

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 124

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

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; 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.--

A. A prospective contractor, prior to seeking a

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

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

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

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

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

6 D. Before a state agency or local public body  
7 enters into a contract with a prospective contractor, the  
8 appropriate procurement officer shall review the information  
9 that the prospective contractor has disclosed to the general  
10 services department and shall certify in the agency's or local  
11 public body's procurement file that:

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

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

24 E. A contractor who was a prospective contractor  
25 pursuant to this section shall update the information required

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1 by Subsection A of this section within thirty days of the event  
2 requiring the update.

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

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

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

21 I. A state agency or local public body may  
22 terminate a contract if a contractor fails to update a fully  
23 completed disclosure statement pursuant to this section or  
24 makes or solicits a contribution prohibited by Subsection G of  
25 this section.

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

8           K. As used in this section:

9                   (1) "contract" means an agreement or  
10 transaction entered into through a request for proposals or  
11 invitation for bids issued by a state agency or local public  
12 body having a value of twenty thousand dollars (\$20,000) or  
13 more; a combination or series of such agreements or  
14 transactions having a value of twenty thousand dollars  
15 (\$20,000) or more in a fiscal year; or a contract for  
16 professional services having a value of fifty thousand dollars  
17 (\$50,000) or more for:

18                           (a) the rendition of services, including  
19 professional services and financial services;

20                           (b) the furnishing of any material,  
21 supplies or equipment;

22                           (c) the construction, alteration or  
23 repair of any public building or public work;

24                           (d) the acquisition, sale or lease of  
25 any land or building;

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- 1 (e) a licensing arrangement;
- 2 (f) a loan or loan guarantee; or
- 3 (g) the purchase or sale of financial
- 4 securities or instruments or the investment of public money;

5 (2) "contractor" means a person that enters  
6 into a contract, which person shall be deemed to be a  
7 contractor until the termination of the contract; but  
8 "contractor" does not include the state or a political  
9 subdivision of the state or any full-time or part-time employee  
10 of the state or a political subdivision of the state in that  
11 person's capacity as an employee of the state or political  
12 subdivision of the state or a health care professional  
13 providing services under a medicaid provider agreement;

14 (3) "contribution" means:

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

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

23 (c) a donation to an organization that  
24 supports a state agency or local public body pursuant to the  
25 provisions of Section 6-5A-1 NMSA 1978 if the donor seeks or

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1 obtains a contract with the state agency or local public body  
2 that the organization supports;

3 (4) "local public body" means a political  
4 subdivision of the state and the agencies, instrumentalities  
5 and institutions thereof, including two-year post-secondary  
6 educational institutions, school districts and local school  
7 boards; municipalities, including any home rule municipality  
8 that has adopted a charter pursuant to Article 10, Section 6 of  
9 the constitution of New Mexico; and counties;

10 (5) "local public officer" means a person  
11 elected to an office or a person appointed to complete a term  
12 of an elected office in a local public body;

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

18 (7) "principal" means, in addition to the  
19 contractor or prospective contractor itself:

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

25 (b) a person who is employed as

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1 president, treasurer, executive vice president or senior vice  
2 president of a contractor or prospective contractor;

3 (c) a person who is the chief executive  
4 officer of a contractor or prospective contractor;

5 (d) an agent, including a lobbyist  
6 subject to the Lobbyist Regulation Act, seeking a contract for  
7 a contractor or prospective contractor;

8 (e) the spouse or a dependent child of a  
9 person described in Subparagraphs (a) through (c) of this  
10 paragraph; or

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

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 for or seeks a contract, until  
19 the contract has been entered into or the solicitation  
20 canceled, but "prospective contractor" does not include the  
21 state or a political subdivision of the state or any full-time  
22 or part-time employee of the state or a political subdivision  
23 of the state, in that person's capacity as an employee of the  
24 state or a political subdivision of the state or a health care  
25 professional providing services under a medicaid provider

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1 agreement;

2 (10) "solicitation" means an invitation to  
3 bid, a request for qualifications, a request for proposals or  
4 other request to enter into a contract, pursuant to the  
5 Procurement Code, or the initiation of a process to enter into  
6 a contract that is exempt from the Procurement Code pursuant to  
7 Sections 13-1-98 through 13-1-98.2 NMSA 1978;

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

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

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

25 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR  
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1 PROPOSALS.--

2 A. Competitive sealed proposals, including  
3 competitive qualifications-based proposals, shall be solicited  
4 through a request for proposals that shall be issued and shall  
5 include:

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

8 (2) all contractual terms and conditions  
9 applicable to the procurement;

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

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

17 B. A request for proposals may, pursuant to Section  
18 13-1-95.1 NMSA 1978, require that all or a portion of a  
19 responsive proposal be submitted electronically.

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

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