

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 338

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

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

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

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

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

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 and information technology;

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

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

7 Section 3. DETERMINATION OF CONTRACT NEED. --

8 A. Prior to making the decision to contract, an
9 agency shall evaluate the need for the contract using an
10 evaluation methodology that is similar to the federal office of
11 management and budget's evaluation for the performance of
12 commercial activities. The agency shall include an objective
13 evaluation of state resources. The evaluation methodology
14 shall consider whether:

15 (1) the agency has the necessary skills and
16 expertise to provide the service;

17 (2) the service would duplicate similar
18 services already being provided by the agency in the same
19 geographic area; and

20 (3) there are deadline requirements that the
21 agency may not be able to meet.

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

1 negotiations and contract form and legal sufficiency.

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

6 Section 4. CONTRACT MANAGEMENT AND IMPLEMENTATION. --

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

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

- 17 (1) documentation to support the contract
18 solicitation and selection process;
- 19 (2) policies and procedures to ensure that
20 contractors do not provide services until a fully executed and
21 approved contract is in place;
- 22 (3) cost-effective methods to track contracts;
- 23 and
- 24 (4) filing of contracts and related
25 documentation.

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

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

7 A. Unless exempted pursuant to the provisions of
8 the Contract Management Act, a contract entered into by an
9 agency shall be a performance contract if the maximum amount
10 payable under the contract is one hundred thousand dollars
11 (\$100,000) or more.

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

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

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

23 (3) monitoring requirements that outline the
24 agency's evaluation of the contractor's performance, including
25 progress reports, activity data, site visits, inspections or

1 outcomes.

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

4 A. assist agencies in performance contract
5 development and management, including providing training
6 courses;

7 B. develop policies and procedures for performance
8 accountability in contract management;

9 C. use principles similar to those developed by the
10 federal office of management and budget to prepare guidelines
11 for agencies to conduct and document a meaningful contract
12 evaluation and to provide for different types of evaluations
13 depending on the types and amounts of the contracts;

14 D. prepare guidelines for agencies on performance
15 contract specifications, time frames for completion of the
16 study, terms and conditions that include performance measures,
17 accountability clauses, monitoring provisions and auditing; and

18 E. selectively monitor contract procedures and
19 projects in agencies.

20 Section 7. APPLICABILITY.--

21 A. Except as provided in this section and pursuant
22 to the schedule developed by the department, the Contract
23 Management Act applies to any contract entered into by an
24 agency; provided that the provisions do not apply to a
25 contract:

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1 (1) for litigation expenses in connection with
2 proceedings before administrative agencies or state or federal
3 courts, including experts, mediators, court reporters, process
4 servers and witness fees, but not including attorney contracts;

5 (2) for hospital and health-care-related
6 services exempt from the provisions of the Procurement Code
7 pursuant to Section 13-1-98.1 NMSA 1978;

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

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

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

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

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

