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SENATE BILL 31

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

INTRODUCED BY

Dede Feldman

ENDORSED BY THE

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING DISCLOSURE OF AND PROHIBITING CERTAIN CONTRIBUTIONS BY PROSPECTIVE CONTRACTORS AND CONTRACTORS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS AND REGISTRATION INFORMATION; AMENDING 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 AND PROHIBITION.--

A. As used in this section:

(1) "contract" means an agreement or transaction with a state agency having a value of fifty thousand dollars (\$50,000) or more, or a combination or series of such agreements or transactions having a value of fifty

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1 thousand dollars (\$50,000) or more, in a fiscal year, for:

2 (a) the rendition of services, including
3 professional services;

4 (b) the furnishing of any material,
5 supplies or equipment;

6 (c) the construction, alteration or
7 repair of any public building or public work;

8 (d) the acquisition, sale or lease of
9 any land or building;

10 (e) a licensing arrangement;

11 (f) a loan or loan guarantee; or

12 (g) the purchase of financial securities
13 or instruments;

14 (2) "contractor" means a person that enters
15 into a contract with a state agency. "Contractor" does not
16 include a state agency or a political subdivision of the state
17 or an employee of a state agency or political subdivision of
18 the state, whether full- or part-time, in that person's
19 capacity as an employee of the state or political subdivision
20 of the state or a health care professional providing services
21 under a medicaid provider agreement;

22 (3) "contribution" means:

23 (a) a gift, subscription, loan, advance
24 or deposit of money or other thing of value, including the
25 estimated value of an in-kind contribution, that is made or

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1 received for a political purpose, including payment of a debt
2 incurred in an election campaign;

3 (b) a donation to an organization that
4 is made in response to a request by a state public officer or
5 an agent on behalf of a state public officer; or

6 (c) a donation to an organization that
7 supports a state agency pursuant to the provisions of Section
8 6-5A-1 NMSA 1978 if the donor seeks or obtains a contract with
9 the agency that the organization supports;

10 (4) "pendency of the procurement process"
11 means the time period commencing on the day of the initial
12 solicitation for a contract by the state agency and ending with
13 the award of the contract or the cancellation of the
14 solicitation;

15 (5) "principal of a contractor" or "principal
16 of a prospective contractor" means, in addition to the
17 contractor or prospective contractor itself:

18 (a) a person who is a member of the
19 board of directors of, or has an ownership interest in, a
20 contractor or prospective contractor, except for a person who
21 owns less than five percent of the shares of a contractor or
22 prospective contractor that is a publicly traded corporation;

23 (b) a person who is the chief executive
24 officer of a contractor or prospective contractor;

25 (c) an agent, including a lobbyist

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1 subject to the Lobbyist Regulation Act, seeking a contract for
2 a contractor or prospective contractor; or

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

5 (6) "prospective contractor" means a person
6 that submits a bid in response to a bid solicitation by a state
7 agency, a proposal in response to a request for proposals or a
8 response to any other solicitation by a state agency until the
9 contract has been entered into. "Prospective contractor" does
10 not include a state agency or a political subdivision of the
11 state or an employee of a state agency or political subdivision
12 of the state, whether full- or part-time, in that person's
13 capacity as an employee of the state or political subdivision
14 of the state or a health care professional providing services
15 under a medicaid provider agreement;

16 (7) "solicitation" means a request to enter
17 into a contract for services, personal property, real property
18 or any other thing of value;

19 (8) "state agency" means an office,
20 department, board, council, commission, institution or other
21 agency in the executive, judicial or legislative branch of
22 state government, an institution of the state or an
23 instrumentality of the state, including the New Mexico finance
24 authority and the New Mexico mortgage finance authority; and

25 (9) "state public officer" means a person

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1 elected to an office, or a person appointed to complete a term
2 of an elected office, in the executive, judicial or legislative
3 branch of state government, a campaign committee established or
4 controlled by or affiliated with that person or any department
5 secretary in the executive branch having an active campaign
6 committee or political committee account.

7 B. A prospective contractor, prior to entering into
8 a contract with a state agency, shall register with the general
9 services department on a form developed by the department and
10 made available on the department's web site. The prospective
11 contractor shall provide the following information:

- 12 (1) the name and address of the business;
- 13 (2) the principals of the business;
- 14 (3) any affiliated business entities;
- 15 (4) the name and address of a contact person
16 for the business; and

17 (5) any contracts the prospective contractor
18 currently has with a state agency and the amount and term of
19 the contract.

20 C. A prospective contractor shall update any of the
21 information required by Subsection B of this section prior to
22 responding to a solicitation from a state agency.

23 D. A prospective contractor shall disclose all
24 contributions given by a principal of the prospective
25 contractor to a state public officer of the state agency

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1 soliciting the contract during the two years prior to the date
2 the prospective contractor responds to a solicitation by a
3 state agency to enter into a contract with the state agency if
4 the total contributions from the principal to the state public
5 officer exceed two hundred fifty dollars (\$250) over the two-
6 year period.

7 E. The disclosure shall indicate the date, the
8 amount and the nature of the contribution and the person
9 receiving the contribution. Prospective contractors shall
10 complete the disclosure statement online, and the general
11 services department shall post the disclosure statements in a
12 searchable format on its web site.

13 F. A principal of a prospective contractor that is
14 seeking to contract with a state agency shall not make a
15 contribution to or solicit a contribution for a state public
16 officer of the state agency soliciting the contract during the
17 pendency of the procurement process.

18 G. If a prospective contractor enters into a
19 contract with a state agency, during the term of the contract,
20 the contractor shall update the information required by this
21 section quarterly. Quarterly updates shall be filed by 5:00
22 p.m. on the second Monday in January, April, July and October.

