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HOUSE BILL 124

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Brian F. Egolf

AN ACT

RELATING TO GOVERNMENT CONTRACTING; REQUIRING PROSPECTIVE CONTRACTORS TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING DISCLOSURE OF CERTAIN INFORMATION BY PROSPECTIVE CONTRACTORS AND BY CONTRACTORS; IMPOSING PENALTIES FOR PERJURY; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS AND REGISTRATION INFORMATION; PROHIBITING CERTAIN CONTRIBUTIONS DURING PENDENCY OF THE PROCUREMENT PROCESS OR DURING THE TERM OF A CONTRACT; PROVIDING FOR CANCELLATION OF THE PROCUREMENT PROCESS AND CONTRACTS; 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 CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE--PROHIBITION-- DEFINITIONS.--

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1           A. A prospective contractor, prior to seeking a  
2 contract with a state agency or local public body, shall  
3 register with the general services department on a disclosure  
4 statement form developed by the department and made available  
5 to prospective contractors, contractors and the public on the  
6 department's web site. The prospective contractor shall  
7 disclose and certify under penalty of perjury pursuant to  
8 Section 30-25-1 NMSA 1978 the following information:

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

19           B. A prospective contractor shall disclose or  
20 update the information required by Subsection A of this section  
21 prior to responding to a solicitation.

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

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1 contractor responds to a solicitation if the aggregate total of  
2 contributions from a principal to the public officer exceeds  
3 two hundred fifty dollars (\$250) over the two-year period. The  
4 disclosure statement shall state the date, the amount and the  
5 nature of the contribution and the person receiving the  
6 contribution.

7 D. Before a state agency or local public body  
8 enters into a contract with a prospective contractor and before  
9 the contract can be enforced, the appropriate procurement  
10 officer shall review the information that the prospective  
11 contractor has disclosed to the general services department and  
12 shall certify that:

13 (1) based on the disclosed information, the  
14 prospective contractor has properly registered with the  
15 department and disclosed contributions as required by this  
16 section; and

17 (2) no conflict of interest with the state  
18 agency or local public body appears to exist involving the  
19 prospective contractor or its principals or contributions and  
20 that no undue influence on the procurement officer, state  
21 agency or local public body has been exerted by a principal of  
22 the prospective contractor, a state public officer, a local  
23 public officer or any other person during the pendency of the  
24 procurement process.

25 E. A contractor who was a prospective contractor

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1 pursuant to this section shall update the information required  
2 by Subsection A of this section within thirty days of the event  
3 requiring the update.

4 F. A principal of a prospective contractor shall  
5 not make a contribution to or solicit a contribution for the  
6 benefit of a state public officer or a local public officer  
7 during the pendency of the procurement process initiated by the  
8 officer's respective state agency or local public body and in  
9 which the prospective contractor is involved.

10 G. A principal of a contractor that was a  
11 prospective contractor pursuant to this section shall not make  
12 a contribution to or solicit a contribution for the benefit of  
13 a state public officer or a local public officer during the  
14 term of a contract entered into between the officer's state  
15 agency or local public body and the contractor.

16 H. A state agency or local public body shall  
17 disqualify a prospective contractor from receiving a contract  
18 if the prospective contractor fails to submit or update a fully  
19 completed disclosure statement pursuant to this section or  
20 makes or solicits a contribution prohibited by Subsection F of  
21 this section.

22 I. A state agency or local public body may  
23 terminate a contract, if it is in the best interests of the  
24 state agency or local public body, when the contractor fails to  
25 update a fully completed disclosure statement pursuant to this

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1 section or makes or solicits a contribution prohibited by  
2 Subsection G of this section.

3 J. The provisions of this section shall be applied  
4 to the extent practicable in conformity with the Procurement  
5 Code, a municipal ordinance or any other procurement  
6 requirement to which a state agency or local public body is  
7 subject. To the extent that a provision of the Procurement  
8 Code, a municipal ordinance or any other procurement  
9 requirement is in conflict with a provision of this section,  
10 the provision of this section shall apply.

