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HOUSE BILL 139

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rick Miera

AN ACT

RELATING TO PROCUREMENT; RAISING MONETARY LIMITS FOR PUBLIC WORKS PROJECTS, SMALL PURCHASES, MULTIPLE SOURCE CONTRACTS AND THE PURCHASE AND TRADE OF USED ITEMS IN THE PROCUREMENT CODE; ALLOWING LOCAL PUBLIC BODIES TO ENTER INTO MULTIPLE SOURCE CONTRACTS; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 2007, CHAPTER 312, SECTION 4.

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

SECTION 1. Section 13-1-66.1 NMSA 1978 (being Laws 1989, Chapter 69, Section 4, as amended) is amended to read:

"13-1-66.1. DEFINITION--LOCAL PUBLIC WORKS PROJECT.--
"Local public works project" means a project of a local public body that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services

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1 requiring professional services costing [~~ten thousand dollars~~
2 ~~(\$10,000)~~] twenty thousand dollars (\$20,000) or more, excluding
3 applicable state and local gross receipts taxes."

4 SECTION 2. Section 13-1-91 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 64, as amended by Laws 2007, Chapter 312,
6 Section 4 and by Laws 2007, Chapter 315, Section 2) is amended
7 to read:

8 "13-1-91. DEFINITION--STATE PUBLIC WORKS PROJECT.--"State
9 public works project" means a project of a state agency, not
10 including projects of the state educational institutions, the
11 supreme court building commission, the legislature or local
12 public bodies, that uses architectural or engineering services
13 requiring professional services costing fifty thousand dollars
14 (\$50,000) or more or landscape architectural or surveying
15 services requiring professional services costing [~~ten thousand~~
16 ~~dollars (\$10,000)~~] twenty thousand dollars (\$20,000) or more,
17 excluding applicable state and local gross receipts taxes."

18 SECTION 3. Section 13-1-104 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 77, as amended) is amended to read:

20 "13-1-104. COMPETITIVE SEALED BIDS--PUBLIC NOTICE.--

21 A. An invitation for bids or a notice thereof shall
22 be published not less than ten calendar days prior to the date
23 set forth for the opening of bids. In the case of purchases
24 made by the state purchasing agent, the invitation or notice
25 shall be published at least once in at least three newspapers

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1 of general circulation in this state; in addition, an
2 invitation or notice may be published electronically on the
3 state purchasing agent's web site that is maintained for that
4 purpose. In the case of purchases made by other central
5 purchasing offices, the invitation or notice shall be published
6 at least once in a newspaper of general circulation in the area
7 in which the central purchasing office is located. These
8 requirements of publication are in addition to any other
9 procedures that may be adopted by central purchasing offices to
10 notify prospective bidders that bids will be received,
11 including publication in a trade journal, if available. If
12 there is no newspaper of general circulation in the area in
13 which the central purchasing office is located, such other
14 notice may be given as is commercially reasonable.

15 B. Central purchasing offices shall send copies of
16 the notice or invitation for bids involving the expenditure of
17 more than [~~twenty thousand dollars (\$20,000)~~] fifty thousand
18 dollars (\$50,000) to those businesses that have signified in
19 writing an interest in submitting bids for particular
20 categories of items of tangible personal property, construction
21 and services and that have paid any required fees. A central
22 purchasing office may set different registration fees for
23 different categories of services, construction or items of
24 tangible personal property, but such fees shall be related to
25 the actual, direct cost of furnishing copies of the notice or

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1 invitation for bids to the prospective bidders. The fees shall
2 be used exclusively for the purpose of furnishing copies of the
3 notice or invitation for bids of proposed procurements to
4 prospective bidders.

5 C. A central purchasing office may satisfy the
6 requirement of sending copies of a notice or invitation for
7 bids by distributing the documents to prospective bidders
8 through electronic media. Central purchasing offices shall not
9 require that prospective bidders receive a notice or invitation
10 for bids through electronic media.

