

1 AN ACT

2 RELATING TO PUBLIC WORKS; CLARIFYING LANGUAGE REQUIRING
3 CONTRACTORS TO BE REGISTERED; CLARIFYING APPLICABILITY TO
4 USING AGENCIES; SPECIFYING THAT BIDS SUBMITTED BY
5 UNREGISTERED CONTRACTORS OR PRIME CONTRACTORS SHALL NOT BE
6 CONSIDERED FOR AWARD; SPECIFYING THAT BIDS SUBMITTED WITH
7 UNREGISTERED SUBCONTRACTORS SHALL BE CONSIDERED FOLLOWING
8 SUBSTITUTION; SPECIFYING ADDITIONAL REASONS FOR SUBSTITUTION
9 OF NAMED SUBCONTRACTORS.

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

12 Section 1. Section 13-1-105 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 78, as amended) is amended to read:

14 "13-1-105. COMPETITIVE SEALED BIDS--RECEIPT AND
15 ACCEPTANCE OF BIDS.--

16 A. Bids shall be unconditionally accepted for
17 consideration for award without alteration or correction,
18 except as authorized in the Procurement Code. In addition to
19 the requirement for the prime contractor and subcontractors
20 to be registered as provided in Section 13-4-13.1 NMSA 1978,
21 bids shall be evaluated based on the requirements set forth
22 in the invitation for bids, which requirements may include
23 criteria to determine acceptability such as inspection,
24 testing, quality, workmanship, delivery and suitability for a
25 particular purpose. Those criteria such as discounts,

1 transportation costs and total or life-cycle costs that will
2 affect the bid price shall be objectively measurable, which
3 shall be defined by rule. The invitation for bids shall set
4 forth the evaluation criteria to be used. No criteria may be
5 used in bid evaluation that are not set forth in the
6 invitation for bids. A bid submitted by a prime contractor
7 that was not registered as required by Section 13-4-13.1 NMSA
8 1978 shall not be considered for award. A bid submitted by a
9 registered prime contractor that includes any subcontractor
10 that is not registered in accordance with that section may be
11 considered for award following substitution of a registered
12 subcontractor for any unregistered subcontractor in
13 accordance with Section 13-4-36 NMSA 1978.

14 B. If the lowest responsible bid has otherwise
15 qualified, and if there is no change in the original terms
16 and conditions, the lowest bidder may negotiate with the
17 purchaser for a lower total bid in order to avoid rejection
18 of all bids for the reason that the lowest bid was up to ten
19 percent higher than budgeted project funds. Such negotiation
20 shall not be allowed if the lowest bid was more than ten
21 percent over budgeted project funds."

22 Section 2. Section 13-4-13.1 NMSA 1978 (being Laws
23 2004, Chapter 89, Section 1) is amended to read:

24 "13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF
25 CONTRACTORS AND SUBCONTRACTORS.--

1 A. Except as otherwise provided in this
2 subsection, in order to submit a bid valued at more than
3 fifty thousand dollars (\$50,000) in order to respond to a
4 request for proposals or to be considered for award of any
5 portion of a public works project greater than fifty thousand
6 dollars (\$50,000) for a public works project that is subject
7 to the Public Works Minimum Wage Act, the contractor, serving
8 as a prime contractor or not, shall be registered with the
9 labor and industrial division of the labor department.

10 Bidding documents issued or released by a state agency or
11 political subdivision of the state shall include a clear
12 notification that each contractor, prime contractor or
13 subcontractor is required to be registered pursuant to this
14 subsection. The provisions of this section do not apply to
15 vocational classes in public schools or public post-secondary
16 educational institutions.

17 B. The state or any political subdivision of the
18 state shall not accept a bid on a public works project
19 subject to the Public Works Minimum Wage Act from a prime
20 contractor that does not provide proof of required
21 registration for itself.

22 C. Contractors and subcontractors may register
23 with the division on a form provided by the division and in
24 accordance with labor department rules. The division shall
25 charge an annual registration fee of two hundred dollars

1 (\$200). The division shall issue to the applicant a
2 certificate of registration within fifteen days after
3 receiving from the applicant the completed registration form
4 and the registration fee.

