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HOUSE BILL 705

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PUBLIC PROCUREMENT; INCREASING CERTAIN THRESHOLD
VALUES FOR PROCUREMENT ACTIONS; AMENDING SECTIONS OF THE NMSA
1978.

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

Section 1. Section 13-1-60 NMSA 1978 (being Laws 1984,
Chapter 65, Section 33) is amended to read:

"13-1-60. DEFINITION--HEAVY ROAD EQUIPMENT.--"Heavy road
equipment" means any motor-driven vehicle or apparatus capable
of use for earth moving or mixing components [~~which~~] that has
an aggregate value or price of over [~~one thousand dollars~~
~~(\$1,000)] fifty thousand dollars (\$50,000)."~~

Section 2. Section 13-1-99 NMSA 1978 (being Laws 1984,
Chapter 65, Section 72, as amended) is amended to read:

"13-1-99. EXCLUDED FROM CENTRAL PURCHASING THROUGH THE

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1 STATE PURCHASING AGENT.--Excluded from the requirement of
2 procurement through the state purchasing agent but not from the
3 requirements of the Procurement Code are the following:

4 A. procurement of professional services;

5 B. small purchases having a value not exceeding
6 [~~one thousand five hundred dollars (\$1,500)~~] twenty thousand
7 dollars (\$20,000);

8 C. emergency procurement;

9 D. procurement of highway construction or
10 reconstruction by the department of transportation;

11 E. procurement by the judicial branch of state
12 government;

13 F. procurement by the legislative branch of state
14 government;

15 G. procurement by the boards of regents of state
16 educational institutions named in Article 12, Section 11 of the
17 constitution of New Mexico;

18 H. procurement by the state fair commission of
19 tangible personal property, services and construction under
20 twenty thousand dollars (\$20,000);

21 I. purchases from the instructional material fund;

22 J. procurement by all local public bodies;

23 K. procurement by regional education cooperatives;

24 L. procurement by charter schools;

25 M. procurement by each state health care

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1 institution that provides direct patient care and that is, or a
2 part of which is, medicaid certified and participating in the
3 New Mexico medicaid program; and

4 N. procurement by the public school facilities
5 authority."

6 Section 3. Section 13-1-146 NMSA 1978 (being Laws 1984,
7 Chapter 65, Section 119, as amended) is amended to read:

8 "13-1-146. REQUIREMENT FOR BID SECURITY.--Bid security
9 shall be required of bidders or offerors for construction
10 contracts when the price is estimated by the procurement
11 officer to exceed [~~twenty-five thousand dollars (\$25,000)~~]
12 sixty thousand dollars (\$60,000). Bid security in an amount
13 equal to at least five percent of the amount of the bid shall
14 be a bond provided by a surety company authorized to do
15 business in this state, or the equivalent in cash, or otherwise
16 supplied in a form satisfactory to the state agency or a local
17 public body."

18 Section 4. Section 13-1-155 NMSA 1978 (being Laws 1984,
19 Chapter 65, Section 128, as amended) is amended to read:

20 "13-1-155. PROCUREMENT OF USED ITEMS--APPRAISAL
21 REQUIRED--COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS.--

22 A. A central purchasing office, when procuring used
23 items of tangible personal property the estimated cost of which
24 exceeds [~~five thousand dollars (\$5,000)~~] twenty thousand
25 dollars (\$20,000), shall request bids as though the items were

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1 new, adding specifications that permit used items under
2 conditions to be outlined in the bid specifications, including
3 but not limited to requiring a written warranty for at least
4 ninety days after date of delivery and an independent
5 "certificate of working order" by a qualified mechanic or
6 appraiser.

