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HOUSE BILL 278

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO PROCUREMENT; PROVIDING FOR IMMEDIATE SUSPENSION OF  
A BUSINESS FOR REASONABLE SUSPICION OF CONDUCT; ADDING CAUSES  
FOR DEBARMENT OR SUSPENSION OF A CONTRACTOR; ALLOWING THE  
CONTINUATION OF CONTRACTS WITH A DEBARRED OR SUSPENDED  
CONTRACTOR UNDER CERTAIN CONDITIONS.

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

**SECTION 1.** Section 13-1-177 NMSA 1978 (being Laws 1984,  
Chapter 65, Section 150) is amended to read:

"13-1-177. AUTHORITY TO DEBAR OR SUSPEND.--

A. The state purchasing agent or a central  
purchasing office, after reasonable notice to the business  
involved, shall have authority to recommend to the governing  
authority of a state agency or a local public body the  
suspension or debarment of a business for cause from

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1 consideration for award of contracts, other than contracts for  
2 professional services. The debarment shall not be for a period  
3 of more than three years, and a suspension shall not exceed  
4 [~~three months~~] one year. The authority to debar or suspend  
5 shall be exercised by the governing authority of a state agency  
6 or a local public body in accordance with regulations [~~which~~]  
7 that shall provide for reasonable notice and a fair hearing  
8 prior to suspension or debarment.

9 B. The state purchasing agent or a central  
10 purchasing office may immediately suspend a business for up to  
11 ninety days if the state purchasing agent or central purchasing  
12 office determines that there is reasonable suspicion of conduct  
13 by the business that would warrant suspension for cause. If  
14 the state purchasing agent or a central purchasing office  
15 immediately suspends a business, the state purchasing agent or  
16 a central purchasing office shall:

17 (1) immediately issue a written notice of the  
18 immediate suspension to the business by certified mail, return  
19 receipt requested, that shall include:

20 (a) the date and time of a review  
21 hearing before the issuing authority pursuant to Paragraph (3)  
22 of this subsection;

23 (b) the reasons for the suspension;

24 (c) a statement that the state may issue  
25 a cease and desist order for all services or activities

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1 provided by the business under any agreement with the state  
2 agency or local public body; and

3 (d) a statement that the business has  
4 the right to appeal the final decision of the review hearing  
5 pursuant to Section 13-1-183 NMSA 1978;

6 (2) inform the governing authority of the  
7 state agency or local public body that has an agreement in  
8 place with the business of the immediate suspension; and

9 (3) hold a review hearing of the immediate  
10 suspension before the issuing authority within thirty days of  
11 issuing the written notice.

12 C. The state purchasing agent or a central  
13 purchasing office may immediately suspend a business if a  
14 criminal information, indictment or complaint is filed against  
15 the business in a district court and is the result of the same  
16 or similar conduct that would warrant an immediate suspension  
17 pursuant to Subsection B of this section. The immediate  
18 suspension pursuant to this subsection shall remain in effect  
19 during the pendency of the criminal proceedings against the  
20 business.

21 D. The secretary shall promulgate rules necessary  
22 to implement the provisions of Subsections B and C of this  
23 section."

24 SECTION 2. Section 13-1-178 NMSA 1978 (being Laws 1984,  
25 Chapter 65, Section 151) is amended to read:

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1 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME  
2 LIMIT.--

3 A. The causes for debarment or suspension occurring  
4 within three years of a procurement include but are not limited  
5 to the following:

6 [~~A-~~] (1) conviction of or civil judgment  
7 against a bidder, offeror or contractor for commission of a  
8 criminal offense related to obtaining or attempting to obtain a  
9 public or private contract or subcontract, or in the  
10 performance of such contract or subcontract;

11 [~~B-~~] (2) conviction of a bidder, offeror or  
12 contractor under state or federal statutes of embezzlement,  
13 theft, forgery, bribery, falsification or destruction of  
14 records, making false statements, tax evasion, violating  
15 federal or state criminal tax laws or receiving stolen  
16 property;

17 [~~G-~~] (3) conviction of a bidder, offeror or  
18 contractor under state or federal antitrust statutes [~~arising~~  
19 ~~out of the submission of bids or proposals~~] relating to  
20 submission of offers;

21 (4) conviction of or civil judgment against a  
22 bidder, offeror or contractor for any other offense indicating  
23 a lack of business integrity or business honesty that seriously  
24 and directly affects the present responsibility of a contractor  
25 or subcontractor;

