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HOUSE BILL 1256

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY W. SANDEL

AN ACT

RELATING TO PROCUREMENT; AUTHORIZING LOCAL PUBLIC BODIES TO IDENTIFY CERTAIN LOCAL PUBLIC WORKS PROJECTS AS SMALL BUSINESS SET-ASIDE PROJECTS; EXEMPTING THE PROCUREMENT OF ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING AND SURVEYING CONTRACTS FOR SMALL BUSINESS SET-ASIDE PROJECTS FROM CERTAIN PROVISIONS OF THE PROCUREMENT CODE; AMENDING AND ENACTING SECTIONS OF THE PROCUREMENT CODE.

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

Section 1. A new section of the Procurement Code is enacted to read:

" [NEW MATERIAL] DEFINITION-- SMALL BUSINESS. -- "Small business" means a business entity whose average annual dollar volume of business for the most recent three calendar years was less than one million two hundred fifty thousand dollars

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1 (\$1, 250, 000). "

2 Section 2. A new section of the Procurement Code is
3 enacted to read:

4 "[NEW MATERIAL] LOCAL PUBLIC BODIES--SMALL BUSINESS SET-
5 ASIDE-- ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND
6 SURVEYING CONTRACTS.--A local public body may set aside for
7 award solely to small businesses the contracts for
8 architectural, engineering, landscape architectural and survey
9 services for local public works projects. The local public body
10 may determine the size and type of contracts that qualify for
11 the set-aside. Projects set aside for small businesses are
12 exempt from the qualifications-based proposal requirements of
13 the Procurement Code. "

14 Section 3. Section 13-1-117.2 NMSA 1978 (being Laws 1989,
15 Chapter 69, Section 10, as amended) is amended to read:

16 "13-1-117.2. PROCUREMENT OF PROFESSIONAL SERVICES--LOCAL
17 PUBLIC BODIES--PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE. --

18 A. Any local public body [~~which~~] that does not have
19 on staff a licensed professional engineer, surveyor, architect
20 or landscape architect shall have appointed to it, or have the
21 appointment waived by the appropriate New Mexico professional
22 society listed in Subsection D of this section, an individual to
23 serve as a professional technical advisor. The professional
24 technical advisor shall be a senior member of an architectural,
25 engineering, surveying or landscape architectural business with

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1 experience appropriate to the type of local public works project
2 proposed and shall be a resident licensed architect,
3 professional engineer, surveyor or landscape architect in the
4 state who possesses at least ten years of experience in
5 responsible charge as defined in the Architectural Act, the
6 Engineering and Surveying Practice Act or the Landscape
7 Architects Act, respectively.

8 B. The professional technical advisor to a local
9 public body shall serve as an agent of the local public body and
10 shall be indemnified and held harmless. He may be reimbursed as
11 provided in the Per Diem and Mileage Act for per diem and
12 mileage in connection with his service as a professional
13 technical advisor and shall receive no other compensation,
14 perquisite or allowance.

15 C. The duties and responsibilities of the
16 professional technical advisor shall include but may not be
17 limited to the following activities:

18 (1) advise the local public body in the
19 development of requests for proposals for engineering,
20 surveying, architectural or landscape architectural services
21 procured by the local public body;

22 (2) advise the local public body in giving
23 public notice of requests for proposals;

24 (3) advise in the evaluation and selection of
25 professional businesses to perform services for the local public

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1 body, based upon demonstrated competence and qualification for
2 the type of professional services required; and

3 (4) assist in contract negotiations.

4 D. Professional technical advisors shall be obtained
5 through the professional technical advisory board, a consortium
6 of the consulting engineers council of New Mexico and the
7 professional engineers in private practice division of the New
8 Mexico society of professional engineers; the New Mexico
9 professional surveyors; the New Mexico society of architects; or
10 the New Mexico chapter of the American society of landscape
11 architects.

12 E. No individual or firm whose principal, officer,
13 director or employee serves as a professional technical advisor
14 to a local public body shall be permitted to submit a proposal
15 to the local public body during the period in which the
16 individual, principal, officer, director or employee serves as a
17 professional technical advisor to the local public body;
18 however, nothing in this section shall prohibit an individual or
19 firm from submitting a proposal to any municipality in which the
20 individual or a principal, officer, director or employee is not
21 serving as a professional technical advisor.

22 F. The professional technical advisor shall have no
23 duties or responsibilities to advise or assist in small business
24 set-aside procurements or contracts."

