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SENATE BILL 415

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Carroll H. Leavell

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PROCUREMENT; AMENDING THE PROCUREMENT CODE TO
PROVIDE FOR CONSTRUCTION MANAGER AT RISK CONTRACTS IN THE
CONSTRUCTION OF EDUCATIONAL FACILITIES; ENACTING THE
EDUCATIONAL FACILITY CONSTRUCTION MANAGER AT RISK ACT;
PROVIDING PROCEDURES FOR SELECTING A CONSTRUCTION MANAGER AT
RISK; DECLARING AN EMERGENCY.

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

Section 1. Section 13-1-102 NMSA 1978 (being Laws 1984,
Chapter 65, Section 75) is amended to read:

"13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
procurement shall be achieved by competitive sealed bid
pursuant to Sections [~~76 through 83 of the Procurement Code~~]
13-1-103 through 13-1-110 NMSA 1978, except procurement
achieved pursuant to the following sections of the Procurement

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1 Code:

2 A. Sections [~~84 through 97~~] 13-1-111 through
3 13-1-122 NMSA 1978, competitive sealed proposals;

4 B. Section [~~98~~] 13-1-125 NMSA 1978, small
5 purchases;

6 C. Section [~~99~~] 13-1-126 NMSA 1978, sole source
7 procurement;

8 D. Section [~~100~~] 13-1-127 NMSA 1978, emergency
9 procurements;

10 E. Section [~~102~~] 13-1-129 NMSA 1978, existing
11 contracts; [~~and~~]

12 F. Section [~~103~~] 13-1-130 NMSA 1978, purchases from
13 antipoverty program businesses; and

14 G. the Educational Facility Construction Manager At
15 Risk Act."

16 Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 84, as amended) is amended to read:

18 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
19 USE.--

20 A. Except as provided in Subsection G of Section
21 13-1-119.1 NMSA 1978, when a state agency or a local public
22 body is procuring professional services or a design and build
23 project delivery system, or when the state purchasing agent, a
24 central purchasing office or a designee of either officer makes
25 a written determination that the use of competitive sealed

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1 bidding for items of tangible personal property or services is
2 either not practicable or not advantageous to the state agency
3 or a local public body, a procurement shall be effected by
4 competitive sealed proposals.

5 B. Competitive sealed proposals may also be used
6 for contracts for construction and facility maintenance,
7 service and repairs.

8 C. Competitive sealed proposals may also be used
9 for construction manager at risk contracts if a three-step
10 selection procedure is used pursuant to the Educational
11 Facility Construction Manager At Risk Act.

12 [~~E.~~] D. Competitive qualifications-based proposals
13 shall be used for procurement of professional services of
14 architects, engineers, landscape architects, construction
15 managers and surveyors who submit proposals pursuant to
16 Sections 13-1-120 through 13-1-124 NMSA 1978.

17 [~~D.~~] E. Competitive sealed proposals shall also be
18 used for contracts for the design and installation of measures
19 the primary purpose of which is to conserve natural resources,
20 including guaranteed utility savings contracts entered into
21 pursuant to the Public Facility Energy Efficiency and Water
22 Conservation Act.

23 [~~E.~~] F. The governor shall appoint an advisory
24 committee to provide assistance in development of rules for the
25 implementation of this section. The advisory committee shall

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1 include one representative from the New Mexico building and
2 construction trades council, American federation of labor and
3 congress for industrial organizations and a representative of:

4 (1) the associated general contractors - New
5 Mexico building branch;

6 (2) the New Mexico chapter of the national
7 electrical contractors association;

8 (3) the New Mexico sheet metal contractors
9 association;

10 (4) the mechanical contractors association of
11 New Mexico;

12 (5) the New Mexico association of counties;

13 (6) the New Mexico municipal league;

14 (7) the public education department;

15 (8) the construction industries commission;

16 (9) the Rio Grande underground contractors
17 association;

18 (10) the American subcontractors association
19 of New Mexico;

20 (11) the higher education community; and

21 (12) the general public, who is not associated
22 with the construction industry and who will serve as chair of
23 the committee."

24 Section 3. A new section of the Procurement Code, Section
25 13-1-124.1 NMSA 1978, is enacted to read:

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1 "13-1-124.1. [NEW MATERIAL] SHORT TITLE.--Sections
2 13-1-124.1 through 13-1-124.5 NMSA 1978 may be cited as the
3 "Educational Facility Construction Manager At Risk Act"."