5 D. Registration fees collected by the division
6 shall be deposited in the labor enforcement fund."

7 Section 3. Section 13-4-36 NMSA 1978 (being Laws 1988,
8 Chapter 18, Section 6, as amended) is amended to read:

9 "13-4-36. SUBSTITUTION OF SUBCONTRACTOR.--

10 A. No contractor whose bid is accepted shall
11 substitute any person as subcontractor in place of the
12 subcontractor listed in the original bid, except that the
13 using agency shall consent to the substitution of another
14 person as a subcontractor in the following circumstances:

15 (1) when the subcontractor listed in the
16 bid, after having had a reasonable opportunity to do so,
17 fails or refuses to execute a written contract, when such
18 written contract, based upon the general terms, conditions,
19 plans and specifications for the project involved and the
20 terms of such subcontractor's written bid, is presented to
21 him by the contractor;

22 (2) when the subcontractor listed in the
23 original bid becomes bankrupt or insolvent prior to execution
24 of a subcontract;

25 (3) when the using agency refuses to approve

1 the subcontractor listed in the original bid, provided such
2 approval has been reserved in the bidding documents;

3 (4) when the subcontractor listed in the
4 original bid fails or refuses to perform his subcontract;

5 (5) when the contractor demonstrates to the
6 using agency or its duly authorized officer that the name of
7 the subcontractor was listed as the result of an inadvertent
8 clerical error;

9 (6) when a bid alternate accepted by the
10 using agency causes the listed subcontractor's bid not to be
11 low;

12 (7) when the contractor can substantiate to
13 the using agency that a listed subcontractor's bid is
14 incomplete;

15 (8) when the listed subcontractor fails or
16 refuses to meet the bond requirements of the contractor;

17 (9) when it is determined that the listed
18 subcontractor does not have a proper license to perform the
19 work and the contractor has submitted the name of the
20 subcontractor along with proof that the subcontractor bid
21 work for which he was not licensed by the construction
22 industries division of the regulation and licensing
23 department; or

24 (10) when it is determined by the using
25 agency, the prime contractor or the director of the labor and

1 industrial division of the labor department that a listed
2 subcontractor is not a registered subcontractor on the date
3 bids are unconditionally accepted for consideration.

4 B. Prior to approval of the contractor's request
5 for substitution of a subcontractor, the using agency shall
6 give notice in writing to the listed subcontractor of the
7 contractor's request to substitute and of the reasons for the
8 request. The notice shall be served by certified or
9 registered mail to the last known address of the
10 subcontractor. The listed subcontractor who has been so
11 notified has five working days within which to submit written
12 objections to the substitution to the using agency. Failure
13 to file written objections shall constitute the listed
14 subcontractor's consent to the substitution. If written
15 objections are filed, the using agency shall give at least
16 five working days notice in writing to the listed
17 subcontractor of a hearing by the using agency on the
18 contractor's request for substitution.

19 C. No contractor whose bid is accepted shall
20 permit any subcontract to be voluntarily assigned or
21 transferred or allow it to be performed by anyone other than
22 the original subcontractor listed in the original bid without
23 the consent of the using agency.

24 D. No contractor whose bid is accepted, other than
25 in the performance of change orders causing changes or

1 deviations from the original contract, shall sublet or
2 subcontract any portion of the work in excess of the listing
3 threshold as to which his original bid did not designate a
4 subcontractor unless:

5 (1) the contractor fails to receive a bid
6 for a category of work. Under such circumstances, the
7 contractor may subcontract. The contractor shall designate
8 on the listing form that no bid was received; or

9 (2) the contractor fails to receive more
10 than one bid for a category of work. Under such
11 circumstances, the contractor may subcontract. The contractor
12 shall state on the listing form that only one subcontractor's
13 bid was received, together with the name of the subcontractor.
14 This designation shall not occur more than one time on the
15 subcontractor list." _____

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