11 D. As used in this section, "prospective bidders"
12 includes persons considering submission of a bid as a general
13 contractor for the construction contract and persons who may
14 submit bids to a general contractor for work to be
15 subcontracted pursuant to the construction contract. Central
16 purchasing offices shall make copies of invitations for bids
17 for construction contracts available to prospective bidders. A
18 central purchasing office may require prospective bidders who
19 have requested documents for bid on a construction contract to
20 pay a deposit for a copy of the documents for bid. The deposit
21 shall equal the full cost of reproduction and delivery of the
22 documents for bid. The deposit, less delivery charges, shall
23 be refunded if the documents for bid are returned in usable
24 condition within the time limits specified in the documents for
25 bid, which time limits shall be no less than ten calendar days

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1 from the date of the bid opening. All forfeited deposits shall
2 be credited to the funds of the applicable central purchasing
3 office."

4 SECTION 4. Section 13-1-125 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 98, as amended) is amended to read:

6 "13-1-125. SMALL PURCHASES.--

7 A. A central purchasing office shall procure
8 services, construction or items of tangible personal property
9 having a value not exceeding [~~twenty thousand dollars~~
10 ~~(\$20,000)~~] fifty thousand dollars (\$50,000) in accordance with
11 the applicable small purchase [~~regulations~~] rules adopted by
12 the secretary, a local public body or a central purchasing
13 office that has the authority to issue [~~regulations~~] rules.

14 B. Notwithstanding the requirements of Subsection A
15 of this section, a central purchasing office may procure
16 professional services having a value not exceeding fifty
17 thousand dollars (\$50,000), excluding applicable state and
18 local gross receipts taxes, except for the services of
19 landscape architects or surveyors for state public works
20 projects or local public works projects, in accordance with
21 professional services procurement [~~regulations~~] rules
22 promulgated by the department of finance and administration,
23 the general services department or a central purchasing office
24 with the authority to issue [~~regulations~~] rules.

25 C. Notwithstanding the requirements of Subsection A

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1 of this section, a state agency or a local public body may
2 procure services, construction or items of tangible personal
3 property having a value not exceeding [~~ten thousand dollars~~
4 ~~(\$10,000)~~] fifteen thousand dollars (\$15,000) by issuing a
5 direct purchase order to a contractor based upon the best
6 obtainable price.

7 D. Procurement requirements shall not be
8 artificially divided so as to constitute a small purchase under
9 this section."

10 SECTION 5. Section 13-1-154.1 NMSA 1978 (being Laws 2007,
11 Chapter 312, Section 1) is amended to read:

12 "13-1-154.1. MULTIPLE SOURCE CONTRACTS--ARCHITECTURAL AND
13 DESIGN SERVICE CONTRACTS--INDEFINITE QUANTITY CONSTRUCTION
14 CONTRACTS.--

15 A. A state agency or local public body may procure
16 multiple architectural or engineering design service contracts
17 for multiple projects under a single qualifications-based
18 request for proposals, provided the total amount of a contract
19 and all renewals does not exceed [~~two hundred thousand dollars~~
20 ~~(\$200,000)~~] five hundred thousand dollars (\$500,000) over four
21 years.

22 B. A state agency or local public body may procure
23 multiple indefinite quantity construction contracts pursuant to
24 a price agreement for multiple projects under a single request
25 for proposals, provided the total amount of a contract and all

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1 renewals does not exceed [~~two million dollars (\$2,000,000)~~]
2 four million dollars (\$4,000,000) over four years and the
3 contract provides that any one purchase order under the
4 contract may not exceed five hundred thousand dollars
5 (\$500,000).

6 C. A state agency or local public body may make
7 procurements in accordance with the provision of Subsection A
8 or B of this section if:

9 (1) the advertisement and request for
10 proposals for services or the notice or invitation for bids for
11 construction states that multiple contracts may or will be
12 awarded, states the number of contracts that may or will be
13 awarded and describes the services or construction to be
14 performed under each contract;

15 (2) there is a single selection process for
16 all of the multiple contracts, except that for each contract
17 there may be a separate final list and, if applicable, a
18 separate negotiation of contract terms;

19 (3) each of the multiple contracts for
20 professional design services or construction shall have a term
21 not exceeding four years, including all extensions and
22 renewals;

23 (4) a contract shall not be awarded pursuant
24 to this section to a firm that is currently performing under a
25 contract issued pursuant to this section if the total amount of

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1 all contracts issued pursuant to this section to that firm
2 would exceed:

3 (a) [~~two hundred thousand dollars~~
4 ~~(\$200,000)~~] five hundred thousand dollars (\$500,000) in any
5 four-year period, for architectural or engineering design
6 services; or

7 (b) [~~two million dollars (\$2,000,000)~~]
8 four million dollars (\$4,000,000) in any four-year period, for
9 construction services; and

10 (5) the procurement is subject to the
11 limitations of Sections 13-1-150 through 13-1-154 NMSA 1978."

