

1 BILL

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4
5
6 DISCUSSION DRAFT

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9
10 AN ACT

11 RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS
12 TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING
13 DISCLOSURE OF CERTAIN CONTRIBUTIONS BY PROSPECTIVE STATE AND
14 LOCAL CONTRACTORS AND STATE AND LOCAL CONTRACTORS; PROHIBITING
15 CERTAIN CONTRIBUTIONS DURING THE PENDENCY OF THE PROCUREMENT
16 PROCESS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS
17 AND REGISTRATION INFORMATION; AMENDING, REPEALING AND ENACTING
18 SECTIONS OF THE NMSA 1978.

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

21 SECTION 1. [NEW MATERIAL] PROSPECTIVE STATE AND LOCAL
22 CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE AND
23 PROHIBITION.--

24 A. As used in this section:

25 (1) "contract" means an agreement or

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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;

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

1 local public officer or an agent on behalf of either; or

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

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

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

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

20 (6) "pendency of the procurement process"
21 means the time period commencing on the day of the initial
22 solicitation for a contract by the state agency or local public
23 body and ending with the award of the contract or the
24 cancellation of the solicitation;

25 (7) "principal of a prospective contractor"

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1 means, in addition to the prospective contractor itself:

2 (a) an individual who is a member of the
3 board of directors of, or a person that has an ownership or
4 controlling interest in, a prospective contractor, except for a
5 person who owns less than five percent of the shares of a
6 prospective contractor that is a publicly traded corporation;

7 (b) an individual who is the chief
8 executive officer of a prospective contractor;

9 (c) an agent, including a lobbyist
10 subject to the Lobbyist Regulation Act, seeking a contract for
11 a prospective contractor; or

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

14 (8) "prospective contractor" means a person
15 that submits a bid in response to a bid solicitation by a state
16 agency or a local public body, a proposal in response to a
17 request for proposals or a response to any other solicitation
18 by a state agency or a local public body until the contract has
19 been entered into. "Prospective contractor" does not include a
20 state agency or a political subdivision of the state or an
21 employee of a state agency or political subdivision of the
22 state, whether full- or part-time, in that person's capacity as
23 an employee of the state or political subdivision of the state;

24 (9) "solicitation" means a request for the
25 purchase of services, personal property, real property or any

1 other thing of value;

2 (10) "state agency" means an office,
3 department, board, council, commission, institution or other
4 agency in the executive, judicial or legislative branch of
5 state government;

6 (11) "state contractor" means a person that
7 enters into a contract with a state agency. "State contractor"
8 does not include a state agency or a political subdivision of
9 the state or an employee of a state agency or political
10 subdivision of the state, whether full- or part-time, in that
11 person's capacity as an employee of the state or political
12 subdivision of the state; and

13 (12) "state public officer" means a person
14 elected to an office, or a person appointed to complete a term
15 of an elected office, in the executive, judicial or legislative
16 branch of state government, a campaign committee established or
17 controlled by or affiliated with that person or any person who
18 is involved in a solicitation or procurement process that has
19 an active campaign committee or political committee account.

20 B. A prospective contractor, prior to entering into
21 a contract with a state agency or a local public body, shall
22 register with the general services department on a form
23 developed by the department and made available on the
24 department's web site. The prospective contractor shall
25 provide the following information:

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1 (1) the name and address of the business;
2 (2) the principals of the business;
3 (3) any affiliated business entities;
4 (4) the name and address of a contact person
5 for the business; and

6 (5) any contracts that the prospective
7 contractor currently has with a state agency or local public
8 body and the amount and term of the contract.

9 C. A prospective contractor shall update any of the
10 information required by Subsection B of this section prior to
11 responding to a solicitation from a state agency or local
12 public body.

13 D. A prospective contractor shall disclose all
14 contributions given by a principal of the prospective
15 contractor to a state public officer of the state agency
16 soliciting the contract during the two years prior to the date
17 the prospective contractor responds to a solicitation by a
18 state agency to enter into a contract with the state agency if
19 the total contributions from the principal to the state public
20 officer exceed two hundred fifty dollars (\$250) over the two-
21 year period.

22 E. A prospective contractor shall disclose all
23 contributions given by a principal of the prospective
24 contractor to a local public officer during the two years prior
25 to the date the prospective contractor responds to a

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1 solicitation by a local public body to enter into a contract
2 with the local public body if the total contributions from the
3 principal to the local public officer exceed two hundred fifty
4 dollars (\$250) over the two-year period.

5 F. The state agency or local public body that makes
6 a solicitation shall provide a list to prospective contractors
7 that indicates the name of each public officer, if any, for
8 which disclosure is required by a prospective contractor. The
9 disclosure shall indicate the date, the amount and the nature
10 of the contribution and the person receiving the contribution.
11 Prospective contractors shall complete the disclosure statement
12 online, and the general services department shall post the
13 disclosure statements in a searchable format on its web site.

14 G. A principal of a prospective contractor that is
15 seeking to contract with a state agency shall not make a
16 contribution to or solicit a contribution for a state public
17 officer of the agency soliciting the contract during the
18 pendency of the procurement process. A principal of a
19 prospective contractor that is seeking to contract with a local
20 public body shall not make a contribution to or solicit a
21 contribution for a local public officer of the local public
22 body soliciting the contract during the pendency of the
23 procurement process.

24 H. If a contractor enters into a contract with a
25 state agency or local public body, during the term of the

1 contract, the contractor shall update the information required
2 by this section annually and include contributions made since
3 the beginning of the contract. Updates shall be filed by 5:00
4 p.m. on the second Monday in January.

5 I. If a principal of a prospective contractor
6 inadvertently makes a contribution during the pendency of the
7 procurement process, the principal may request full
8 reimbursement from the recipient, and, if reimbursement is
9 received within thirty days after the date on which the
10 contribution was made, the contractor shall be eligible to
11 receive a contract or shall no longer be in violation, as
12 appropriate.

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 or local
23 public body when a prospective contractor or a state or local
24 contractor fails to submit a fully completed disclosure
25 statement pursuant to this section or makes a contribution

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1 prohibited by Subsection G of this section.

2 L. The New Mexico finance authority and the New
3 Mexico mortgage finance authority shall adopt policies that
4 have the same effect as the requirements of this section.

5 M. The department of finance and administration
6 shall issue all rules necessary to carry out the provisions of
7 this section.

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

10 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
11 PROPOSALS.--

12 A. Competitive sealed proposals, including
13 competitive qualifications-based proposals, shall be solicited
14 through a request for proposals that shall be issued and shall
15 include:

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

18 (2) all contractual terms and conditions
19 applicable to the procurement;

20 (3) the ~~[form]~~ applicable instructions for
21 disclosure of ~~[campaign]~~ contributions given by prospective
22 contractors to applicable public officials pursuant to Section
23 ~~[13-1-191.1 NMSA 1978]~~ 1 of this 2013 act; and

24 (4) the location where proposals are to be
25 received and the date, time and place where proposals are to be

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1 received and reviewed.

2 B. A request for proposals may, pursuant to Section
3 13-1-95.1 NMSA 1978, require that all or a portion of a
4 responsive proposal be submitted electronically.

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

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

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