4 Section 4. A new section of the Procurement Code, Section
5 13-1-124.2 NMSA 1978, is enacted to read:

6 "13-1-124.2. [NEW MATERIAL] APPLICABILITY.--The
7 provisions of the Educational Facility Construction Manager At
8 Risk Act apply to contracts for the construction of educational
9 facilities if the governing body chooses, pursuant to the
10 provisions of that act, to use the services of a construction
11 manager at risk."

12 Section 5. A new section of the Procurement Code, Section
13 13-1-124.3 NMSA 1978, is enacted to read:

14 "13-1-124.3. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Educational Facility Construction Manager At Risk Act:

16 A. "construction manager at risk" means a person
17 who, pursuant to a contract with a governing body, provides the
18 preconstruction services and construction management required
19 in a construction manager at risk delivery method;

20 B. "construction manager at risk delivery method"
21 means a construction method for an educational facility wherein
22 a construction manager at risk provides a range of
23 preconstruction services and construction management, including
24 cost estimation and consultation regarding the design of the
25 building project, preparation and coordination of bid packages,

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1 scheduling, cost control, value engineering and, while acting
2 as the general contractor during construction, detailing the
3 trade contractor scope of work, holding the trade contracts and
4 other subcontracts, prequalifying and evaluating trade
5 contractors and subcontractors and providing management and
6 construction services, all at a guaranteed maximum price;

7 C. "educational facility" means a public school,
8 including a locally chartered or state-chartered charter school
9 or a facility of a state educational institution listed in
10 Section 6-17-1.1 NMSA 1978;

11 D. "governing body" means:

12 (1) the public school facilities authority if
13 the authority is the using agency that requires the
14 construction of an educational facility;

15 (2) a local school board if the board is the
16 using agency that requires the construction of an educational
17 facility;

18 (3) the governing body of a charter school if
19 the governing body is the using agency that requires the
20 construction of an educational facility; or

21 (4) the governing body of a state educational
22 institution if the governing body is the using agency that
23 requires the construction of an educational facility; and

24 E. "guaranteed maximum price" means the maximum
25 amount to be paid by the governing body for the construction of

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1 the educational facility, including the cost of the work, the
2 general conditions and the fees charged by the construction
3 manager at risk."

4 Section 6. A new section of the Procurement Code, Section
5 13-1-124.4 NMSA 1978, is enacted to read:

6 "13-1-124.4. [NEW MATERIAL] CONSTRUCTION MANAGER AT RISK
7 DELIVERY METHOD AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

8 A. A construction manager at risk delivery method
9 may be used when a governing body determines that it is in its
10 interest to use that method on a specific educational facility
11 construction project, provided that the construction manager at
12 risk shall be selected pursuant to the provisions of this
13 section.

14 B. The governing body shall form a selection
15 committee of at least three members with at least one member
16 being an architect or engineer. The selection committee shall
17 develop an evaluation process, including a multiphase procedure
18 consisting of two or three steps. A two-step procedure shall
19 include a request for qualifications and an interview. A
20 three-step procedure shall consist of a request for
21 qualifications, a request for proposals and an interview.

22 C. A request for qualifications shall be published
23 in accordance with Section 13-1-104 NMSA 1978 and shall include
24 at a minimum the following:

25 (1) a statement of the minimum qualifications

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1 for the construction manager at risk, including the
2 requirements for:

3 (a) a contractor's license for the type
4 of work to be performed, issued pursuant to the Construction
5 Industries Licensing Act;

6 (b) registration pursuant to Section
7 13-4-13.1 NMSA 1978; and

8 (c) a minimum bond capacity; and

9 (2) a statement of the scope of work to be
10 performed, including:

11 (a) the location of the project and the
12 total amount of money available for the project;

13 (b) a proposed schedule, including a
14 deadline for submission of the statements of qualification;

15 (c) specific project requirements and
16 deliverables;

17 (d) the composition of the selection
18 committee;

19 (e) a description of the process the
20 selection committee shall use to evaluate qualifications;

21 (f) a proposed contract; and

22 (g) a detailed statement of the
23 relationships and obligations of all parties, including the
24 construction manager at risk, agents of the governing body,
25 such as an architect or engineer, and the governing body.

