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SENATE BILL 269

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO PUBLIC PROCUREMENT; ESTABLISHING AN ADMINISTRATIVE APPEAL PROCESS FOR DECISIONS MADE PURSUANT TO THE PROCUREMENT CODE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 13-1-175 NMSA 1978 (being Laws 1984, Chapter 65, Section 148) is amended to read:

"13-1-175. PROTEST-- DETERMINATION.-- The state purchasing agent, a central purchasing office or a designee of either shall promptly issue a determination relating to the protest.

The determination shall:

- A. state the reasons for the action taken; and
- B. inform the protestant of the right to

~~[judicial]~~ review of the determination by the procurement appeals board pursuant to Section ~~[156 of the Procurement~~

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1 ~~Code~~ 13-1-176.4 NMSA 1978. "

2 Section 2. Section 13-1-176 NMSA 1978 (being Laws 1984,  
3 Chapter 65, Section 149) is amended to read:

4 "13-1-176. PROTEST--NOTICE OF DETERMINATION.--A copy of  
5 the determination issued under Section [~~148 of the Procurement~~  
6 ~~Code~~] 13-1-175 NMSA 1978 shall immediately be mailed to the  
7 protestant and other bidders or offerors involved in the  
8 procurement. A person aggrieved by the determination may  
9 appeal to the procurement appeals board pursuant to Section  
10 13-1-176.4 NMSA 1978. "

11 Section 3. Section 13-1-177 NMSA 1978 (being Laws 1984,  
12 Chapter 65, Section 150) is amended to read:

13 "13-1-177. AUTHORITY TO DEBAR OR SUSPEND.--The state  
14 purchasing agent or a central purchasing office, after  
15 reasonable notice to the business involved, shall have  
16 authority to recommend to the governing authority of a state  
17 agency or a local public body the suspension or debarment of a  
18 business for cause from consideration for award of contracts,  
19 other than contracts for professional services. The debarment  
20 shall not be for a period of more than three years, and a  
21 suspension shall not exceed three months. The authority to  
22 debar or suspend shall be exercised by the governing authority  
23 of a state agency or a local public body in accordance with  
24 [~~regulations which shall provide for reasonable notice and a~~  
25 ~~fair hearing prior to suspension or debarment~~] the Procurement

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1 Code and rules adopted pursuant to that code. "

2 Section 4. Section 13-1-179 NMSA 1978 (being Laws 1984,  
3 Chapter 65, Section 152) is amended to read:

4 "13-1-179. DEBARMENT OR SUSPENSION-- DETERMINATION. -- The  
5 governing authority of a state agency or a local public body  
6 shall issue a written determination to debar or suspend. The  
7 determination shall:

8 A. state the reasons for the action taken; and

9 B. inform the debarred or suspended business  
10 involved of its ~~[rights to judicial]~~ right to review by the  
11 procurement appeals board pursuant to Section ~~[156 of the~~  
12 ~~Procurement Code]~~ 13-1-176.4 NMSA 1978. "

13 Section 5. Section 13-1-180 NMSA 1978 (being Laws 1984,  
14 Chapter 65, Section 153) is amended to read:

15 "13-1-180. DEBARMENT OR SUSPENSION-- NOTICE OF  
16 DETERMINATION. -- A copy of the determination under Section ~~[152~~  
17 ~~of the Procurement Code]~~ 13-1-179 NMSA 1978 shall immediately  
18 be mailed to the debarred or suspended business. A person  
19 aggrieved by the determination may appeal to the procurement  
20 appeals board pursuant to Section 13-1-176.4 NMSA 1978. "

21 Section 6. Section 13-1-183 NMSA 1978 (being Laws 1984,  
22 Chapter 65, Section 156, as amended) is amended to read:

23 "13-1-183. JUDICIAL REVIEW. -- ~~[All]~~ Except for judicial  
24 review of actions of the procurement appeals board pursuant to  
25 Section 13-1-176.8 NMSA 1978, actions for which judicial

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1 review is specifically authorized by the Procurement Code [~~for~~  
2 ~~judicial review of a determination~~] shall be [~~filed~~] reviewed  
3 pursuant to the provisions of Section 39-3-1.1 NMSA 1978. "

4 Section 7. A new section of the Procurement Code,  
5 Section 13-1-176.1 NMSA 1978, is enacted to read:

6 "13-1-176.1. [NEW MATERIAL] CREATION OF PROCUREMENT  
7 APPEALS BOARD. --

8 A. The "procurement appeals board" is created in  
9 the executive branch. The procurement appeals board is  
10 composed of a chair and one other member, to be appointed by  
11 the governor, and a third member to be designated by the two  
12 appointed members on a case-by-case basis.

13 B. None of the members of the procurement appeals  
14 board shall otherwise be full-time employees of the state.

15 C. The appointed members of the procurement appeals  
16 board shall have been members in good standing of the state  
17 bar for at least five years and shall be experienced in  
18 contract or commercial matters.

19 D. The designated member shall possess the  
20 technical expertise and experience needed for the proper  
21 disposition of the factual issues presented by the case.

22 E. Except as required by Subsection F of this  
23 section, as terms of current board members expire, the  
24 governor shall appoint each new member or reappointed member  
25 to a four-year term.

