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HOUSE BILL 194

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO GOVERNMENT CONTRACTING; REQUIRING PROSPECTIVE CONTRACTORS TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING DISCLOSURE OF CERTAIN INFORMATION BY PROSPECTIVE CONTRACTORS AND BY CONTRACTORS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS AND REGISTRATION INFORMATION; PROHIBITING CERTAIN CONTRIBUTIONS DURING PENDENCY OF THE PROCUREMENT PROCESS OR DURING THE TERM OF A CONTRACT; PROVIDING FOR CANCELLATION OF THE PROCUREMENT PROCESS AND CONTRACTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] PROSPECTIVE CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE--PROHIBITION-- DEFINITIONS.--

A. A prospective contractor, prior to seeking a

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1 contract with a state agency, shall register with the general
2 services department on a disclosure statement form developed by
3 the department and made available to prospective contractors,
4 contractors and the public on the department's web site. The
5 prospective contractor shall disclose and certify pursuant to
6 Section 30-25-1 NMSA 1978 the following information:

- 7 (1) the name and address of the business;
- 8 (2) the principals of the business;
- 9 (3) any affiliated business entities;
- 10 (4) the name and address of a contact person
11 for the business;
- 12 (5) any contracts the prospective contractor
13 currently has with a state agency and the amount and term of
14 each contract; and
- 15 (6) a contribution disclosure statement as
16 required by Subsection C of this section.

17 B. A prospective contractor shall disclose or
18 update the information required by Subsection A of this section
19 prior to responding to a solicitation.

20 C. A prospective contractor shall disclose all
21 contributions given by a principal of the prospective
22 contractor to a state public officer of the office soliciting
23 the contract during the two years prior to the date the
24 prospective contractor responds to a solicitation if the
25 aggregate total of contributions from a principal to the state

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1 public officer exceeds two hundred fifty dollars (\$250) over
2 the two-year period. The disclosure statement shall state the
3 date, the amount and the nature of the contribution and the
4 person receiving the contribution.

5 D. Before a state agency enters into a contract
6 with a prospective contractor, the appropriate procurement
7 officer shall review the information that the prospective
8 contractor has disclosed to the general services department and
9 shall certify in the agency's procurement file that:

10 (1) based on the disclosed information, the
11 prospective contractor has properly registered with the
12 department and disclosed contributions as required by this
13 section; and

14 (2) no conflict of interest with the state
15 agency appears to exist involving the prospective contractor or
16 its principals or contributions and that no undue influence on
17 the procurement officer or state agency has been exerted by a
18 principal of the prospective contractor, a state public officer
19 or any other person during the pendency of the procurement
20 process.

21 E. A contractor who was a prospective contractor
22 pursuant to this section shall update the information required
23 by Subsection A of this section within thirty days of the event
24 requiring the update.

25 F. A principal of a prospective contractor shall

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1 not make a contribution to or solicit a contribution for the
2 benefit of a state public officer during the pendency of the
3 procurement process initiated by the officer's respective state
4 agency and in which the prospective contractor is involved.

5 G. A principal of a contractor that was a
6 prospective contractor pursuant to this section shall not make
7 a contribution to or solicit a contribution for the benefit of
8 a state public officer during the term of a contract entered
9 into between the officer's state agency and the contractor.

10 H. A state agency shall disqualify a prospective
11 contractor from receiving a contract if the prospective
12 contractor fails to submit or update a fully completed
13 disclosure statement pursuant to this section or makes or
14 solicits a contribution prohibited by Subsection F of this
15 section.

16 I. A state agency may terminate a contract if a
17 contractor fails to update a fully completed disclosure
18 statement pursuant to this section or makes or solicits a
19 contribution prohibited by Subsection G of this section.

20 J. If a principal of a contractor inadvertently
21 makes a contribution that would otherwise bar the contractor
22 from receiving a contract or makes a contribution prohibited by
23 Subsection F or G of this section, the principal may request
24 full reimbursement from the recipient and, if reimbursement is
25 received within thirty days after the date on which the

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1 contribution was made, the contractor shall be eligible to
2 receive a contract or shall no longer be in violation, as
3 appropriate. A contribution made within sixty days after the
4 prospective contractor's submission of a response to a
5 solicitation for a contract shall be presumed not to be made
6 inadvertently.

7 K. The provisions of this section shall be applied
8 in conformity with the Procurement Code or any other
9 procurement requirement to which a state agency is subject. To
10 the extent that a provision of the Procurement Code or any
11 other procurement requirement is in conflict with a provision
12 of this section, the provision of this section shall apply.

