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SENATE BILL 448

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PROCUREMENT; REVISING PROVISIONS RELATED TO
DEBARMENT AND SUSPENSION; INCLUDING CIVIL VIOLATIONS AS CAUSE
FOR DEBARMENT OR SUSPENSION; PROVIDING LIMITATIONS ON
CONTINUATION OF CONTRACTS AND SUBCONTRACTING WITH DEBARRED OR
SUSPENDED PARTIES.

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

SECTION 1. A new section of the Procurement Code is
enacted to read:

"[NEW MATERIAL] DEFINITION--PERSON.--"Person" means an
individual, corporation, business trust, estate, trust,
partnership, limited liability company, association, joint
venture or other legal or commercial entity."

SECTION 2. Section 13-1-177 NMSA 1978 (being Laws 1984,
Chapter 65, Section 150) is amended to read:

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1 "13-1-177. AUTHORITY TO ~~DEBAR OR~~ SUSPEND OR DEBAR.--

2 A. The state purchasing agent or a central
3 purchasing office, after consultation with the using agency,
4 may suspend a person from consideration for award of contracts
5 if the state purchasing agent or central purchasing office,
6 after reasonable investigation, finds that a person has engaged
7 in conduct that constitutes cause for debarment pursuant to
8 Section 13-1-178 NMSA 1978.

9 B. The term of a suspension pursuant to this
10 section shall not exceed three months; however, if a person,
11 including a bidder, offeror or contractor, has been charged
12 with a criminal offense that would be a cause for debarment
13 pursuant to Section 13-1-178 NMSA 1978, the suspension shall
14 remain in effect until the criminal charge is resolved and the
15 person is debarred or the reason for suspension no longer
16 exists.

17 C. The state purchasing agent or a central
18 purchasing office, after reasonable notice to the [business]
19 person involved, shall have authority to recommend to the
20 governing authority of a state agency or a local public body
21 the [suspension or] debarment of a [business] person for cause
22 from consideration for award of contracts, other than contracts
23 for professional services. The debarment shall not be for a
24 period of more than three years [and a suspension shall not
25 exceed three months]. The authority to debar [or suspend]

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1 shall be exercised by the governing authority of a state agency
2 or a local public body in accordance with [~~regulations which~~]
3 rules that shall provide for reasonable notice and a fair
4 hearing prior to [~~suspension or~~] debarment.

5 D. As used in this section, the terms "person",
6 "bidder", "offeror" and "contractor" include principals,
7 officers, directors, owners, partners and managers of the
8 person, bidder, offeror or contractor."

9 SECTION 3. Section 13-1-178 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 151) is amended to read:

11 "13-1-178. CAUSES FOR DEBARMENT OR SUSPENSION--TIME
12 LIMIT.--

13 A. The causes for debarment or suspension occurring
14 within three years of the time final action on a procurement is
15 taken include but are not limited to the following:

16 [~~A.~~] (1) criminal conviction [of] or civil
17 judgment against a bidder, offeror or contractor for commission
18 of a criminal offense or civil violation related to obtaining
19 or attempting to obtain a public or private contract or
20 subcontract, or [~~in~~] related to the performance of such
21 contract or subcontract;

22 [~~B.~~] (2) conviction of a bidder, offeror or
23 contractor under state or federal statutes [of] related to
24 embezzlement, theft, forgery, bribery, fraud, falsification or
25 destruction of records, [of] making false statements or

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1 receiving stolen property or for violation of federal or state
2 tax laws;

3 [~~6-~~] (3) conviction of a bidder, offeror or
4 contractor under state or federal antitrust statutes [~~arising~~
5 ~~out of~~] relating to the submission of [~~bids or proposals~~]
6 offers;

7 (4) criminal conviction or civil judgment
8 against a bidder, offeror or contractor for any other offense
9 related to honesty, integrity or business ethics;

10 (5) civil judgment against a bidder, offeror
11 or contractor pursuant to the Unfair Practices Act;