11 K. As used in this section:

12 (1) "contract" means an agreement with a state  
13 agency or local public body procured pursuant to the  
14 Procurement Code, a municipal ordinance or otherwise for:

15 (a) the rendition of services, including  
16 professional services and financial services;

17 (b) the furnishing of any material,  
18 supplies or equipment;

19 (c) the construction, alteration or  
20 repair of any public building or public work, including  
21 transportation projects;

22 (d) the acquisition, sale or lease of  
23 any land or building;

24 (e) a licensing arrangement;

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

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1 (g) the purchase of financial securities  
2 or instruments;

3 (2) "contractor" means a person that enters  
4 into a contract after being a prospective contractor and that  
5 shall be deemed to be a contractor until the termination of the  
6 contract. "Contractor" does not include a state agency or  
7 local public body or any full- or part-time employee of either  
8 in that person's capacity as an employee of the state agency or  
9 local public body;

10 (3) "contribution" means:

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

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

19 (c) a donation to an organization that  
20 supports a state agency or local public body pursuant to the  
21 provisions of Section 6-5A-1 NMSA 1978 if the donor seeks or  
22 obtains a contract with the state agency or local public body  
23 that the organization supports;

24 (4) "local public body" means a political  
25 subdivision of the state and the agencies, instrumentalities

1 and institutions thereof, including two-year post-secondary  
2 educational institutions, school districts and local school  
3 boards; municipalities, including any home rule municipality  
4 that has adopted a charter pursuant to Article 10, Section 6 of  
5 the constitution of New Mexico; and counties;

6 (5) "local public officer" means a person  
7 elected to an office or a person appointed to complete a term  
8 of an elected office in a local public body;

9 (6) "pendency of the procurement process"  
10 means the time period commencing on the day of the initial  
11 solicitation for a contract by the state agency or local public  
12 body and ending with the execution of the contract or the  
13 cancellation of the solicitation;

14 (7) "principal" means:

15 (a) a prospective contractor or  
16 contractor;

17 (b) a person who is a member of the  
18 board of directors of, or has an ownership interest in, a  
19 prospective contractor or contractor, except for a person who  
20 owns less than five percent of the shares of a prospective  
21 contractor or contractor that is a publicly traded corporation;

22 (c) a person who is employed by the  
23 prospective contractor or contractor as president, chief  
24 executive officer, executive or senior vice president or  
25 treasurer;

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1 (d) an employee of the prospective  
2 contractor or contractor who has managerial or discretionary  
3 responsibilities with respect to a contract;

4 (e) the spouse, parent, child,  
5 father-in-law, mother-in-law, son-in-law or daughter-in-law of  
6 a person described in this paragraph;

7 (f) a candidate committee or political  
8 committee established by or on behalf of a person described in  
9 this paragraph; or

10 (g) a person who is compensated to seek  
11 or lobby for contracts by a prospective contractor or  
12 contractor;

13 (8) "procurement officer" means a person or a  
14 designee authorized by a state agency or a local public body to  
15 enter into or administer contracts and make written  
16 determinations with respect to those contracts;

17 (9) "prospective contractor" means a person  
18 that responds to a solicitation by a state agency or a local  
19 public body until the contract contemplated by that  
20 solicitation has been executed or the solicitation terminated.  
21 "Prospective contractor" does not include a state agency or a  
22 local public body or any full- or part-time employee of either  
23 in that person's capacity as an employee of the state agency or  
24 local public body;

25 (10) "solicitation" means an invitation to

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1 bid, a request for qualifications, a request for proposals or  
2 other request to enter into a contract, pursuant to the  
3 Procurement Code, or the initiation of a process to enter into  
4 a contract that is exempt from the Procurement Code pursuant to  
5 Sections 13-1-98 through 13-1-98.2 NMSA 1978;

6 (11) "state agency" means an office,  
7 department, board, council, commission, institution or agency  
8 in the executive, legislative or judicial branch of state  
9 government; an institution of the state; or an instrumentality  
10 of the state, including the New Mexico finance authority and  
11 the New Mexico mortgage finance authority; and

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

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

23 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR  
24 PROPOSALS.--

25 A. Competitive sealed proposals, including

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1 competitive qualifications-based proposals, shall be solicited  
2 through a request for proposals that shall be issued and shall  
3 include:

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

6 (2) all contractual terms and conditions  
7 applicable to the procurement;

8 (3) the form for disclosure of ~~[campaign]~~  
9 contributions given by prospective contractors to applicable  
10 public officials pursuant to ~~[Section 13-1-191.1 NMSA 1978]~~  
11 Section 1 of this 2010 act; and

12 (4) the location where proposals are to be  
13 received and the date, time and place where proposals are to be  
14 received and reviewed.

15 B. A request for proposals may, pursuant to Section  
16 13-1-95.1 NMSA 1978, require that all or a portion of a  
17 responsive proposal be submitted electronically.

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

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