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1                    (5) civil judgment against a bidder, offeror  
2                    or contractor of an unfair trade practice pursuant to the  
3                    Unfair Practices Act;

4                    [~~D-~~] (6) violation by a bidder, offeror or  
5                    contractor of contract provisions, as set forth in this  
6                    [~~subsection~~] paragraph, of a character [~~which~~] that is  
7                    reasonably regarded by the state purchasing agent or a central  
8                    purchasing office to be so serious as to justify suspension or  
9                    debarment action:

10                    [~~(1)~~] (a) willful failure to perform in  
11                    accordance with one or more contracts, provided that this  
12                    failure has occurred within a reasonable time preceding the  
13                    decision to impose debarment; or

14                    [~~(2)~~] (b) a history of failure to  
15                    perform or of unsatisfactory performance of one or more  
16                    contracts, provided that this failure or unsatisfactory  
17                    performance has occurred within a reasonable time preceding the  
18                    decision to impose debarment and provided further that failure  
19                    to perform or unsatisfactory performance caused by acts beyond  
20                    the control of the contractor shall not be considered to be a  
21                    basis for debarment;

22                    [~~E-~~] (7) any other cause occurring within  
23                    three years of a procurement [~~which~~] that the state purchasing  
24                    agent or a central purchasing office determines to be so  
25                    serious and compelling as to affect responsibility as a

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1 contractor; or

2 [F.—for] (8) a willful violation by a bidder,  
3 offeror or contractor of the provisions of the Procurement Code  
4 within three years of a procurement.

5 B. As used in this section, the terms "bidder",  
6 "offeror" and "contractor" include "principal". "Principal"  
7 means an officer, director, owner or partner of, or a person  
8 having primary management or supervisory responsibilities  
9 within, a business or a business's related entities."

10 SECTION 3. A new section of the Procurement Code is  
11 enacted to read:

12 "[NEW MATERIAL] CONTINUATION OF CURRENT CONTRACTS--  
13 RESTRICTIONS ON SUBCONTRACTING.--

14 A. Notwithstanding the debarment, suspension or  
15 proposed debarment of a contractor, a state agency or local  
16 public body may continue contracts or subcontracts in existence  
17 at the time the contractor was debarred, suspended or proposed  
18 for debarment unless the governing authority of the state  
19 agency or local public body directs otherwise.

20 B. Unless the governing authority of a state agency  
21 or local public body makes a written determination of the  
22 compelling reasons otherwise, ordering activities from a  
23 contractor that has been debarred, suspended or proposed for  
24 debarment shall not:

25 (1) incur any further financial obligations

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1 for materials, services, facilities or other obligations unless  
2 specifically authorized to do so under the terms and conditions  
3 of the current agreement or proposed agreement; or

4 (2) add new work, exercise options or  
5 otherwise extend the duration of the current contract or order.

6 C. When a contractor that has been debarred,  
7 suspended or proposed for debarment is proposed as a  
8 subcontractor for any subcontract subject to the Procurement  
9 Code, the state purchasing agent or a central purchasing office  
10 shall not consent to the subcontract unless the governing  
11 authority of a state agency or local public body states in  
12 writing the compelling reasons for consenting to the  
13 subcontract.

14 D. A contractor shall not enter into a subcontract  
15 with a contractor that has been debarred, suspended or proposed  
16 for debarment unless the contractor receives written  
17 authorization from the state purchasing agent or a central  
18 purchasing office. If a contractor intends to subcontract with  
19 a contractor that has been debarred, suspended or proposed for  
20 debarment, the contractor shall notify the state agency or  
21 local public body in writing before entering into the  
22 subcontract and the notification shall include:

23 (1) the name of the subcontractor;

24 (2) the contractor's knowledge of the reasons  
25 the subcontractor has been debarred, suspended or proposed for

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1 debarment;

2 (3) the compelling reasons for doing business  
3 with the subcontractor, notwithstanding the debarment,  
4 suspension or proposed debarment; and

5 (4) the systems and procedures that the  
6 contractor has established to ensure that the contractor is  
7 fully protecting the interests of the state agency or local  
8 public body when dealing with the subcontractor in view of the  
9 specific basis for the subcontractor's debarment, suspension or  
10 proposed debarment."

11 SECTION 4. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2012.