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1 F. Notwithstanding the requirements of Subsection E  
2 of this section, the governor shall, at the time of  
3 appointment or reappointment, adjust the length of terms to  
4 ensure that the terms of board members are staggered so that  
5 approximately half of the board is appointed every two years.

6 G. The designated member shall serve for the case  
7 on which designated until the final disposition of the case.

8 H. Appointed members may be reappointed for  
9 succeeding terms and may continue to serve after the  
10 expiration of their terms until a successor takes office.

11 I. Qualified persons may be redesignated as members.

12 J. When a vacancy occurs in the membership for any  
13 reason, the replacement shall be appointed for the unexpired term.

14 K. Members shall receive no compensation or  
15 benefits for their services, but may receive per diem and  
16 expenses incurred in the performance of the members' official  
17 duties pursuant to the Per Diem and Mileage Act. Members may  
18 decline to receive per diem and expenses for their service."

19 Section 8. A new section of the Procurement Code,  
20 Section 13-1-176.2 NMSA 1978, is enacted to read:

21 "13-1-176.2. [NEW MATERIAL] RULES OF PROCEDURE TO BE  
22 ADOPTED. --The procurement appeals board shall adopt rules of  
23 procedure that, to the fullest extent possible, will provide  
24 for the expeditious resolution of controversies, including  
25 procedures to encourage agreements between the parties to a

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1 controversy prior to a hearing. "

2 Section 9. A new section of the Procurement Code,  
3 Section 13-1-176.3 NMSA 1978, is enacted to read:

4 "13-1-176.3. [NEW MATERIAL] DECISIONS TO BE IN  
5 WRITING. --The procurement appeals board shall issue a decision  
6 in writing or take other appropriate action of each appeal  
7 submitted. A copy of a decision shall be provided to all  
8 parties and the state purchasing agent or the head of a  
9 central purchasing office. "

10 Section 10. A new section of the Procurement Code,  
11 Section 13-1-176.4 NMSA 1978, is enacted to read:

12 "13-1-176.4. [NEW MATERIAL] JURISDICTION OF THE  
13 PROCUREMENT APPEALS BOARD. --Unless an action has been  
14 initiated previously in the district court for essentially the  
15 same cause of action, the board shall have jurisdiction to  
16 review and determine de novo:

17 A. a determination relating to a protest of a  
18 solicitation or award of a contract pursuant to Section  
19 13-1-175 NMSA 1978, addressed to the board by an aggrieved  
20 actual or prospective bidder or offeror; or

21 B. an appeal by an aggrieved party from a decision  
22 rendered or deemed to have been rendered pursuant to Section  
23 13-1-179 NMSA 1978. "

24 Section 11. A new section of the Procurement Code,  
25 Section 13-1-176.5 NMSA 1978, is enacted to read:

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1 "13-1-176.5. [NEW MATERIAL] TIME LIMITS TO FILE AN  
2 APPEAL--EFFECT OF FILING.--

3 A. For an appeal from a decision regarding a  
4 protested solicitation or award, the aggrieved person shall  
5 file an appeal within seven calendar days of receipt of a  
6 decision rendered or deemed to have been rendered pursuant to  
7 Section 13-1-175 NMSA 1978.

8 B. For an appeal from a decision regarding a  
9 debarment, suspension or contract controversy, the aggrieved  
10 person shall file an appeal within sixty calendar days of  
11 receipt of a decision rendered or deemed to have been rendered  
12 pursuant to Section 13-1-179 NMSA 1978. "

13 Section 12. A new section of the Procurement Code,  
14 Section 13-1-176.6 NMSA 1978, is enacted to read:

15 "13-1-176.6. [NEW MATERIAL] DISCONTINUED APPEAL WITH  
16 PREJUDICE EXCEPT AS AUTHORIZED.--After notice of an appeal has  
17 been filed with the procurement appeals board, no party may  
18 discontinue the appeal without prejudice, except as authorized  
19 by the board. "

20 Section 13. A new section of the Procurement Code,  
21 Section 13-1-176.7 NMSA 1978, is enacted to read:

22 "13-1-176.7. [NEW MATERIAL] FACTUAL DETERMINATION OF  
23 APPEALS BOARD FINAL AND CONCLUSIVE.--

24 A. On an appeal pursuant to Section 13-1-176.4  
25 NMSA 1978, the procurement appeals board shall promptly decide

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1 whether the solicitation or award or the suspension or  
2 debarment was in accordance with the Procurement Code. Prior  
3 determinations by administrative officials regarding protests  
4 of solicitations or awards or suspension or debarments shall  
5 not be final or conclusive.

6 B. A determination of an issue of fact by the  
7 procurement appeals board pursuant to Subsection A of this  
8 section shall be final and conclusive unless arbitrary and  
9 capricious or clearly erroneous. No determination on an issue  
10 of law shall be final or conclusive. "

11 Section 14. A new section of the Procurement Code,  
12 Section 13-1-176.8 NMSA 1978, is enacted to read:

13 "13-1-176.8. [NEW MATERIAL] JUDICIAL REVIEW BY COURT OF  
14 APPEALS. --The state or a person receiving an adverse decision  
15 may appeal the final decision of the procurement appeals board  
16 to the court of appeals pursuant to Rule 12-601 NMRA. "

17 Section 15. EFFECTIVE DATE. --The effective date of the  
18 provisions of this act is July 1, 2001.