13 L. As used in this section:

14 (1) "contract" means an agreement or
15 transaction entered into through a request for proposals or
16 invitation for bids issued by a state agency having a value of
17 twenty thousand dollars (\$20,000) or more; a combination or
18 series of such agreements or transactions having a value of
19 twenty thousand dollars (\$20,000) or more in a fiscal year; or
20 a contract for professional services having a value of fifty
21 thousand dollars (\$50,000) or more for:

22 (a) the rendition of services, including
23 professional services and financial services;

24 (b) the furnishing of any material,
25 supplies or equipment;

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1 (c) the construction, alteration or
2 repair of a public building or public work;

3 (d) the acquisition, sale or lease of
4 any land or building;

5 (e) a licensing arrangement;

6 (f) a loan or loan guarantee; or

7 (g) the purchase or sale of financial
8 securities or instruments or the investment of public money;

9 (2) "contractor" means a person that enters
10 into a contract, which person shall be deemed to be a
11 contractor until the termination of the contract; but
12 "contractor" does not include the state or a political
13 subdivision of the state or any full-time or part-time employee
14 of the state or a political subdivision of the state in that
15 person's capacity as an employee of the state or political
16 subdivision of the state or a health care professional
17 providing services under a medicaid provider agreement;

18 (3) "contribution" means:

19 (a) a gift, subscription, loan, advance
20 or deposit of money or any other thing of value, including the
21 estimated value of an in-kind contribution, that is made or
22 received for a political purpose, including payment of a debt
23 incurred in an election campaign;

24 (b) a donation to an organization that
25 is made in response to a request by a state public officer or

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1 an agent on behalf of that officer; or

2 (c) a donation to an organization that
3 supports a state agency pursuant to the provisions of Section
4 6-5A-1 NMSA 1978 if the donor seeks or obtains a contract with
5 the state agency that the organization supports;

6 (4) "pendency of the procurement process"
7 means the time period commencing on the day of the initial
8 solicitation for a contract by the state agency and ending with
9 the execution of the contract or the cancellation of the
10 solicitation;

11 (5) "principal" means, in addition to the
12 contractor or prospective contractor itself:

13 (a) a person who is a member of the
14 board of directors of, or has an ownership interest in, a
15 contractor or prospective contractor, except for a person who
16 owns less than five percent of the shares of a contractor or
17 prospective contractor that is a publicly traded corporation;

18 (b) a person who is employed as
19 president, treasurer, executive vice president or senior vice
20 president of a contractor or prospective contractor;

21 (c) a person who is the chief executive
22 officer of a contractor or prospective contractor;

23 (d) an agent, including a lobbyist
24 subject to the Lobbyist Regulation Act, seeking a contract for
25 a contractor or prospective contractor;

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1 (e) the spouse or a dependent child of a
2 person described in Subparagraphs (a) through (c) of this
3 paragraph; or

4 (f) a political committee established by
5 or on behalf of a person described in this paragraph;

6 (6) "procurement officer" means a person or a
7 designee authorized by a state agency to enter into or
8 administer contracts and make written determinations with
9 respect to those contracts;

10 (7) "prospective contractor" means a person
11 that responds to a solicitation for or seeks a contract, until
12 the contract has been entered into or the solicitation
13 canceled; but "prospective contractor" does not include the
14 state or a political subdivision of the state or any full-time
15 or part-time employee of the state or a political subdivision
16 of the state, in that person's capacity as an employee of the
17 state or a political subdivision of the state or a health care
18 professional providing services under a medicaid provider
19 agreement;

20 (8) "solicitation" means an invitation to bid,
21 a request for qualifications, a request for proposals or other
22 request to enter into a contract, pursuant to the Procurement
23 Code, or the initiation of a process to enter into a contract
24 that is exempt from the Procurement Code pursuant to Sections
25 13-1-98 through 13-1-98.2 NMSA 1978;

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1 (9) "state agency" means an office,
2 department, board, council, commission, institution or agency
3 in the executive, legislative or judicial branch of state
4 government; an institution of the state; or an instrumentality
5 of the state, including the New Mexico finance authority and
6 the New Mexico mortgage finance authority; and

7 (12) "state public officer" means a person
8 elected to an office, or a person appointed to complete a term
9 of an elected office, in the executive, legislative or judicial
10 branch of state government; a candidate or political committee
11 established or controlled by or affiliated with a person
12 elected to or appointed to complete a term of an elected
13 office; or any other person in a state agency who is involved
14 in a solicitation or procurement process and who has an active
15 candidate committee or political committee account.

16 SECTION 2. Section 13-1-112 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 85, as amended) is amended to read:

18 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
19 PROPOSALS.--

20 A. Competitive sealed proposals, including
21 competitive qualifications-based proposals, shall be solicited
22 through a request for proposals that shall be issued and shall
23 include:

24 (1) the specifications for the services or
25 items of tangible personal property to be procured;

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- 1 (2) all contractual terms and conditions
- 2 applicable to the procurement;
- 3 (3) the form for disclosure of ~~[campaign]~~
- 4 contributions given by prospective contractors to applicable
- 5 public officials pursuant to ~~[Section 13-1-191.1 NMSA 1978]~~
- 6 Section 1 of this 2011 act; and
- 7 (4) the location where proposals are to be
- 8 received and the date, time and place where proposals are to be
- 9 received and reviewed.

10 B. A request for proposals may, pursuant to Section
11 13-1-95.1 NMSA 1978, require that all or a portion of a
12 responsive proposal be submitted electronically.

13 C. In the case of requests for competitive
14 qualifications-based proposals, price shall be determined by
15 formal negotiations related to scope of work."

16 Section 3. REPEAL.--Section 13-1-191.1 NMSA 1978 (being
17 Laws 2006, Chapter 81, Section 1, as amended) is repealed.