23 H. A principal of a contractor shall not make a
24 contribution to or solicit a contribution for the benefit of a
25 state public officer of the state agency that has entered into

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1 a contract with the contractor during the term of the contract.

2 I. If a principal of a prospective contractor or
3 principal of a contractor inadvertently makes a contribution
4 that would otherwise bar the contractor from receiving a
5 contract or makes a contribution prohibited by Subsection H of
6 this section, the principal may request full reimbursement from
7 the recipient, and, if reimbursement is received within thirty
8 days after the date on which the contribution was made, the
9 contractor shall be eligible to receive a contract or shall no
10 longer be in violation, as appropriate. Any contribution made
11 during the pendency of the procurement process shall be
12 presumed not to be made inadvertently.

13 J. Before awarding or entering into a contract with
14 a prospective contractor, the appropriate purchasing agent or
15 contract evaluation committee shall review the information that
16 the prospective contractor has submitted and shall certify that
17 the prospective contractor has properly registered with the
18 general services department and submitted the list of
19 contributions required by this section.

20 K. A solicitation for or proposed award of a
21 contract may be canceled or a contract that is executed may be
22 terminated if it is in the best interests of the state when a
23 prospective contractor or a contractor fails to submit a fully
24 completed disclosure statement pursuant to this section or
25 makes a contribution prohibited by Subsection F or H of this

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1 section.

2 L. The general services department shall issue all
3 rules necessary to carry out the provisions of this section.

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

6 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
7 PROPOSALS.--

8 A. Competitive sealed proposals, including
9 competitive qualifications-based proposals, shall be solicited
10 through a request for proposals that shall be issued and shall
11 include:

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

14 (2) all contractual terms and conditions
15 applicable to the procurement;

16 (3) the ~~[form]~~ applicable instructions for
17 disclosure of ~~[campaign]~~ contributions given by prospective
18 contractors to applicable public officials pursuant to Section
19 13-1-191.1 NMSA 1978 or Section 1 of this 2011 act; and

20 (4) the location where proposals are to be
21 received and the date, time and place where proposals are to be
22 received and reviewed.

23 B. A request for proposals may, pursuant to Section
24 13-1-95.1 NMSA 1978, require that all or a portion of a
25 responsive proposal be submitted electronically.

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

4 SECTION 3. Section 13-1-191.1 NMSA 1978 (being Laws 2006,
5 Chapter 81, Section 1, as amended) is amended to read:

6 "13-1-191.1. CAMPAIGN CONTRIBUTION DISCLOSURE AND
7 PROHIBITION.--

8 A. This section applies to prospective contractors
9 with ~~[the state or]~~ a local public body.

10 B. A prospective contractor subject to this section
11 shall disclose all campaign contributions given by the
12 prospective contractor or a family member or representative of
13 the prospective contractor to an applicable public official of
14 ~~[the state or]~~ a local public body during the two years prior
15 to the date on which a proposal is submitted or, in the case of
16 a sole source or small purchase contract, the two years prior
17 to the date on which the contractor signs the contract, if the
18 aggregate total of contributions given by the prospective
19 contractor or a family member or representative of the
20 prospective contractor to the public official exceeds two
21 hundred fifty dollars (\$250) over the two-year period.

22 C. The disclosure shall indicate the date, the
23 amount, the nature and the purpose of the contribution. The
24 disclosure statement shall be on a form developed and made
25 available electronically by the department of finance and

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1 administration to all ~~[state agencies and]~~ local public bodies.
2 The ~~[state agency or]~~ local public body that procures the
3 services or items of tangible personal property shall indicate
4 on the form the name or names of every applicable public
5 official, if any, for which disclosure is required by a
6 prospective contractor for each competitive sealed proposal,
7 sole source or small purchase contract. The form shall be
8 filed with the ~~[state agency or]~~ local public body as part of
9 the competitive sealed proposal or, in the case of a sole
10 source or small purchase contract, on the date on which the
11 contractor signs the contract.

12 D. A prospective contractor submitting a disclosure
13 statement pursuant to this section who has not contributed to
14 an applicable public official, whose family members have not
15 contributed to an applicable public official or whose
16 representatives have not contributed to an applicable public
17 official shall make a statement that no contribution was made.

18 E. A prospective contractor or a family member or
19 representative of the prospective contractor shall not give a
20 campaign contribution or other thing of value to an applicable
21 public official or the applicable public official's employees
22 during the pendency of the procurement process or during the
23 pendency of negotiations for a sole source or small purchase
24 contract.

25 F. A solicitation or proposed award for a proposed

1 contract may be canceled pursuant to Section 13-1-181 NMSA 1978
2 or a contract that is executed may be ratified or terminated
3 pursuant to Section 13-1-182 NMSA 1978 if:

4 (1) a prospective contractor fails to submit a
5 fully completed disclosure statement pursuant to this section;
6 or

7 (2) a prospective contractor or family member
8 or representative of the prospective contractor gives a
9 campaign contribution or other thing of value to an applicable
10 public official or the applicable public official's employees
11 during the pendency of the procurement process.

12 G. As used in this section:

13 (1) "applicable public official" means a
14 person elected to an office, or a person appointed to complete
15 a term of an elected office, who has the authority to award or
16 influence the award of the contract for which the prospective
17 contractor is submitting a competitive sealed proposal or who
18 has the authority to negotiate a sole source or small purchase
19 contract that may be awarded without submission of a sealed
20 competitive proposal;

21 (2) "family member" means a spouse, father,
22 mother, child, father-in-law, mother-in-law, daughter-in-law or
23 son-in-law of:

24 (a) a prospective contractor, if the
25 prospective contractor is a natural person; or

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(b) an owner of a prospective contractor;

(3) "pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals;

(4) "prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and

(5) "representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor."