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SENATE BILL 390

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Antonio Maestas

AN ACT

RELATING TO PROCUREMENT; PROVIDING THAT BIDS RECEIVED PURSUANT TO THE PROCUREMENT CODE SHALL BE CONSIDERED BASED ON A DETERMINATION OF BEST VALUE; DEFINING "BEST VALUE".

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

SECTION 1. A new Section 13-1-31.1 NMSA 1978 is enacted to read:

"13-1-31.1. [NEW MATERIAL] DEFINITION--BEST VALUE.--"Best value" means bid or proposal evaluation criteria that balances and supports the achievement of:

- A. required outcomes;
- B. best quality economic value;
- C. timely performance;
- D. minimizing the burdens on administrative

resources;

- 1 E. expediting simple or routine purchases;
- 2 F. flexibility in developing alternative
- 3 procurement and business relationships;
- 4 G. encouraging competition;
- 5 H. encouraging the continuing participation of
- 6 quality contractors and supporting state procurement planning
- 7 and implementation;
- 8 I. efficiency among similar projects; and
- 9 J. maximizing the state's investments in workforce
- 10 development and training."

11 SECTION 2. Section 13-1-105 NMSA 1978 (being Laws 1984,
12 Chapter 65, Section 78, as amended) is amended to read:

13 "13-1-105. COMPETITIVE SEALED BIDS--RECEIPT AND
14 ACCEPTANCE OF BIDS.--~~[A.]~~ Bids shall be unconditionally
15 accepted for consideration for award without alteration or
16 correction, except as authorized in the Procurement Code. In
17 addition to the requirement for the prime contractor and
18 subcontractors to be registered as provided in Section
19 13-4-13.1 NMSA 1978, bids shall be evaluated based on the
20 requirements set forth in the invitation for bids, which
21 requirements may include criteria to determine acceptability
22 such as inspection, testing, quality, workmanship, delivery and
23 suitability for a particular purpose. Those criteria such as
24 discounts, transportation costs and total or life-cycle costs
25 that will affect the bid price shall be objectively measurable,
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1 which shall be defined by rule. The invitation for bids shall
2 set forth the evaluation criteria to be used. No criteria may
3 be used in bid evaluation that are not set forth in the
4 invitation for bids. A bid submitted by a prime contractor
5 that was not registered as required by Section 13-4-13.1 NMSA
6 1978 shall not be considered for award. A bid submitted by a
7 registered prime contractor that includes any subcontractor
8 that is not registered in accordance with that section may be
9 considered for award following substitution of a registered
10 subcontractor for any unregistered subcontractor in accordance
11 with Section 13-4-36 NMSA 1978.

12 ~~[B. If the lowest responsible bid has otherwise~~
13 ~~qualified, and if there is no change in the original terms and~~
14 ~~conditions, the lowest bidder may negotiate with the purchaser~~
15 ~~for a lower total bid in order to avoid rejection of all bids~~
16 ~~for the reason that the lowest bid was up to ten percent higher~~
17 ~~than budgeted project funds. Such negotiation shall not be~~
18 ~~allowed if the lowest bid was more than ten percent over~~
19 ~~budgeted project funds.]"~~

20 SECTION 3. Section 13-1-106 NMSA 1978 (being Laws 1984,
21 Chapter 65, Section 79) is amended to read:

22 "13-1-106. COMPETITIVE SEALED BIDS--CORRECTION OR
23 WITHDRAWAL OF BIDS.--

24 A. A bid containing a mistake discovered before bid
25 opening may be modified or withdrawn by a bidder prior to the

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1 time set for bid opening by delivering written or telegraphic
2 notice to the location designated in the invitation for bids as
3 the place where bids are to be received. After bid opening, no
4 modifications in bid prices or other provisions of bids shall
5 be permitted. A [~~low~~] bidder alleging a material mistake of
6 fact [~~which~~] that makes [~~his~~] the bid nonresponsive may be
7 permitted to withdraw [~~its~~] the bid if:

8 (1) the mistake is clearly evident on the face
9 of the bid document; or

10 (2) the bidder submits evidence [~~which~~] that
11 clearly and convincingly demonstrates that a mistake was made.

12 B. Any decision by a procurement officer to permit
13 or deny the withdrawal of a bid on the basis of a mistake
14 contained [~~therein~~] in the bid shall be supported by a
15 determination setting forth the grounds for the decision."

