

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 133

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS
TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING
DISCLOSURE OF CERTAIN CONTRIBUTIONS BY PROSPECTIVE STATE AND
LOCAL CONTRACTORS AND STATE AND LOCAL CONTRACTORS; PROHIBITING
CERTAIN CONTRIBUTIONS DURING THE PENDENCY OF THE PROCUREMENT
PROCESS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS
AND REGISTRATION INFORMATION; 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 STATE AND LOCAL
CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE AND
PROHIBITION.--

A. As used in this section:

(1) "contract" means an agreement or

1 transaction with a state agency or a local public body having a
2 value of fifty thousand dollars (\$50,000) or more, or a
3 combination or series of such agreements or transactions having
4 a value of fifty thousand dollars (\$50,000) or more, in a
5 fiscal year, for:

6 (a) the rendition of services, including
7 professional services;

8 (b) the furnishing of any material,
9 supplies or equipment;

10 (c) the construction, alteration or
11 repair of any public building or public work;

12 (d) the acquisition, sale or lease of
13 any land or building;

14 (e) a licensing arrangement;

15 (f) a loan or loan guarantee; or

16 (g) the purchase of financial securities
17 or instruments;

18 (2) "contribution" means:

19 (a) a gift, subscription, loan, advance
20 or deposit of money or 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, but does not include the
24 value of services provided without compensation or unreimbursed
25 travel or other personal expenses of individuals who volunteer

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1 a portion or all of their time on behalf of a candidate or
2 political committee;

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

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

10 (3) "local contractor" means a person that
11 enters into a contract with a local public body. "Local
12 contractor" does not include a state agency or a political
13 subdivision of the state or an employee of a state agency or
14 political subdivision of the state, whether full- or part-time,
15 in that person's capacity as an employee of the state or
16 political subdivision of the state;

17 (4) "local public body" means the governing
18 authority of a political subdivision of the state;

19 (5) "local public officer" means a person
20 elected to an office, or a person appointed to complete a term
21 of an elected office, in the political subdivision of the state
22 where the local public body is seeking to contract with a local
23 contractor;

24 (6) "pendency of the procurement process"
25 means the time period commencing on the day of the initial

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1 solicitation for a contract by the state agency or local public
2 body and ending with the award of the contract or the
3 cancellation of the solicitation;

4 (7) "political purpose" means to expressly
5 advocate the nomination, election or defeat of a candidate or
6 to expressly advocate the passage or defeat of a ballot issue;

7 (8) "principal of a prospective contractor"
8 means, in addition to the prospective contractor itself:

9 (a) an individual who is a member of the
10 board of directors of a prospective contractor;

11 (b) a person, including a spouse, who
12 has an ownership or controlling interest in a prospective
13 contractor, except for a person who owns less than five percent
14 of the shares of a prospective contractor that is a publicly
15 traded corporation;

16 (c) an individual who is the chief
17 executive officer of a prospective contractor;

18 (d) an agent, including a lobbyist
19 subject to the Lobbyist Regulation Act, seeking a contract for
20 a prospective contractor; or

21 (e) a political committee established by
22 or on behalf of a person described in this paragraph;

23 (9) "prospective contractor" means a person
24 that submits a bid in response to a bid solicitation by a state
25 agency or a local public body, a proposal in response to a

1 request for proposals or a response to any other solicitation
2 by a state agency or a local public body until the contract has
3 been entered into. "Prospective contractor" does not include a
4 state agency or a political subdivision of the state or an
5 employee of a state agency or political subdivision of the
6 state, whether full- or part-time, in that person's capacity as
7 an employee of the state or political subdivision of the state;

8 (10) "solicitation" means a request for the
9 purchase of services, professional services, personal property,
10 real property or any other thing of value, including requests
11 for information;

12 (11) "state agency" means an office,
13 department, board, council, commission, institution or other
14 agency in the executive, judicial or legislative branch of
15 state government;

16 (12) "state contractor" means a person that
17 enters into a contract with a state agency. "State contractor"
18 does not include a state agency or a political subdivision of
19 the state or an employee of a state agency or political
20 subdivision of the state, whether full- or part-time, in that
21 person's capacity as an employee of the state or political
22 subdivision of the state; and

23 (13) "state public officer" means:

24 (a) a person elected to an office, or a
25 person appointed to complete a term of an elected office, in

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1 the executive, judicial or legislative branch of state
2 government;

3 (b) a campaign committee established or
4 controlled by or affiliated with that person; or

5 (c) any person who is involved in a
6 solicitation or procurement process that has an active campaign
7 committee or political committee account.

