

AN ACT
RELATING TO GOVERNMENT CONTRACTING; ENACTING THE CONTRACT
MANAGEMENT ACT; PROVIDING FOR CONTRACT MANAGEMENT AND
ACCOUNTABILITY.

H
G
U
A
C
/
H
B

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

3
3
8
P
a
g
e

Section 1. SHORT TITLE.--This act may be cited as the "Contract
Management Act".

Section 2. DEFINITIONS.--As used in the Contract Management Act:

1

A. "agency" means a department, institution, board, bureau,
commission, district or committee of the state that enters into or proposes to enter into
a contract;

B. "contract" means an agreement for the procurement of professional
and consulting services, including contract management, construction, construction
contract management and information technology;

C. "department" means the department of finance and administration;
and

D. "performance contract" means a contract that focuses on the
outputs, quality and outcomes of service provision and that ties at least a portion of the
contractor's payment to the achievement of those goals.

Section 3. DETERMINATION OF CONTRACT NEED.--

A. Prior to making the decision to contract, an agency shall evaluate
the need for the contract using an evaluation methodology that is similar to the federal
office of management and budget's evaluation for the performance of commercial

activities. The agency shall include an objective evaluation of state resources. The evaluation methodology shall consider whether:

- (1) the agency has the necessary skills and expertise to provide the service;
- (2) the service would duplicate similar services already being provided by the agency in the same geographic area; and
- (3) there are deadline requirements that the agency may not be able to meet.

B. The agency's administrative services division, general counsel and secretary, or their equivalent personnel in noncabinet agencies, shall substantively review the decision to contract, request for proposal process, final contract negotiations and contract form and legal sufficiency.

C. Before entering into a contract, an agency shall certify to the department that the agency has complied with the provisions of Subsections A and B of this section. The evaluation shall remain on file with the contracting agency.

Section 4. CONTRACT MANAGEMENT AND IMPLEMENTATION.--

A. An agency shall not enter into a contract in which the maximum amount payable under the contract is equal to or greater than one million dollars (\$1,000,000) unless the agency has developed specific guidelines for the administration and implementation of that contract.

B. For contracts in which the maximum amount payable is less than one million dollars (\$1,000,000), an agency shall use department guidelines or similar guidelines to identify and develop an effective system for the management of the contracts. The guidelines shall include:

H
G
U
A
C
/
H
B

3
3
8
P
a
g
e

2

(1) documentation to support the contract solicitation and selection process;

(2) policies and procedures to ensure that contractors do not provide services until a fully executed and approved contract is in place;

(3) cost-effective methods to track contracts; and

(4) filing of contracts and related documentation.

C. If review is required by rule of the department or the general services department pursuant to Section 13-1-118 NMSA 1978, the agency shall submit the contract for review no less than thirty days prior to the effective date.

Section 5. PERFORMANCE CONTRACTING REQUIRED--SPECIFICATIONS--TERMS AND CONDITIONS.--

A. Unless exempted pursuant to the provisions of the Contract Management Act, a contract entered into by an agency shall be a performance contract if the maximum amount payable under the contract is one hundred thousand dollars (\$100,000) or more.

B. The following elements shall be included in a performance contract:

(1) performance measures developed by the agency specifically for that contract. The measures shall be used by the agency to evaluate the services provided to the agency and the outcomes resulting from those services;

(2) an accountability section that requires the contractor to report regularly on how performance levels are meeting the performance measures and that allows the agency to withhold payment until successful completion of all or part of a contract; and

(3) monitoring requirements that outline the agency's

H
G
U
A
C
/
H
B

3
3
8
P
a
g
e

3

evaluation of the contractor's performance, including progress reports, activity data, site visits, inspections or outcomes.

Section 6. DEPARTMENT --ADDITIONAL DUTIES.--The department shall:

- A. assist agencies in performance contract development and management, including providing training courses;
- B. develop policies and procedures for performance accountability in contract management;
- C. use principles similar to those developed by the federal office of management and budget to prepare guidelines for agencies to conduct and document a meaningful contract evaluation and to provide for different types of evaluations depending on the types and amounts of the contracts;
- D. prepare guidelines for agencies on performance contract specifications, time frames for completion of the study, terms and conditions that include performance measures, accountability clauses, monitoring provisions and auditing; and
- E. selectively monitor contract procedures and projects in agencies.

Section 7. APPLICABILITY.--

- A. Except as provided in this section and pursuant to the schedule developed by the department, the Contract Management Act applies to any contract entered into by an agency; provided that the provisions do not apply to a contract:
 - (1) for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
 - (2) for hospital and health-care-related services exempt from

H
G
U
A
C
/
H
B

3
3
8
P
a
g
e

4

the provisions of the Procurement Code pursuant to Section 13-1-98.1 NMSA 1978;

(3) in response to an emergency procurement under Section 13-1-127 NMSA 1978; or

(4) exempted by rule of the department or order of the secretary of finance and administration, but only to the extent specified in the rule or order.

B. The department shall develop an agency schedule so that all agencies, including the legislative and judicial branches of government and institutions of higher education, are implementing the provisions of the Contract Management Act by the end of fiscal year 2007.

C. The Contract Management Act applies to contracts entered into by agencies of the legislative branch of state government, the judicial branch of state government and public post-secondary educational institutions, but such agencies and institutions:

(1) may develop their own policies, procedures and guidelines similar to those required of the department pursuant to Section 6 of the Contract Management Act;

(2) may provide for exemptions similar to those allowed pursuant to Subsection A of this section; and

(3) are not required to report or make submissions to the department.

D. No provision of the Contract Management Act shall be applied to any situation, decision, proposed contract or contract if the application of that provision to the situation, decision, proposed contract or contract would directly or indirectly

H
G
U
A
C
/
H
B

3
3
8
P
a
g
e

5

impair a legally protected right.

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this Act is July 1, 2004.