

HOUSE VOTERS AND ELECTIONS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 133

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

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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underscoring material = new
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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, but does not include the
24 value of services provided without compensation or unreimbursed
25 travel or other personal expenses of individuals who volunteer

1 a portion or all of their time on behalf of a candidate or
2 political committee;

3 (b) a donation to an organization that
4 is made in response to a request by a state public officer or
5 local public officer or an agent on behalf of either; or

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

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

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

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

24 (6) "pendency of the procurement process"
25 means the time period commencing on the day of the initial

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~~[bracketed material] = delete~~

1 solicitation for a contract by the state agency or local public
2 body and ending with the award of the contract or the
3 cancellation of the solicitation;

4 (7) "political purpose" means to expressly
5 advocate the nomination, election or defeat of a candidate or
6 to expressly advocate the passage or defeat of a ballot issue;

7 (8) "principal of a prospective contractor"
8 means, in addition to the prospective contractor itself:

9 (a) an individual who is a member of the
10 board of directors of a prospective contractor;

11 (b) a person, including a spouse, who
12 has an ownership or controlling interest in a prospective
13 contractor, except for a person who owns less than five percent
14 of the shares of a prospective contractor that is a publicly
15 traded corporation;

16 (c) an individual who is the chief
17 executive officer of a prospective contractor;

18 (d) an agent, including a lobbyist
19 subject to the Lobbyist Regulation Act, seeking a contract for
20 a prospective contractor; or

21 (e) a political committee established by
22 or on behalf of a person described in this paragraph;

23 (9) "prospective contractor" means a person
24 that submits a bid in response to a bid solicitation by a state
25 agency or a local public body, a proposal in response to a

1 request for proposals or a response to any other solicitation
2 by a state agency or a local public body until the contract has
3 been entered into. "Prospective contractor" does not include a
4 state agency or a political subdivision of the state or an
5 employee of a state agency or political subdivision of the
6 state, whether full- or part-time, in that person's capacity as
7 an employee of the state or political subdivision of the state;

8 (10) "solicitation" means a request for the
9 purchase of services, personal property, real property or any
10 other thing of value, including requests for information;

11 (11) "state agency" means an office,
12 department, board, council, commission, institution or other
13 agency in the executive, judicial or legislative branch of
14 state government;

15 (12) "state contractor" means a person that
16 enters into a contract with a state agency. "State contractor"
17 does not include a state agency or a political subdivision of
18 the state or an employee of a state agency or political
19 subdivision of the state, whether full- or part-time, in that
20 person's capacity as an employee of the state or political
21 subdivision of the state; and

22 (13) "state public officer" means a person
23 elected to an office, or a person appointed to complete a term
24 of an elected office, in the executive, judicial or legislative
25 branch of state government, a campaign committee established or

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1 controlled by or affiliated with that person or any person who
2 is involved in a solicitation or procurement process that has
3 an active campaign committee or political committee account.

4 B. A prospective contractor, prior to entering into
5 a contract with a state agency, shall register with the general
6 services department on a form developed by the department and
7 made available on the department's web site. A prospective
8 contractor, prior to entering into a contract with a local
9 public body, shall register with the local public body on a
10 form developed by the local public body and made available on
11 the local public body's web site, if one exists. The
12 prospective contractor shall provide the following information:

13 (1) the name and address of the prospective
14 contractor;

15 (2) the principals of the business;

16 (3) any affiliated business entities;

17 (4) the name and address of a contact person
18 for the business; and

19 (5) any contracts, as well as the amounts and
20 terms of the contracts, that the prospective contractor
21 currently has with the state agency or local public body
22 issuing the solicitation.

23 C. A prospective contractor shall update any of the
24 information required by Subsection B of this section prior to
25 responding to a solicitation from a state agency or local

1 public body.

2 D. The state agency or local public body that makes
3 a solicitation shall provide a list to the prospective
4 contractors that indicates the name of each public officer, if
5 any, for which disclosure is required by a prospective
6 contractor.

7 E. A prospective contractor shall include in its
8 bid to a state agency a completed disclosure statement
9 developed by the general services department and made available
10 on the department's web site. A prospective contractor shall
11 include in its bid to a local public body a completed
12 disclosure statement developed by the local public body and
13 made available on the local public body's web site, if one
14 exists. The disclosure statement shall indicate the date, the
15 amount and the nature of the contribution and the person
16 receiving the contribution. Prospective contractors shall
17 complete the disclosure statement online, if a web site exists.
18 The general services department shall post the disclosure
19 statements in a searchable format on the sunshine portal. The
20 local public body shall post the disclosure statements in a
21 searchable format on the local public body's web site, if one
22 exists. Prospective contractors shall include a copy of the
23 disclosure statement with their bid.

24 F. A prospective contractor shall disclose all
25 contributions given by a principal of the prospective

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1 contractor to a state public officer of the state agency
2 soliciting the contract during the two years prior to the date
3 that the prospective contractor responds to a solicitation by a
4 state agency to enter into a contract with the state agency if
5 the total contributions from the principal to the state public
6 officer exceed one thousand dollars (\$1,000) over the two-year
7 period.

8 G. A prospective contractor shall disclose all
9 contributions given by a principal of the prospective
10 contractor to a local public officer during the two years prior
11 to the date the prospective contractor responds to a
12 solicitation by a local public body to enter into a contract
13 with the local public body if the total contributions from the
14 principal to the local public officer exceed one thousand
15 dollars (\$1,000) over the two-year period.

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

1 I. Before awarding or entering into a contract with
2 a prospective contractor, the appropriate purchasing agent or
3 contract evaluation committee shall review the information that
4 the prospective contractor has submitted and shall certify that
5 the prospective contractor has properly submitted the required
6 disclosure statement.

7 J. If a contractor enters into a contract with a
8 state agency or local public body, during the term of the
9 contract, the contractor shall update the information required
10 by this section annually and include contributions made since
11 the beginning of the contract. Updates shall be filed with the
12 appropriate state or local public body by 5:00 p.m. on the
13 second Monday in January.

14 K. A solicitation for or proposed award of a
15 contract may be canceled or a contract that is executed may be
16 terminated if it is in the best interests of the state or local
17 public body when a prospective contractor or a state or local
18 contractor fails to submit a fully completed disclosure
19 statement pursuant to this section or makes a contribution
20 prohibited by Subsection H of this section.

21 L. The New Mexico finance authority and the New
22 Mexico mortgage finance authority shall adopt policies that
23 have the same effect as the requirements of this section.

24 M. The general services department shall issue all
25 rules necessary to carry out the provisions of this section.

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

3 "13-1-112. COMPETITIVE SEALED PROPOSALS--REQUEST FOR
4 PROPOSALS.--

5 A. Competitive sealed proposals, including
6 competitive qualifications-based proposals, shall be solicited
7 through a request for proposals that shall be issued and shall
8 include:

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

11 (2) all contractual terms and conditions
12 applicable to the procurement;

13 (3) the ~~[form]~~ applicable instructions for
14 disclosure of ~~[campaign]~~ contributions given by prospective
15 contractors to applicable public officials pursuant to Section
16 ~~[13-1-191.1 NMSA 1978]~~ 1 of this 2013 act; and

17 (4) the location where proposals are to be
18 received and the date, time and place where proposals are to be
19 received and reviewed.

20 B. A request for proposals may, pursuant to Section
21 13-1-95.1 NMSA 1978, require that all or a portion of a
22 responsive proposal be submitted electronically.

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