25 Section 4. Section 13-1-119 NMSA 1978 (being Laws 1984,

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1 Chapter 65, Section 92, as amended) is amended to read:

2 "13-1-119. COMPETITIVE SEALED QUALIFICATIONS-BASED
3 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
4 SURVEYORS--ADDITIONAL REQUIREMENTS.--In addition to compliance
5 with the requirements of Sections 13-1-112 through 13-1-114 and
6 13-1-116 through 13-1-118 NMSA 1978, a state agency or local
7 public body, when procuring the services of architects,
8 landscape architects, engineers or surveyors for state public
9 works projects or local public works projects, other than small
10 business set-aside projects, shall comply with Sections 13-1-120
11 through 13-1-124 NMSA 1978. "

12 Section 5. Section 13-1-120 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 93, as amended) is amended to read:

14 "13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED
15 PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--
16 SURVEYORS--SELECTION PROCESS.--

17 A. For each proposed state public works project or
18 local public works project other than a small business set-aside
19 project, the architect, engineer, landscape architect and
20 surveyor selection committee, state highway and transportation
21 department selection committee or local selection committee, as
22 appropriate, shall evaluate statements of qualifications and
23 performance data submitted by at least three businesses in
24 regard to the particular project and may conduct interviews with
25 and may require public presentation by all businesses applying

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1 for selection regarding their qualifications, their approach to
2 the project and their ability to furnish the required services.

3 B. The selection committee shall select, ranked in
4 the order of their qualifications, no less than three businesses
5 deemed to be the most highly qualified to perform the required
6 services, after considering the following criteria together with
7 any criteria, except price, established by the using agency
8 authorizing the project:

9 (1) specialized design and technical competence
10 of the business, including a joint venture or association,
11 regarding the type of services required;

12 (2) capacity and capability of the business to
13 perform the work, including any specialized services, within the
14 time limitations;

15 (3) past record of performance on contracts
16 with government agencies or private industry with respect to
17 such factors as control of costs, quality of work and ability to
18 meet schedules;

19 (4) proximity to or familiarity with the area
20 in which the project is located;

21 (5) the amount of design work that will be
22 produced by a New Mexico business within this state; and

23 (6) the volume of work previously done for the
24 entity requesting proposals [~~which~~] that is not seventy-five
25 percent complete with respect to basic professional design

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1 services, with the objective of effecting an equitable
2 distribution of contracts among qualified businesses and of
3 assuring that the interest of the public in having available a
4 substantial number of qualified businesses is protected;
5 provided, however, that the principle of selection of the most
6 highly qualified businesses is not violated.

7 C. Notwithstanding the requirements of Subsections A
8 and B of this section, if fewer than three businesses have
9 submitted a statement of qualifications for a particular
10 project, the committee may:

11 (1) rank in order of qualifications and submit
12 to the secretary or local public body for award those businesses
13 [~~which~~] that have submitted a statement of qualifications; or

14 (2) recommend termination of the selection
15 process and sending out of new notices of the proposed
16 procurement pursuant to Section 13-1-104 NMSA 1978.

17 D. The names of all businesses submitting proposals
18 and the names of all businesses, if any, selected for interview
19 shall be public information. After an award has been made,
20 final ranking and evaluation scores for all proposals shall
21 become public information. Businesses [~~which~~] that have not
22 been selected shall be so notified in writing within twenty-one
23 days after an award is made. "

24 Section 6. Section 13-1-122 NMSA 1978 (being Laws 1984,
25 Chapter 65, Section 95, as amended) is amended to read:

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1 "13-1-122. COMPETITIVE SEALED QUALIFICATIONS-BASED
2 PROPOSALS--AWARD OF ARCHITECT, ENGINEERING, LANDSCAPE ARCHITECT
3 AND SURVEYING CONTRACTS. --

4 A. The secretary or his designee or the secretary of
5 [the] highway and transportation [~~department~~] or his designee or
6 a designee of a local public body shall negotiate a contract
7 with the highest qualified business for the architectural,
8 landscape architectural, engineering or surveying services at
9 compensation determined in writing to be fair and reasonable.
10 In making this decision, the secretary or his designee or the
11 designee of a local public body shall take into account the
12 estimated value of the services to be rendered and the scope,
13 complexity and professional nature of the services. Should the
14 secretary or his designee or the designee of a local public body
15 be unable to negotiate a satisfactory contract with the business
16 considered to be the most qualified at a price determined to be
17 fair and reasonable, negotiations with that business shall be
18 formally terminated. The secretary or his designee or the
19 designee of a local public body shall then undertake
20 negotiations with the second most qualified business. Failing
21 accord with the second most qualified business, the secretary or
22 his designee or a designee of a local public body shall formally
23 terminate negotiations with that business. The secretary or his
24 designee or the designee of the local public body shall then
25 undertake negotiations with the third most qualified business.

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1 Should the secretary or his designee or a designee of a local
2 public body be unable to negotiate a contract with any of the
3 businesses selected by the committee, additional businesses
4 shall be ranked in order of their qualifications and the
5 secretary or his designee or the designee of a local public body
6 shall continue negotiations in accordance with this section
7 until a contract is signed with a qualified business or the
8 procurement process is terminated and a new request for
9 proposals is initiated. The secretary or the representative of
10 a local public body shall publicly announce the business
11 selected for award.

12 B. The provisions of this section do not apply to
13 contracts for architectural, engineering, landscape
14 architectural or surveying services for projects identified as
15 small business set-aside projects of a local public body."

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 11, 1997

Mr. Speaker:

Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred

HOUSE BILL 1256

has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Gary King, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 2 Against

Yes: 4

No: Dana, Johnson

Excused: Rios, Trujillo, Vaughn, Vigil

Absent: None

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