16 SECTION 4. Section 13-1-108 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 81, as amended) is amended to read:

18 "13-1-108. COMPETITIVE SEALED BIDS--AWARD.--A contract
19 solicited by competitive sealed bids shall be awarded with
20 reasonable promptness by written notice to the [~~lowest~~
21 ~~responsible~~] bidder who has been determined by the state
22 purchasing agent or a central purchasing office to offer the
23 best value. Contracts solicited by competitive sealed bids
24 shall require that the bid amount exclude the applicable state
25 gross receipts tax or applicable local option tax but that the

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1 contracting agency shall be required to pay the applicable tax,
2 including any increase in the applicable tax becoming effective
3 after the date the contract is entered into. The applicable
4 gross receipts tax or applicable local option tax shall be
5 shown as a separate amount on each billing or request for
6 payment made under the contract."

7 SECTION 5. Section 13-1-109 NMSA 1978 (being Laws 1984,
8 Chapter 65, Section 82) is amended to read:

9 "13-1-109. COMPETITIVE SEALED BIDS--MULTI-STEP SEALED
10 BIDDING.--When the state purchasing agent or a central
11 purchasing office makes a determination that it is impractical
12 to initially prepare specifications to support an award based
13 on ~~[price]~~ best value, as determined by the state purchasing
14 agent or a central purchasing office, an invitation for bids
15 may be issued requesting the submission of unpriced offers to
16 be followed by an invitation for bids."

17 SECTION 6. Section 13-1-110 NMSA 1978 (being Laws 1984,
18 Chapter 65, Section 83) is amended to read:

19 "13-1-110. COMPETITIVE SEALED BIDS--IDENTICAL BIDS.--When
20 competitive sealed bids are used and two or more of the bids
21 submitted are identical in price and are ~~[the low bid]~~
22 determined by the state purchasing agent or a central
23 purchasing office to each offer the best value, the state
24 purchasing agent or a central purchasing office may:

25 A. award pursuant to the multiple source award

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1 provisions of Sections [~~126 and 127 of the Procurement Code~~]
2 13-1-153 and 13-1-154 NMSA 1978;

3 B. award to a resident business if the identical
4 [~~low~~] bids are submitted by a resident business and a
5 nonresident business;

6 C. award to a resident manufacturer if the
7 identical [~~low~~] bids are submitted by a resident manufacturer
8 and a resident business;

9 D. award by lottery to one of the identical [~~low~~]
10 bidders; or

11 E. reject all bids and resolicit bids or proposals
12 for the required services, construction or items of tangible
13 personal property."

14 SECTION 7. Section 13-1-132 NMSA 1978 (being Laws 1984,
15 Chapter 65, Section 105) is amended to read:

16 "13-1-132. IRREGULARITIES IN BIDS OR PROPOSALS.--The
17 state purchasing agent or a central purchasing office may waive
18 technical irregularities in the form of the bid or proposal of
19 the [~~low~~] bidder or offeror [~~which~~], determined by the state
20 purchasing agent or a central purchasing office to offer the
21 best value, that do not alter the price, quality or quantity of
22 the services, construction or items of tangible personal
23 property bid or offered."

24 SECTION 8. Section 13-1-153 NMSA 1978 (being Laws 1984,
25 Chapter 65, Section 126, as amended) is amended to read:

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1 "13-1-153. MULTIPLE SOURCE AWARD--LIMITATIONS ON USE.--A
2 multiple source award may be made pursuant to Section 13-1-110
3 NMSA 1978 or [~~Section 1 of this 2007 act~~] Section 13-1-154.1
4 NMSA 1978 when awards to two or more bidders or offerors are
5 necessary for adequate delivery or service. Multiple source
6 awards shall not be made when a single award will meet the
7 needs of the state agency or a local public body without
8 sacrifice of economy or service. Awards shall be limited to
9 the least number of suppliers in one geographical area
10 necessary to meet the requirements of the state agency or a
11 local public body. A multiple source award shall be based upon
12 the [~~lowest responsible~~] bid or proposal, determined by the
13 state purchasing agent or a central purchasing office to offer
14 the best value, received in each geographical area unless the
15 award is made in response to a qualifications-based proposal."

16 SECTION 9. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2023.