12 [~~D-~~] (6) violation by a bidder, offeror or
13 contractor of contract provisions, as set forth in this
14 [~~subsection~~] paragraph, of a character [~~which~~] that is
15 reasonably regarded by the state purchasing agent or a central
16 purchasing office to be so serious as to justify suspension or
17 debarment action, including:

18 [~~(1)~~] (a) willful failure to perform in
19 accordance with one or more contracts; provided that this
20 failure has occurred within a reasonable time preceding the
21 decision to impose debarment; or

22 [~~(2)~~] (b) a history of failure to
23 perform or of unsatisfactory performance of one or more
24 contracts; provided that this failure or unsatisfactory
25 performance has occurred within a reasonable time preceding the

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1 decision to impose debarment; and provided further that failure
2 to perform or unsatisfactory performance caused by acts beyond
3 the control of the contractor shall not be considered to be a
4 basis for debarment;

5 ~~[E-]~~ (7) any other cause occurring within
6 three years of a procurement ~~[which]~~ that the state purchasing
7 agent or a central purchasing office determines to be so
8 serious and compelling as to affect responsibility as a
9 contractor; or

10 ~~[F-]~~ (8) for a willful violation by a bidder,
11 offeror or contractor of the provisions of the Procurement Code
12 within three years of a procurement.

13 B. As used in this section, the terms "bidder",
14 "offeror" and "contractor" include principals, officers,
15 directors, owners, partners and managers of the bidder, offeror
16 or contractor."

17 SECTION 4. Section 13-1-180 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 153) is amended to read:

19 "13-1-180. DEBARMENT OR SUSPENSION--NOTICE OF
20 DETERMINATION.--A copy of the determination ~~[under]~~ made
21 pursuant to Section [152 of the Procurement Code] 13-1-179 NMSA
22 1978 shall [immediately be mailed to the debarred or suspended
23 business] be:

24 A. mailed to the last known address on file with
25 the state purchasing agent or central purchasing office, by

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1 first class mail, within three business days after issuance of
2 the written determination; or

3 B. transmitted electronically within three business
4 days after issuance of the written determination."

5 SECTION 5. A new section of the Procurement Code is
6 enacted to read:

7 "[NEW MATERIAL] CONTINUATION OF CURRENT CONTRACTS--
8 RESTRICTIONS ON SUBCONTRACTING.--

9 A. Notwithstanding the debarment, suspension or
10 proposed debarment of a person, a state agency or local public
11 body may continue contracts or subcontracts in existence at the
12 time that the person is debarred, suspended or proposed for
13 debarment unless the governing authority of the state agency or
14 local public body directs otherwise.

15 B. Unless the governing authority of a state agency
16 or local public body issues a written determination based on
17 compelling reasons holding otherwise, a person that has been
18 debarred or suspended or whose debarment has been proposed
19 shall not, after the date that the person is debarred,
20 suspended or proposed for debarment:

21 (1) incur financial obligations, including
22 those for materials, services and facilities, unless the person
23 is specifically authorized to do so under the terms and
24 conditions of the person's contract; or

25 (2) extend the duration of the person's

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1 contract by adding new work, by exercising options or by taking
2 other action.

3 C. Unless pursuant to written authorization based
4 on the compelling reasons of the governing authority of a state
5 agency or local public body, the state purchasing agent or a
6 central purchasing office shall not consent to enter a
7 subcontract subject to the Procurement Code with a person that
8 has been debarred, suspended or proposed for debarment.

9 D. A person that has entered into a contract
10 subject to the Procurement Code shall not subcontract with
11 another person that has been debarred, suspended or proposed
12 for debarment without the written authorization of the state
13 purchasing agent or a central purchasing office. A person that
14 wishes to subcontract with another person that has been
15 debarred, suspended or proposed for debarment shall make a
16 request to the applicable state agency or local public body
17 that includes the following:

18 (1) the name of the proposed subcontractor;

19 (2) information about the proposed
20 subcontractor's debarment, suspension or proposed debarment;

21 (3) the requester's compelling reasons for
22 seeking a subcontract with the proposed subcontractor; and

23 (4) a statement of how the person will protect
24 the interests of the state agency or local public body
25 considering the proposed subcontractor's debarment, suspension

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or proposed debarment."