

1 SENATE BILL 214

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Vernon D. Asbill

5  
6  
7  
8 FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

9  
10 AN ACT

11 RELATING TO PUBLIC PROCUREMENT; CLARIFYING CIRCUMSTANCES UNDER  
12 WHICH A BEST AND FINAL OFFER PRICE MAY BE NEGOTIATED.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. A new section of the Procurement Code is  
16 enacted to read:

17 "[NEW MATERIAL] COMPETITIVE SEALED PROPOSALS--RECEIPT AND  
18 ACCEPTANCE OF PROPOSALS--NEGOTIATIONS.--

19 A. Proposals shall be unconditionally accepted for  
20 consideration for award without alteration or correction,  
21 except as authorized in the Procurement Code. In addition to  
22 the requirement for the prime contractor and subcontractors to  
23 be registered with the division as provided in Section  
24 13-4-13.1 NMSA 1978, proposals shall be evaluated based on the  
25 requirements set forth in the request for proposals, which

.188168.4

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

1 requirements may include criteria to determine acceptability  
2 such as inspection, testing, quality, workmanship, delivery and  
3 suitability for a particular purpose. Those criteria such as  
4 discounts, transportation costs and total or life-cycle costs  
5 that will affect the bid price shall be objectively measurable,  
6 which shall be defined by rule. The request for proposals  
7 shall set forth the evaluation criteria to be used. No  
8 criteria shall be used in the proposal evaluation that are not  
9 set forth in the request for proposals. A proposal submitted  
10 by a prime contractor that was not registered as required by  
11 Section 13-4-13.1 NMSA 1978 shall not be considered for award.  
12 A proposal submitted by a registered prime contractor that  
13 includes any subcontractor that is not registered in accordance  
14 with that section may be considered for award following  
15 substitution of a registered subcontractor for any unregistered  
16 subcontractor in accordance with Section 13-4-36 NMSA 1978.

17 B. If the highest ranked offeror has otherwise  
18 qualified, and if there is no change in the original terms and  
19 conditions, the highest ranked offeror may negotiate with the  
20 purchaser for a lower total price in order to avoid rejection  
21 of all proposals for the reason that the lowest price was up to  
22 ten percent higher than budgeted project funds. Such  
23 negotiation shall not be allowed if the price in the highest  
24 ranked proposal was more than ten percent over budgeted project  
25 funds."

.188168.4