

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. PROSPECTIVE STATE AND LOCAL CONTRACTOR REGISTRATION--CONTRIBUTION DISCLOSURE AND PROHIBITION.--

A. As used in this section:

(1) "contract" means an agreement or transaction with a state agency or a local public body having a value of fifty thousand dollars (\$50,000) or more, or a combination or series of such agreements or transactions having a value of fifty thousand dollars (\$50,000) or more, in a fiscal year, for:

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

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

(c) the construction, alteration or

repair of any public building or public work;

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

(e) a licensing arrangement;

(f) a loan or loan guarantee; or

(g) the purchase of financial securities or instruments;

(2) "contribution" means:

(a) a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

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

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

(3) "local contractor" means a person that

enters into a contract with a local public body. "Local contractor" does not include a state agency or a political subdivision of the state or an employee of a state agency or political subdivision of the state, whether full- or part-time, in that person's capacity as an employee of the state or political subdivision of the state;

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

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

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

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

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

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

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

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

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

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

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

(10) "solicitation" means a request for the purchase of services, professional services, personal

property, real property or any other thing of value, including requests for information;

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

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

(13) "state public officer" means:

(a) a person elected to an office, or a person appointed to complete a term of an elected office, in the executive, judicial or legislative branch of state government;

(b) a campaign committee established or controlled by or affiliated with that person; or

(c) any person who is involved in a solicitation or procurement process that has an active campaign committee or political committee account.

B. A prospective contractor, prior to entering into a contract with a state agency, shall register with the

general services department on a form developed by the department and made available on the sunshine portal web site. A prospective contractor, prior to entering into a contract with a local public body, shall register with the local public body on a form developed by the local public body and made available on the local public body's web site, if one exists. The prospective contractor shall provide the following information:

- (1) the name and address of the prospective contractor;
- (2) the principals of the prospective contractor;
- (3) any affiliated business entities;
- (4) the name and address of a contact person for the business; and
- (5) any contracts, as well as the amounts and terms of the contracts, that the prospective contractor currently has with the state agency or local public body issuing the solicitation.

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

D. The state agency or local public body that makes a solicitation shall provide a list, as part of the

solicitation, to the prospective contractors that indicates:

(1) the name of each public officer, if any, for which disclosure is required by a prospective contractor as provided in Subsection F or G of this section; and

(2) the organizations for which disclosure is required by a prospective contractor, if any, as provided in Subsection F or G of this section.

E. A prospective contractor shall include in its bid or proposal to a state agency a completed disclosure statement developed by the general services department and made available on the sunshine portal web site. A prospective contractor shall include in its bid or proposal to a local public body a completed disclosure statement developed by the local public body and made available on the local public body's web site, if one exists. The disclosure statement shall indicate the date, the amount and the nature of the contribution and the person receiving the contribution. Prospective contractors shall complete the disclosure statement online, if a web site exists. The general services department shall provide the disclosure statements in a searchable format to the department of information technology for posting on the sunshine portal. The local public body shall post the disclosure statements in a searchable format on the local public body's web site, if one exists.

F. A prospective contractor shall disclose all

contributions given by a principal of the prospective contractor to a state public officer of the state agency soliciting the contract, and donations described in Subparagraph (b) or (c) of Paragraph (2) of Subsection A of this section, during the two years prior to the date that the prospective contractor responds to a solicitation by a state agency to enter into a contract with the state agency if the total contributions from the principal to the state public officer, or donations described in Subparagraph (a) or (b) of Paragraph (2) of Subsection A of this section, exceed one thousand dollars (\$1,000) over the two-year period.

G. A prospective contractor shall disclose all contributions given by a principal of the prospective contractor to a local public officer, and donations described in Subparagraph (b) or (c) of Paragraph (2) of Subsection A of this section, during the two years prior to the date the prospective contractor responds to a solicitation by a local public body to enter into a contract with the local public body if the total contributions from the principal to the local public officer, or donations described in Subparagraph (a) or (b) of Paragraph (2) of Subsection A of this section, exceed one thousand dollars (\$1,000) over the two-year period.

H. A principal of a prospective contractor that is seeking to contract with a state agency shall not make a contribution to or solicit a contribution for a state public

officer of the agency soliciting the contract during the pendency of the procurement process. A principal of a prospective contractor that is seeking to contract with a local public body shall not make a contribution to or solicit a contribution for a local public officer of the local public body soliciting the contract during the pendency of the procurement process.

I. Before awarding or entering into a contract with a prospective contractor, the appropriate purchasing agent or contract evaluation committee shall review the information that the prospective contractor has submitted and shall verify that the prospective contractor has properly submitted the required disclosure statement specified in Subsection E of this section.

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

K. A solicitation for or proposed award of a contract may be canceled or a contract that is executed may be terminated if it is in the best interests of the state or local public body when a prospective contractor or a state or

local contractor fails to submit a fully completed disclosure statement pursuant to this section or makes a contribution prohibited by Subsection H of this section.

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

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

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

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

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

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

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

(3) the applicable instructions for disclosure of contributions given by prospective contractors to applicable public officials pursuant to Section 1 of this 2013 act;

(4) the location where proposals are to be