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1 D. The selection committee shall evaluate the
2 statements of qualifications submitted and determine the
3 persons that qualify for the construction manager at risk. If
4 the selection committee has chosen a three-step procedure, the
5 committee shall issue a request for proposals to the persons
6 that qualify. If the selection committee has chosen a two-step
7 procedure based upon the statements of qualification, the
8 committee shall rank the persons that qualify and interview up
9 to three of the highest-ranked proposers.

10 E. In a three-step procedure, the selection
11 committee shall issue a request for proposals and evaluate the
12 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA
13 1978 except that:

14 (1) the request for proposals shall be sent
15 only to those determined to be qualified pursuant to Subsection
16 D of this section;

17 (2) the selection committee shall evaluate the
18 proposals and conduct interviews with up to three of the
19 highest-ranked proposers instead of negotiating with
20 responsible offerors found to be reasonably likely to be
21 selected; and

22 (3) pursuant to Subsection F of this section,
23 the contract award shall be made after the interviews.

24 F. After conducting interviews with the highest-
25 ranked persons and after considering the factors listed in

1 Subsection G of this section, the selection committee shall
2 recommend to the governing body the proposer that will be most
3 advantageous to the governing body. Upon receipt of the
4 recommendation, the governing body may award the construction
5 manager at risk contract to the person recommended by the
6 selection committee, reject the recommendation and order the
7 selection committee to repeat the selection process or reject
8 the recommendation and appoint a new selection committee to
9 repeat the selection process.

10 G. In evaluating and ranking statements of
11 qualifications, proposals and results of interviews, and in the
12 final recommendation of a construction manager at risk, the
13 selection committee shall consider:

14 (1) the proposer's experience with
15 construction of similar types of projects;

16 (2) the qualifications and experience of the
17 proposer's personnel and consultants and the role of each in
18 the project;

19 (3) the plan for management actions to be
20 undertaken on the project, including services to be rendered in
21 connection with safety and the safety plan for the project;

22 (4) the proposer's experience with the
23 construction manager at risk method; and

24 (5) all other selection criteria, as stated in
25 the request for qualifications and the request for proposals.

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1 H. Nothing in this section precludes the selection
2 committee from recommending the termination of the selection
3 procedure pursuant to Section 13-1-131 NMSA 1978 and repeating
4 the selection process pursuant to this section. Any material
5 received by the selection committee in response to a
6 solicitation that is terminated shall not be disclosed so as to
7 be available to competing proposers.

8 I. The selection committee shall make the names of
9 all proposers and the names of all proposers selected for
10 interview available for public inspection along with the
11 selection committee's final ranking and evaluation scores.
12 Proposers who were interviewed but not selected for contract
13 award shall be notified in writing within fifteen days of the
14 award."

15 Section 7. A new section of the Procurement Code, Section
16 13-1-124.5 NMSA 1978, is enacted to read:

17 "13-1-124.5. [NEW MATERIAL] RESPONSIBILITIES OF
18 CONSTRUCTION MANAGER AT RISK FOLLOWING AWARD OF PROJECT.--

19 A. The contract with the construction manager at
20 risk shall specify:

21 (1) the guaranteed maximum price; and
22 (2) the percentage of the guaranteed price
23 that the construction manager at risk will perform with its own
24 work force.

25 B. The construction manager at risk, in cooperation

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1 with the governing body, shall seek to develop subcontractor
2 interest in the project and shall furnish to the governing body
3 and any architect or engineer representing the governing body a
4 list of subcontractors who state in writing that they are a
5 responsible bidder or a responsible offeror, including
6 suppliers who are to furnish materials or equipment fabricated
7 to a special design and from whom proposals or bids will be
8 requested for each principal portion of the project. The
9 governing body and its architect or engineer shall promptly
10 reply in writing to the construction manager at risk if the
11 governing body, architect or engineer knows of any objection to
12 a listed subcontractor or supplier, provided that the receipt
13 of the list shall not require the governing body, architect or
14 engineer to investigate the qualifications of proposed
15 subcontractors or suppliers, nor shall it waive the right of
16 the governing body, architect or engineer later to object to or
17 reject any proposed subcontractor or supplier.

18 C. The construction manager at risk shall:

- 19 (1) conduct pre-bid or pre-proposal meetings;
20 (2) advise the governing body about bidding or
21 proposals;
22 (3) enter into contracts; and
23 (4) assist the governing body in evaluating
24 submissions by responsible bidders and offerors."

25 Section 8. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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