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HOUSE BILL 385

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

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO GOVERNMENT PROCUREMENT; PROHIBITING STATE AGENCIES AND LOCAL PUBLIC BODIES FROM CONTRACTING WITH INDIVIDUALS AND ENTITIES THAT HAVE BEEN CONVICTED OF OR FOUND CIVILLY LIABLE FOR CERTAIN CRIMINAL AND UNETHICAL CONDUCT; PROVIDING CIVIL AND CRIMINAL PENALTIES.

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

SECTION 1. GOVERNMENT PROCUREMENT--PROHIBITION AGAINST CONTRACTING WITH CERTAIN INDIVIDUALS AND ENTITIES.--

A. A state agency or local public body shall not seek or enter into a contractual relationship with an individual or entity if the individual, entity or a key employee of the entity has, within the ten-year period prior to the commencement of the procurement process, been convicted of, administratively or civilly found to be in violation of or

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1 determined to be civilly liable for a violation of a law that
2 regulates the relationship between an individual or entity and
3 the government.

4 B. As used in this section:

5 (1) "conviction" means a plea, judgment or
6 verdict of guilty, a plea of nolo contendere or a plea or
7 judgment entered in connection with a suspended sentence;

8 (2) "key employee" means:

9 (a) an officer of an entity whose annual
10 compensation from the entity exceeds one hundred thirty
11 thousand dollars (\$130,000);

12 (b) an employee of an entity, or the
13 employee's spouse, parent, child, grandchild or sibling, who
14 owns more than five percent of the entity;

15 (c) an employee of an entity, or the
16 employee's spouse, parent, child, grandchild or sibling, who
17 owns more than one percent of the entity and the employee's
18 compensation exceeds one hundred fifty thousand dollars
19 (\$150,000); or

20 (d) a senior executive or manager of an
21 entity who is considered to be managing or controlling the
22 operations of the entity;

23 (3) "law that regulates the relationship
24 between an individual or entity and the government" means any
25 of the following laws, or any provision of the following laws,

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1 for which civil or criminal penalties may be imposed for their
2 violation:

- 3 (a) the Election Code;
- 4 (b) the Campaign Reporting Act;
- 5 (c) the Lobbyist Regulation Act;
- 6 (d) the Governmental Conduct Act;
- 7 (e) the Financial Disclosure Act;
- 8 (f) the Gift Act;
- 9 (g) the Procurement Code;
- 10 (h) the New Mexico Uniform Securities
11 Act;
- 12 (i) the 1999 Public Accountancy Act;
- 13 (j) fraud, as provided in Section
14 30-16-6 NMSA 1978;
- 15 (k) embezzlement, as provided in Section
16 30-16-8 NMSA 1978;
- 17 (l) forgery, as provided in Section
18 30-16-10 NMSA 1978;
- 19 (m) misconduct by officials, as provided
20 in Sections 30-23-1 through 30-23-7 NMSA 1978;
- 21 (n) bribery, as provided in Sections
22 30-24-1 through 30-24-3.1 NMSA 1978;
- 23 (o) perjury and false affirmation, as
24 provided in Section 30-25-1 NMSA 1978;
- 25 (p) tampering with public records, as

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1 provided in Section 30-26-1 NMSA 1978;

2 (q) this section; and

3 (r) attempt to commit a felony or
4 conspiracy to commit a felony associated with a law identified
5 in Subparagraphs (a) through (q) of this paragraph that
6 includes a felony, as provided in Sections 30-28-1 and 30-28-2
7 NMSA 1978;

8 (4) "local public body" means a political
9 subdivision of the state or an agency, instrumentality or
10 institution of the political subdivision, including two-year
11 post-secondary educational institutions, school districts or
12 local school boards, municipalities and counties; and

13 (5) "state agency" means a department,
14 commission, council, board, committee, institution, agency,
15 government corporation or educational institution or an
16 official of the executive, legislative or judicial branch of
17 the government.

18 C. The prohibition in Subsection A of this section
19 applies to contractual relationships subject to the Procurement
20 Code and to contractual relationships that are exempt from the
21 Procurement Code.

22 D. As part of a procurement process, a state agency
23 or local public body shall specifically request information
24 from an individual or entity that is a prospective contractor
25 about whether the individual, the entity or a key employee of

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1 the entity has, within the ten-year period prior to the
2 commencement of the procurement process, been convicted of,
3 administratively or civilly found to be in violation of or
4 determined to be civilly liable for a violation of a law that
5 regulates the relationship between an individual or entity and
6 the government. The request and response shall be maintained
7 as a public record in the state agency's or local public body's
8 files for that procurement and shall be designated as
9 compliance with this section.

10 E. An individual or entity that knowingly provides
11 false information in the response required by Subsection D of
12 this section is subject to a civil penalty of not more than
13 five thousand dollars (\$5,000) for each violation. The
14 attorney general or the district attorney in the jurisdiction
15 in which the violation occurs may bring a civil action for the
16 enforcement of this section. A penalty collected under the
17 provisions of this section shall be credited to the general
18 fund of the state agency or local public body on whose behalf
19 the civil action was brought.

20 F. An individual or entity that knowingly provides
21 false information in the response required by Subsection D of
22 this section is guilty of a misdemeanor and shall be sentenced
23 as provided in Section 31-19-1 NMSA 1978.