7 B. Notwithstanding the provisions of Subsection A
8 of this section, the purchasing office for a county may
9 purchase, at public or private auctions conducted by
10 established, recognized commercial auction companies, used
11 heavy equipment having an estimated cost that exceeds [~~five~~
12 ~~thousand dollars (\$5,000)] twenty thousand dollars (\$20,000)
13 for use in construction and maintenance of county streets,
14 roads and highways, subject to the following provisions:~~

15 (1) the commercial auction company shall have
16 been in business for at least three years preceding the date of
17 purchase and shall conduct at least five auctions annually;

18 (2) the value of each piece of equipment shall
19 be appraised prior to the auction by a qualified disinterested
20 appraiser retained and paid by the county, who shall make a
21 written appraisal report stating the basis for the appraisal,
22 including the age, condition and comparable sales, and stating
23 that the appraiser has exercised [~~his~~] independent judgment
24 without prior understanding or agreement with any person as to
25 a target value or range of value;

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1 (3) an independent "certificate of working
2 condition" shall be obtained prior to the auction from a
3 qualified mechanic who shall have made a detailed inspection of
4 each major working or major functional part and certified the
5 working condition of each; and

6 (4) the price paid, including all auction fees
7 and buyer's surcharges, shall not exceed the appraised value."

8 Section 5. Section 13-1-156 NMSA 1978 (being Laws 1984,
9 Chapter 65, Section 129, as amended) is amended to read:

10 "13-1-156. TRADE OR EXCHANGE OF USED ITEMS--APPRAISAL
11 REQUIRED.--

12 A. A central purchasing office, when trading in or
13 exchanging used items of tangible personal property the
14 estimated value of which exceeds [~~five thousand dollars~~
15 ~~(\$5,000)~~] twenty thousand dollars (\$20,000) as part-payment on
16 the procurement of new items of tangible personal property,
17 shall:

18 (1) have an independent appraisal made of the
19 items to be traded in or exchanged. The appraisal shall be in
20 writing, shall be made part of the procurement file and shall
21 be a public record. The invitation for bids or request for
22 proposals shall contain notice to prospective bidders or
23 offerors of the description and specifications of the items to
24 be traded in or exchanged, the appraised value of the items to
25 be traded in or exchanged and the location where the items to

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1 be traded in or exchanged may be inspected; or

2 (2) have two written quotes for purchase of
3 the property at a specified price.

4 B. Award shall be based upon the net bid. Bidders
5 or offerors shall compute their net bid or offer by deducting
6 the appraised value or highest quote of the items to be traded
7 in or exchanged from the gross bid or offer on the new items of
8 tangible personal property to be procured. If an amount
9 offered in trade is less than the appraised value or the
10 highest quote but is found to be a fair reflection of the
11 current market, representative of the condition of the items of
12 tangible personal property and in the best interest of the
13 agency, the bid or offer may be accepted. Documentation of the
14 terms of acceptance shall be in writing, shall be made a part
15 of the procurement file and shall be a public record."

16 Section 6. Section 13-4-13.1 NMSA 1978 (being Laws 2004,
17 Chapter 89, Section 1, as amended) is amended to read:

18 "13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF
19 CONTRACTORS AND SUBCONTRACTORS.--

20 A. Except as otherwise provided in this subsection,
21 in order to submit a bid valued at more than [~~fifty thousand~~
22 ~~dollars (\$50,000)] sixty thousand dollars (\$60,000) in order to
23 respond to a request for proposals or to be considered for
24 award of any portion of a public works project greater than
25 [~~fifty thousand dollars (\$50,000)] sixty thousand dollars~~~~

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1 (\$60,000) for a public works project that is subject to the
2 Public Works Minimum Wage Act, the contractor, serving as a
3 prime contractor or not, shall be registered with the labor
4 [~~and industrial division of the labor~~] relations division of
5 the workforce solutions department. Bidding documents issued
6 or released by a state agency or political subdivision of the
7 state shall include a clear notification that each contractor,
8 prime contractor or subcontractor is required to be registered
9 pursuant to this subsection. The provisions of this section do
10 not apply to vocational classes in public schools or public
11 post-secondary educational institutions.

12 B. The state or any political subdivision of the
13 state shall not accept a bid on a public works project subject
14 to the Public Works Minimum Wage Act from a prime contractor
15 that does not provide proof of required registration for
16 itself.

17 C. Contractors and subcontractors may register with
18 the division on a form provided by the division and in
19 accordance with [~~labor~~] workforce solutions department rules.
20 The division shall charge an annual registration fee of two
21 hundred dollars (\$200). The division shall issue to the
22 applicant a certificate of registration within fifteen days
23 after receiving from the applicant the completed registration
24 form and the registration fee.

25 D. Registration fees collected by the division

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1 shall be deposited in the labor enforcement fund."

2 Section 7. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2009.

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