12 SECTION 6. Section 13-1-155 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 128, as amended) is amended to read:

14 "13-1-155. PROCUREMENT OF USED ITEMS--APPRAISAL
15 REQUIRED--COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS.--

16 A. A central purchasing office, when procuring used
17 items of tangible personal property the estimated cost of which
18 exceeds [~~five thousand dollars (\$5,000)~~] fifty thousand dollars
19 (\$50,000), shall request bids as though the items were new,
20 adding specifications that permit used items under conditions
21 to be outlined in the bid specifications, including [~~but not~~
22 ~~limited to~~] requiring a written warranty for at least ninety
23 days after date of delivery and an independent "certificate of
24 working order" by a qualified mechanic or appraiser.

25 B. Notwithstanding the provisions of Subsection A

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1 of this section, the purchasing office for a county may
2 purchase, at public or private auctions conducted by
3 established, recognized commercial auction companies, used
4 heavy equipment having an estimated cost that exceeds [~~five~~
5 ~~thousand dollars (\$5,000)] fifty thousand dollars (\$50,000) for
6 use in construction and maintenance of county streets, roads
7 and highways, subject to the following provisions:~~

8 (1) the commercial auction company shall have
9 been in business for at least three years preceding the date of
10 purchase and shall conduct at least five auctions annually;

11 (2) the value of each piece of equipment shall
12 be appraised prior to the auction by a qualified disinterested
13 appraiser retained and paid by the county, who shall make a
14 written appraisal report stating the basis for the appraisal,
15 including the age, condition and comparable sales, and stating
16 that the appraiser has exercised [~~his~~] independent judgment
17 without prior understanding or agreement with any person as to
18 a target value or range of value;

19 (3) an independent "certificate of working
20 condition" shall be obtained prior to the auction from a
21 qualified mechanic who shall have made a detailed inspection of
22 each major working or major functional part and certified the
23 working condition of each; and

24 (4) the price paid, including all auction fees
25 and buyer's surcharges, shall not exceed the appraised value."

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1 SECTION 7. Section 13-1-156 NMSA 1978 (being Laws 1984,
2 Chapter 65, Section 129, as amended) is amended to read:

3 "13-1-156. TRADE OR EXCHANGE OF USED ITEMS--APPRAISAL
4 REQUIRED.--

5 A. A central purchasing office, when trading in or
6 exchanging used items of tangible personal property the
7 estimated value of which exceeds [~~five thousand dollars~~
8 ~~(\$5,000)~~] fifty thousand dollars (\$50,000.00) as part-payment
9 on the procurement of new items of tangible personal property,
10 shall:

11 (1) have an independent appraisal made of the
12 items to be traded in or exchanged. The appraisal shall be in
13 writing, shall be made part of the procurement file and shall
14 be a public record. The invitation for bids or request for
15 proposals shall contain notice to prospective bidders or
16 offerors of the description and specifications of the items to
17 be traded in or exchanged, the appraised value of the items to
18 be traded in or exchanged and the location where the items to
19 be traded in or exchanged may be inspected; or

20 (2) have two written quotes for purchase of
21 the property at a specified price.

22 B. Award shall be based upon the net bid. Bidders
23 or offerors shall compute their net bid or offer by deducting
24 the appraised value or highest quote of the items to be traded
25 in or exchanged from the gross bid or offer on the new items of

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1 tangible personal property to be procured. If an amount
2 offered in trade is less than the appraised value or the
3 highest quote but is found to be a fair reflection of the
4 current market, representative of the condition of the items of
5 tangible personal property and in the best interest of the
6 agency, the bid or offer may be accepted. Documentation of the
7 terms of acceptance shall be in writing, shall be made a part
8 of the procurement file and shall be a public record."

9 SECTION 8. REPEAL.--Laws 2007, Chapter 312, Section 4 is
10 repealed.

11 SECTION 9. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.

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