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HOUSE BILL 208

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Thomas C. Taylor and Dede Feldman

AN ACT

RELATING TO PUBLIC CONTRACTS; REQUIRING PROSPECTIVE CONTRACTORS TO REGISTER WITH THE GENERAL SERVICES DEPARTMENT; REQUIRING DISCLOSURE OF CERTAIN CONTRIBUTIONS BY PROSPECTIVE STATE AND LOCAL CONTRACTORS AND STATE AND LOCAL CONTRACTORS; PROHIBITING CERTAIN CONTRIBUTIONS DURING THE PENDENCY OF THE PROCUREMENT PROCESS; PROVIDING FOR ONLINE ACCESS OF DISCLOSURE STATEMENTS AND REGISTRATION INFORMATION; 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 STATE AND LOCAL CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. As used in this section:

(1) "contract" means an agreement or

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1 transaction with a state agency or a local public body having a
2 value of fifty thousand dollars (\$50,000) or more, or a
3 combination or series of such agreements or transactions having
4 a value of fifty thousand dollars (\$50,000) or more, in a
5 fiscal year, for:

6 (a) the rendition of services, including
7 professional services;

8 (b) the furnishing of any material,
9 supplies or equipment;

10 (c) the construction, alteration or
11 repair of any public building or public work;

12 (d) the acquisition, sale or lease of
13 any land or building;

14 (e) a licensing arrangement;

15 (f) a loan or loan guarantee; or

16 (g) the purchase of financial securities
17 or instruments;

18 (2) "contribution" means:

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

24 (b) a donation to an organization that
25 is made in response to a request by a state public officer or

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1 local public officer or an agent on behalf of either; or

2 (c) a donation to an organization that
3 supports an agency pursuant to the provisions of Section 6-5A-1
4 NMSA 1978 if the donor seeks or obtains a contract with the
5 agency that the organization supports;

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

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

15 (5) "local public officer" means a person
16 elected to an office, or a person appointed to complete a term
17 of an elected office, in the political subdivision of the state
18 where the local public body is seeking to contract with a local
19 contractor;

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

25 (7) "principal of a prospective contractor"

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1 means, in addition to the contractor itself:

2 (a) an individual who is a member of the
3 board of directors of, or a person that has an ownership or
4 controlling interest in, a contractor or prospective
5 contractor, except for a person who owns less than five percent
6 of the shares of a contractor or prospective contractor that is
7 a publicly traded corporation;

8 (b) an individual who is the chief
9 executive officer of a contractor or prospective contractor;

10 (c) an agent, including a lobbyist
11 subject to the Lobbyist Regulation Act, seeking a contract for
12 a contractor or prospective contractor; or

13 (d) a political committee established by
14 or on behalf of a person described in this paragraph;

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

25 (9) "solicitation" means a request for the

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1 purchase of services, personal property, real property or any
2 other thing of value;

3 (10) "state agency" means an office,
4 department, board, council, commission, institution or other
5 agency in the executive, judicial or legislative branch of
6 state government;

7 (11) "state contractor" means a person that
8 enters into a contract with a state agency. "State contractor"
9 does not include a state agency or a political subdivision of
10 the state or an employee of a state agency or political
11 subdivision of the state, whether full- or part-time, in that
12 person's capacity as an employee of the state or political
13 subdivision of the state; 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, judicial or legislative
17 branch of state government, a campaign committee established or
18 controlled by or affiliated with that person or any person who
19 is involved in a solicitation or procurement process that has
20 an active campaign committee or political committee account.

21 B. A prospective contractor, prior to entering into
22 a contract with a state agency or a local public body, shall
23 register with the general services department on a form
24 developed by the department and made available on the
25 department's web site. The prospective contractor shall

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1 provide the following information:

- 2 (1) the name and address of the business;
- 3 (2) the principals of the business;
- 4 (3) any affiliated business entities;
- 5 (4) the name and address of a contact person
6 for the business; and
- 7 (5) any contracts the prospective contractor
8 currently has with a state agency or local public body and the
9 amount and term of the contract.

10 C. A prospective contractor shall update any of the
11 information required by Subsection B of this section prior to
12 responding to a solicitation from a state agency or local
13 public body.

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

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

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1 to the date the prospective contractor responds to a
2 solicitation by a local public body to enter into a contract
3 with the local public body if the total contributions from the
4 principal to the local public officer exceed two hundred fifty
5 dollars (\$250) over the two-year period.

6 F. The state agency or local public body that makes
7 a solicitation shall provide a list to prospective contractors
8 that indicates the name of each public officer, if any, for
9 which disclosure is required by a prospective contractor. The
10 disclosure shall indicate the date, the amount and the nature
11 of the contribution and the person receiving the contribution.
12 Prospective contractors shall complete the disclosure statement
13 online, and the general services department shall post the
14 disclosure statements in a searchable format on its web site.

15 G. A principal of a prospective contractor that is
16 seeking to contract with a state agency shall not make a
17 contribution to or solicit a contribution for a state public
18 officer of the agency soliciting the contract during the
19 pendency of the procurement process. A principal of a
20 prospective contractor that is seeking to contract with a local
21 public body shall not make a contribution to or solicit a
22 contribution for a local public officer of the local public
23 body soliciting the contract during the pendency of the
24 procurement process.

25 H. If a contractor enters into a contract with a

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1 state agency or local public body, during the term of the
2 contract, the contractor shall update the information required
3 by this section annually and include contributions made since
4 the beginning of the contract. Updates shall be filed by 5:00
5 p.m. on the second Monday in January.

6 I. If a principal of a prospective contractor
7 inadvertently makes a contribution during the pendency of the
8 procurement process, the principal may request full
9 reimbursement from the recipient, and, if reimbursement is
10 received within thirty days after the date on which the
11 contribution was made, the contractor shall be eligible to
12 receive a contract or shall no longer be in violation, as
13 appropriate.

14 J. Before awarding or entering into a contract with
15 a prospective contractor, the appropriate purchasing agent or
16 contract evaluation committee shall review the information that
17 the prospective contractor has submitted and shall certify that
18 the prospective contractor has properly registered with the
19 general services department and submitted the list of
20 contributions required by this section.

21 K. A solicitation for or proposed award of a
22 contract may be canceled or a contract that is executed may be
23 terminated if it is in the best interests of the state or local
24 public body when a prospective contractor or a state or local
25 contractor fails to submit a fully completed disclosure

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1 statement pursuant to this section or makes a contribution
2 prohibited by Subsection G of this section.

3 L. The New Mexico finance authority and the New
4 Mexico mortgage finance authority shall adopt policies that
5 have the same effect as the requirements of this section.

6 M. The department of finance and administration
7 shall issue all rules necessary to carry out the provisions of
8 this section.

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

11 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
12 PROPOSALS.--

13 A. Competitive sealed proposals, including
14 competitive qualifications-based proposals, shall be solicited
15 through a request for proposals that shall be issued and shall
16 include:

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

19 (2) all contractual terms and conditions
20 applicable to the procurement;

21 (3) the ~~[form]~~ applicable instructions for
22 disclosure of ~~[campaign]~~ contributions given by prospective
23 contractors to applicable public officials pursuant to Section
24 ~~[13-1-191.1 NMSA 1978]~~ 1 of this 2012 act; and

25 (4) the location where proposals are to be

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1 received and the date, time and place where proposals are to be
2 received and reviewed.

3 B. A request for proposals may, pursuant to Section
4 13-1-95.1 NMSA 1978, require that all or a portion of a
5 responsive proposal be submitted electronically.

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

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

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