

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 283

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

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, construction, construction contract

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1 management, construction manager at-risk and information
2 technology;

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

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

9 Section 3. DETERMINATION OF CONTRACT NEED.--

10 A. Prior to making the decision to contract, an
11 agency shall objectively evaluate the need for the contract
12 using a methodology that considers whether:

13 (1) the agency has the necessary skills and
14 expertise to provide the service;

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

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

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

25 C. Before entering into a contract, an agency shall

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1 certify to the department that the agency has complied with the
 2 provisions of Subsections A and B of this section. The
 3 evaluation shall remain on file with the contracting agency.

4 Section 4. CONTRACT MANAGEMENT AND IMPLEMENTATION.--

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

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

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

24 C. If review is required by rule of the department
 25 or the general services department pursuant to Section 13-1-118

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1 NMSA 1978, the agency shall submit the contract for review no
2 less than thirty days prior to the effective date.

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

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

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

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

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

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

25 Section 6. DEPARTMENT--ADDITIONAL DUTIES.--The department

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1 shall:

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

5 B. develop policies and procedures for performance
6 accountability in contract management;

7 C. prepare guidelines for agencies to conduct and
8 document a meaningful contract evaluation and provide for
9 different types of evaluations depending on the types and
10 amounts of the contracts;

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

15 E. selectively monitor contract procedures and
16 projects in agencies.

17 Section 7. APPLICABILITY.--

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

23 (1) for litigation expenses in connection with
24 proceedings before administrative agencies or state or federal
25 courts, including experts, mediators, court reporters, process

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1 servers and witness fees, but not including attorney contracts;

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

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

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

10 B. The department shall develop an agency schedule
11 so that all agencies, including the legislative and judicial
12 branches of government and institutions of higher education,
13 are implementing the provisions of the Contract Management Act
14 by the end of fiscal year 2008.

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

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

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

25 (3) are not required to report or make

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1 submissions to the department.

2 D. No provision of the Contract Management Act
3 shall be applied to any situation, decision, proposed contract
4 or contract if the application of that provision to the
5 situation, decision, proposed contract or contract would
6 directly or indirectly impair a legally protected right.

7 Section 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2006.

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