8 B. A prospective contractor, prior to entering into
9 a contract with a state agency, shall register with the general
10 services department on a form developed by the department and
11 made available on the department's web site. A prospective
12 contractor, prior to entering into a contract with a local
13 public body, shall register with the local public body on a
14 form developed by the local public body and made available on
15 the local public body's web site, if one exists. The
16 prospective contractor shall provide the following information:

17 (1) the name and address of the prospective
18 contractor;

19 (2) the principals of the prospective
20 contractor;

21 (3) any affiliated business entities;

22 (4) the name and address of a contact person
23 for the business; and

24 (5) any contracts, as well as the amounts and
25 terms of the contracts, that the prospective contractor

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1 currently has with the state agency or local public body
2 issuing the solicitation.

3 C. A prospective contractor shall update any of the
4 information required by Subsection B of this section prior to
5 responding to a solicitation from a state agency or local
6 public body.

7 D. The state agency or local public body that makes
8 a solicitation shall provide a list, as part of the
9 solicitation, to the prospective contractors that indicates:

10 (1) the name of each public officer, if any,
11 for which disclosure is required by a prospective contractor as
12 provided in Subsection F or G of this section; and

13 (2) the organizations for which disclosure is
14 required by a prospective contractor, if any, as provided in
15 Subsection F or G of this section.

16 E. A prospective contractor shall include in its
17 bid or proposal to a state agency a completed disclosure
18 statement developed by the general services department and made
19 available on the sunshine portal web site. A prospective
20 contractor shall include in its bid or proposal to a local
21 public body a completed disclosure statement developed by the
22 local public body and made available on the local public body's
23 web site, if one exists. The disclosure statement shall
24 indicate the date, the amount and the nature of the
25 contribution and the person receiving the contribution.

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1 Prospective contractors shall complete the disclosure statement
2 online, if a web site exists. The general services department
3 shall provide the disclosure statements in a searchable format
4 to the department of information technology for posting on the
5 sunshine portal. The local public body shall post the
6 disclosure statements in a searchable format on the local
7 public body's web site, if one exists.

8 F. A prospective contractor shall disclose all
9 contributions given by a principal of the prospective
10 contractor to a state public officer of the state agency
11 soliciting the contract, or donations described in Subparagraph
12 (a) or (b) of Paragraph (2) of Subsection A of this section,
13 during the two years prior to the date that the prospective
14 contractor responds to a solicitation by a state agency to
15 enter into a contract with the state agency if the total
16 contributions from the principal to the state public officer,
17 or donations described in Subparagraph (a) or (b) of Paragraph
18 (2) of Subsection A of this section, exceed one thousand
19 dollars (\$1,000) over the two-year period.

20 G. A prospective contractor shall disclose all
21 contributions given by a principal of the prospective
22 contractor to a local public officer, or donations described in
23 Subparagraph (a) or (b) of Paragraph (2) of Subsection A of
24 this section, during the two years prior to the date the
25 prospective contractor responds to a solicitation by a local

1 public body to enter into a contract with the local public body
2 if the total contributions from the principal to the local
3 public officer, or donations described in Subparagraph (a) or
4 (b) of Paragraph (2) of Subsection A of this section, exceed
5 one thousand dollars (\$1,000) over the two-year period.

6 H. A principal of a prospective contractor that is
7 seeking to contract with a state agency shall not make a
8 contribution to or solicit a contribution for a state public
9 officer of the agency soliciting the contract during the
10 pendency of the procurement process. A principal of a
11 prospective contractor that is seeking to contract with a local
12 public body shall not make a contribution to or solicit a
13 contribution for a local public officer of the local public
14 body soliciting the contract during the pendency of the
15 procurement process.

16 I. Before awarding or entering into a contract with
17 a prospective contractor, the appropriate purchasing agent or
18 contract evaluation committee shall review the information that
19 the prospective contractor has submitted and shall verify that
20 the prospective contractor has properly submitted the required
21 disclosure statement specified in Subsection E of this section.

22 J. If a contractor enters into a contract with a
23 state agency or local public body, during the term of the
24 contract, the contractor shall update the information required
25 by this section annually and include contributions made since

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1 the beginning of the contract. Updates shall be filed with the
2 appropriate state or local public body by 5:00 p.m. on the
3 second Monday in January.

4 K. A solicitation for or proposed award of a
5 contract may be canceled or a contract that is executed may be
6 terminated if it is in the best interests of the state or local
7 public body when a prospective contractor or a state or local
8 contractor fails to submit a fully completed disclosure
9 statement pursuant to this section or makes a contribution
10 prohibited by Subsection H of this section.

11 L. The New Mexico finance authority and the New
12 Mexico mortgage finance authority shall adopt policies that
13 have the same effect as the requirements of this section.

14 M. The general services department shall issue all
15 rules necessary to carry out the provisions of this section.

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]~~ applicable instructions for
4 disclosure of ~~[campaign]~~ contributions given by prospective
5 contractors to applicable public officials pursuant to Section
6 ~~[13-1-191.1 NMSA 1978]~~ 1 of this 2013 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.

18 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is March 15, 2014.