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SENATE BILL 28

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

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS TO REGISTER WITH THE DEPARTMENT OF FINANCE AND ADMINISTRATION; REQUIRING DISCLOSURE OF AND PROHIBITING CERTAIN CONTRIBUTIONS BY PROSPECTIVE STATE AND LOCAL CONTRACTORS AND STATE AND LOCAL CONTRACTORS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS AND REGISTRATION INFORMATION; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. PROSPECTIVE STATE AND LOCAL CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. As used in this section:

(1) "contract" means an agreement or transaction with a state agency or a local public body having a value of fifty thousand dollars (\$50,000) or more, or a

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1 combination or series of such agreements or transactions having
2 a value of fifty thousand dollars (\$50,000) or more, in a
3 fiscal year, for:

4 (a) the rendition of services, including
5 professional services;

6 (b) the furnishing of any material,
7 supplies or equipment;

8 (c) the construction, alteration or
9 repair of any public building or public work;

10 (d) the acquisition, sale or lease of
11 any land or building;

12 (e) a licensing arrangement;

13 (f) a loan or loan guarantee; or

14 (g) the purchase of financial securities
15 or instruments;

16 (2) "contribution" means:

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

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

25 (c) a donation to an organization that

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1 supports a state agency or local public body pursuant to the
2 provisions of Section 6-5A-1 NMSA 1978 if the donor seeks or
3 obtains a contract with the agency that the organization
4 supports;

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

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

14 (5) "local 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 political subdivision of the state
17 where the local public body is seeking to contract with a local
18 contractor;

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

24 (7) "principal of a prospective contractor"
25 means, in addition to the contractor itself:

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1 (a) an owner, officer or director of a
2 corporation that is a prospective contractor, a member or
3 manager of a limited liability company that is a prospective
4 contractor, a partner of a partnership that is a prospective
5 contractor or trustee of a trust of a prospective contractor;
6 and

7 (b) the spouse or a dependent child of a
8 person described in this paragraph;

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

19 (9) "solicitation" means a request for the
20 purchase of services, personal property, real property or any
21 other thing of value;

22 (10) "state agency" means an office,
23 department, board, council, commission, institution or other
24 agency in the executive or legislative branch of state
25 government, an institution of the state or an instrumentality

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1 of the state, including the New Mexico finance authority and
2 the New Mexico mortgage finance authority;

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

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

17 B. A prospective contractor, prior to entering into
18 a contract with a state agency or a local public body, shall
19 register with the department of finance and administration on a
20 form developed by the department and made available on the
21 department's web site. The prospective contractor shall
22 provide the following information:

- 23 (1) the name and address of the business;
- 24 (2) the principals of the business;
- 25 (3) any affiliated business entities;

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1 (4) the name and address of a contact person
2 for the business; and

3 (5) any contracts the contractor currently has
4 with a state agency or local public body and the amount and
5 term of the contract.

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

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

18 E. A prospective contractor shall disclose all
19 contributions given by a principal of the prospective
20 contractor to a local public officer during the two years prior
21 to the date the prospective contractor responds to a
22 solicitation by a local public body to enter into a contract
23 with the local public body if the total contributions from the
24 principal to the local public officer exceed two hundred fifty
25 dollars (\$250) over the two-year period.

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1 F. The disclosure shall indicate the date, the
2 amount and the nature of the contribution and the person
3 receiving the contribution. Prospective contractors shall
4 complete the disclosure statement online, and the department of
5 finance and administration shall post the disclosure statements
6 in a searchable format on its web site.

7 G. A principal of a prospective contractor that is
8 seeking to contract with a state agency shall not make a
9 contribution to or solicit a contribution for a state public
10 officer during the pendency of the procurement process. A
11 principal of a prospective contractor that is seeking to
12 contract with a local public body shall not make a contribution
13 to or solicit a contribution for a local public officer during
14 the pendency of the procurement process.

15 H. If a contractor enters into a contract with a
16 state agency or local public body, during the term of the
17 contract, the contractor shall update the information required
18 by this section quarterly and include contributions made since
19 the beginning of the contract. Quarterly updates shall be
20 filed by 5:00 p.m. on the second Monday in January, April, July
21 and October.

22 I. Before awarding or entering into a contract with
23 a prospective contractor, the appropriate purchasing agent or
24 contract evaluation committee shall review the information that
25 the prospective contractor has submitted and shall certify that

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1 the prospective contractor has properly registered with the
2 department of finance and administration and submitted the list
3 of contributions required by this section.

4 J. A solicitation for or proposed award of a
5 contract may be canceled or a contract that is executed may be
6 terminated if it is in the best interests of the state or local
7 public body when a prospective contractor or a state or local
8 contractor fails to submit a fully completed disclosure
9 statement pursuant to this section or makes a contribution
10 prohibited by Subsection G of this section.

11 K. The department of finance and administration
12 shall issue all rules necessary to carry out the provisions of
13 this section.

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