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HOUSE BILL 878

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO STATE CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS
TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING
DISCLOSURE OF CERTAIN INFORMATION BY PROSPECTIVE STATE
CONTRACTORS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE
STATEMENTS AND REGISTRATION INFORMATION; PROHIBITING
CONTRIBUTIONS DURING PENDENCY OF THE PROCUREMENT PROCESS;
ENACTING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] PROSPECTIVE CONTRACTOR
REGISTRATION--CAMPAIGN CONTRIBUTION DISCLOSURE AND
PROHIBITION.--

A. A prospective contractor, prior to seeking a
state contract with a state agency, shall register with the
general services department on a form developed by the

1 department and made available on the department's web site.

2 The prospective contractor shall provide the following
3 information:

- 4 (1) the name and address of the business;
- 5 (2) the principals of the business;
- 6 (3) any affiliated business entities;
- 7 (4) the name and address of a contact person
8 for the business;
- 9 (5) any contracts the contractor currently has
10 with a state agency and the amount and term of each contract;
11 and
- 12 (6) a contribution disclosure statement as
13 required by Subsection C of this section.

14 B. A prospective contractor shall provide or update
15 the information required by Subsection A of this section prior
16 to responding to a solicitation from a state agency.

17 C. A prospective contractor shall disclose all
18 campaign contributions given by a principal of the prospective
19 contractor to a state public officer during the two years prior
20 to the date the prospective contractor responds to a
21 solicitation by a state agency to enter into a state contract
22 if the aggregate total of contributions from a principal to a
23 public officer exceeds two hundred fifty dollars (\$250) over
24 the two-year period. The disclosure shall indicate the date,
25 the amount and the nature of the contribution and the person

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1 receiving the contribution.

2 D. Before awarding or entering into a state
3 contract with a prospective contractor, the appropriate state
4 agency purchasing officer or contract evaluation committee
5 shall review all of the information the contractor has
6 submitted to the general services department and shall certify
7 that:

8 (1) the prospective contractor has properly
9 registered with the department and submitted the list of
10 contributions required by this section;

11 (2) the appropriate purchasing officer or
12 committee has reviewed the contributions list; and

13 (3) no conflict of interest appears to exist
14 and no undue influence has been exerted regarding award of the
15 contract.

16 E. A principal of a state contractor shall not make
17 a campaign contribution to or solicit a campaign contribution
18 for the benefit of a state public officer during the pendency
19 of the procurement process.

20 F. 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 when a
23 state contractor or a prospective contractor fails to submit a
24 fully completed disclosure statement pursuant to this section
25 or makes or solicits a contribution prohibited by Subsection E

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1 of this section.

2 G. As used in this section:

3 (1) "business entity" includes, whether
4 organized in or outside of this state, a sole proprietorship; a
5 partnership; a joint venture; a limited liability company; a
6 for-profit or nonprofit corporation organized pursuant to this
7 or another state's law or federal law; a cooperative; and any
8 other association, organization or entity that is engaged in
9 the operation of a business or profit-making activity;

10 (2) "contribution" means a gift, subscription,
11 loan, advance or deposit of money or other thing of value,
12 including the estimated value of an in-kind contribution, that
13 is made or received for a political purpose, including payment
14 of a debt incurred in an election campaign;

15 (3) "pendency of the procurement process"
16 means the time period commencing on the day of the initial
17 solicitation for a state contract by the state agency and
18 ending with the award of the contract or the cancellation of
19 the solicitation;

20 (4) "principal of a prospective contractor"
21 means, in addition to the prospective contractor itself:

22 (a) a person who is a member of the
23 board of directors of, or has an ownership interest in, the
24 prospective contractor that is a business entity, except for an
25 individual who owns less than five percent of the shares of

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1 that prospective contractor that is a publicly traded
2 corporation;

3 (b) a person who is employed by the
4 prospective contractor that is a business entity, as president,
5 treasurer or executive or senior vice president;

6 (c) a person who is the chief executive
7 officer of the prospective contractor;

8 (d) an employee of the prospective
9 contractor who has managerial or discretionary responsibilities
10 with respect to a state contract;

11 (e) the spouse or a dependent child of a
12 person described in this paragraph;

13 (f) a candidate committee or political
14 committee established by or on behalf of a person described in
15 this paragraph; or

16 (g) a person who is compensated to seek
17 or lobby for state contracts by the prospective contractor;

18 (5) "prospective contractor" means a business
19 entity that submits a bid in response to a bid solicitation by
20 a state agency or a proposal in response to a request for
21 proposals or other solicitation by a state agency until the
22 state contract has been entered into. "Prospective contractor"
23 does not include a municipality or any other political
24 subdivision of the state or an employee of a state agency,
25 whether full- or part-time, in such person's capacity as an

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1 employee of the state agency or political subdivision of the
2 state;

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

8 (7) "state contract" means an agreement or
9 contract with any state agency having a value of twenty
10 thousand dollars (\$20,000) or more, or a combination or series
11 of such agreements or contracts having a value of twenty
12 thousand dollars (\$20,000) or more in a fiscal year, for:

13 (a) the rendition of services, including
14 professional services and financial services;

15 (b) the furnishing of any material,
16 supplies or equipment;

17 (c) the construction, alteration or
18 repair of any public building or public work;

19 (d) the acquisition, sale or lease of
20 any land or building;

21 (e) a licensing arrangement;

22 (f) a grant, loan or loan guarantee; or

23 (g) the purchase of financial securities
24 or instruments;

25 (8) "state contractor" means a business entity

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1 that enters into a state contract and that shall be deemed to
2 be a state contractor until the termination of the contract.
3 "State contractor" does not include a municipality or any other
4 political subdivision of the state or an employee in the
5 executive, legislative or judicial branch of state government
6 or an instrumentality of the state, whether full- or part-time,
7 in that person's capacity as an employee of the state or
8 instrumentality of the state; and

9 (9) "state public officer" means a person
10 elected to an office, or a person appointed to complete a term
11 of an elected office, in the executive, legislative or judicial
12 branch of state government, a candidate or political committee
13 established or controlled by or affiliated with a state public
14 officer and any department secretary in the executive branch
15 having an active candidate committee or political committee
16 account."

17 Section 2. REPEAL.--Section 13-1-191.1 NMSA 1978 (being
18 Laws 2006, Chapter 81, Section 1, as amended) is repealed.

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