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HOUSE BILL 543

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PROCUREMENT; PROVIDING FOR QUALIFICATIONS AND
PURPOSE OF CONSTRUCTION MANAGERS; ALLOWING FOR RISK OF
CONSTRUCTION MANAGERS.

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

Section 1. Section 13-1-40.1 NMSA 1978 (being Laws 1997,
Chapter 171, Section 1) is amended to read:

"~~Section~~ 13-1-40.1. ~~[DEFINITION]~~ DEFINITIONS-
CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER. --

A. "Construction management" means consulting
services related to the process of management applied to a
public works project for any duration from conception to
completion of the project for the purpose of controlling time,
cost and quality of the project.

B. "Construction manager" means a ~~[person]~~ licensed

underscored material = new
[bracketed material] = delete

1 general commercial contractor who [~~acts as an agent of the~~
2 ~~state agency or local public body for~~] provides construction
3 management [~~for whom the~~] under a professional services
4 contract with a state agency or local public body [~~shall assume~~
5 ~~all the risks and responsibilities~~]. "

6 Section 2. Section 13-1-100.1 NMSA 1978 (being Laws 1997,
7 Chapter 171, Section 3) is amended to read:

8 "13-1-100.1. CONSTRUCTION CONTRACTS--CONSTRUCTION
9 MANAGEMENT SERVICES--SUBCONTRACTING. --

10 A. A construction management services contract may
11 be entered into for any construction or state or local public
12 works project when a state agency or local public body makes a
13 determination that it is in the public's interest to [~~utilize~~]
14 use construction management services. Construction management
15 services shall not duplicate and are in addition to the normal
16 scope of separate architect or engineer contracts, the need for
17 which may arise due to the complexity or unusual requirements
18 of a project as requested by a state agency or local public
19 body. A state agency or local public body may require a
20 construction manager to have subcontracts with subcontractors
21 or oversee direct prime contracts with the state agency or
22 local public body. When a construction manager has
23 subcontracts with subcontractors, the construction management
24 services contract with the state agency or local public body
25 may specify a guaranteed maximum price for the construction

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1 project. A construction management services contract between a
2 state agency or local public body and a construction manager
3 may allow the construction manager to perform work with its own
4 work force.

5 B. To [~~insure~~] ensure fair, uniform, clear and
6 effective procedures that will strive for the delivery of a
7 quality project, on time and within budget, the secretary, in
8 conjunction with the appropriate and affected professional
9 associations and contractors, shall promulgate [~~regulations~~]
10 rules, which shall be adopted by the governing bodies of all
11 using agencies and shall be followed by all using agencies when
12 procuring construction management services as authorized in
13 Subsection A of this section.

14 C. A state agency shall ~~make~~ the decision on a
15 construction management services contract for a state public
16 works project and a local public body shall ~~make~~ that decision
17 for a local public works project. A state agency shall not
18 ~~make~~ the decision on a construction management services
19 contract for a local public works project. "

20 Section 3. A new section of the Procurement Code is
21 enacted to read:

22 "[NEW MATERIAL] CONSTRUCTION MANAGER QUALIFICATIONS AND
23 DUTIES. --

24 A. A state agency or local public body shall
25 require that any construction manager it contracts with has

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1 demonstrated ability, indicated by past construction management
2 experience on projects comparable in design, scope and
3 complexity, including:

4 (1) recommendations in writing from owners for
5 whom comparable services were performed, including their
6 recommendations pertaining to the construction manager's
7 ability to work cooperatively with state agency or local public
8 body personnel;

9 (2) demonstration of adequate financial
10 resources, bonding capacity and ability to assume a financial
11 risk required by the state agency or local public body;

12 (3) qualifications of in-house staff of the
13 construction manager who will manage the proposed public works
14 project; and

15 (4) demonstration of capability to perform
16 work on the public works project with the construction
17 manager's own work force if it is advantageous to the project.

18 B. The purpose of contracting with a construction
19 manager is to deliver a public works project within the optimum
20 time for the most economical cost with the required quality,
21 including:

22 (1) integrating the design and construction
23 phases;

24 (2) controlling time through the development
25 of schedules;

underscored material = new
[bracketed material] = delete

- 1 (3) providing project construction cost
- 2 estimates;
- 3 (4) analyzing alternative designs;
- 4 (5) studying labor conditions;
- 5 (6) providing advice concerning construction
- 6 techniques;
- 7 (7) performing value engineering; and
- 8 (8) coordinating and communicating the
- 9 activities of owners, architects, engineers and other
- 10 consultants. "