

1 HOUSE BILL 279

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Larry A. Larrañaga

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10 AN ACT

11 RELATING TO PROCUREMENT; ALLOWING THE PROPERTY CONTROL DIVISION  
12 OF THE GENERAL SERVICES DEPARTMENT TO USE A CONSTRUCTION  
13 MANAGER AT RISK PROCUREMENT PROCESS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 13-1-124.1 NMSA 1978 (being Laws 2007,  
17 Chapter 141, Section 3) is amended to read:

18 "13-1-124.1. SHORT TITLE.--Sections 13-1-124.1 through  
19 13-1-124.5 NMSA 1978 may be cited as the "~~Educationa~~  
20 ~~Facility~~] Construction Manager At Risk Act"."

21 SECTION 2. Section 13-1-124.2 NMSA 1978 (being Laws 2007,  
22 Chapter 141, Section 4) is amended to read:

23 "13-1-124.2. APPLICABILITY.--The provisions of the  
24 [~~Educationa~~ ~~Facility~~] Construction Manager At Risk Act apply  
25 to contracts for the construction of educational facilities and  
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1 property control division facilities if the governing body  
2 chooses, pursuant to the provisions of that act, to use the  
3 services of a construction manager at risk."

4 SECTION 3. Section 13-1-124.3 NMSA 1978 (being Laws 2007,  
5 Chapter 141, Section 5) is amended to read:

6 "13-1-124.3. DEFINITIONS.--As used in the [~~Educational~~  
7 ~~Facility~~] Construction Manager At Risk Act:

8 A. "construction manager at risk" means a person  
9 who, pursuant to a contract with a governing body, provides the  
10 preconstruction services and construction management required  
11 in a construction manager at risk delivery method;

12 B. "construction manager at risk delivery method"  
13 means a construction method for an educational facility or  
14 property control division facility wherein a construction  
15 manager at risk provides a range of preconstruction services  
16 and construction management, including cost estimation and  
17 consultation regarding the design of the building project,  
18 preparation and coordination of bid packages, scheduling, cost  
19 control, value engineering and, while acting as the general  
20 contractor during construction, detailing the trade contractor  
21 scope of work, holding the trade contracts and other  
22 subcontracts, prequalifying and evaluating trade contractors  
23 and subcontractors and providing management and construction  
24 services, all at a guaranteed maximum price for which the  
25 construction manager at risk is financially responsible;

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1           C. "educational facility" means a public school,  
2 including a locally chartered or state-chartered charter school  
3 or a facility of a state educational institution listed in  
4 Section 6-17-1.1 NMSA 1978;

5           D. "governing body" means:

6                 (1) the public school facilities authority if  
7 the authority is the using agency that requires the  
8 construction of an educational facility;

9                 (2) a local school board if the board is the  
10 using agency that requires the construction of an educational  
11 facility;

12                (3) the governing body of a charter school if  
13 the governing body is the using agency that requires the  
14 construction of an educational facility; [~~or~~]

15                (4) the governing body of a state educational  
16 institution if the governing body is the using agency that  
17 requires the construction of an educational facility; [~~and~~] or

18                         (5) the property control division of the  
19 general services department if the division is the using agency  
20 that requires the construction of a property control division  
21 facility;

22           E. "guaranteed maximum price" means the maximum  
23 amount to be paid by the governing body for the construction of  
24 the educational facility or property control division facility,  
25 including the cost of the work, the general conditions and the

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1 fees charged by the construction manager at risk; and

2 F. "property control division facility" means a  
3 facility under the control of the property control division of  
4 the general services department pursuant to the Property  
5 Control Act."

6 SECTION 4. Section 13-1-124.4 NMSA 1978 (being Laws 2007,  
7 Chapter 141, Section 6) is amended to read:

8 "13-1-124.4. CONSTRUCTION MANAGER AT RISK DELIVERY METHOD  
9 AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

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

16 B. The governing body shall form a selection  
17 committee of at least three members with at least one member  
18 being an architect or engineer. The selection committee shall  
19 develop an evaluation process, including a multiphase procedure  
20 consisting of two or three steps. A two-step procedure may be  
21 used when the total amount of money available for the project  
22 is less than five hundred thousand dollars (\$500,000) and shall  
23 include a request for qualifications and an interview. A  
24 three-step procedure shall consist of a request for  
25 qualifications, a request for proposals and an interview.

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

4 (1) a statement of the minimum qualifications  
5 for the construction manager at risk, including the  
6 requirements for:

7 (a) a contractor's license for the type  
8 of work to be performed, issued pursuant to the Construction  
9 Industries Licensing Act;

10 (b) registration pursuant to Section  
11 13-4-13.1 NMSA 1978; and

12 (c) a minimum bond capacity;

13 (2) a statement of the scope of work to be  
14 performed, including:

15 (a) the location of the project and the  
16 total amount of money available for the project;

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

19 (c) specific project requirements and  
20 deliverables;

21 (d) the composition of the selection  
22 committee;

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

25 (f) a proposed contract; and

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1 (g) a detailed statement of the  
2 relationships and obligations of all parties, including the  
3 construction manager at risk, agents of the governing body,  
4 such as an architect or engineer, and the governing body;

5 (3) a verification of the maximum allowable  
6 construction cost; and

7 (4) a request for a proposal bond as required  
8 by Section 13-1-146 NMSA 1978.

9 D. The selection committee shall evaluate the  
10 statements of qualifications submitted and determine the  
11 offerors that qualify for the construction manager at risk. If  
12 the selection committee has chosen a three-step procedure, the  
13 committee shall issue a request for proposals to the offerors  
14 that qualify.

15 E. If the selection committee has chosen a two-step  
16 procedure, the committee shall rank the persons that qualify  
17 based upon the statements of qualification and interview up to  
18 three of the highest-ranked offerors.

19 F. In a three-step procedure, the selection  
20 committee shall issue a request for proposals and evaluate the  
21 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA  
22 1978 except that:

23 (1) the request for proposals shall be sent  
24 only to those determined to be qualified pursuant to Subsection  
25 D of this section;

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1 (2) the selection committee shall evaluate the  
2 proposals and conduct interviews with up to three of the  
3 highest-ranked offerors instead of negotiating with responsible  
4 offerors found to be reasonably likely to be selected; and

5 (3) pursuant to Subsection G of this section,  
6 the contract award may be made after the interviews.

7 G. After conducting interviews with the highest-  
8 ranked offerors and after considering the factors listed in  
9 Subsection H of this section, the selection committee shall  
10 recommend to the governing body the offeror that will be most  
11 advantageous to the governing body. Should the governing body  
12 or its designee be unable to negotiate a satisfactory contract  
13 with the offeror considered to be the most qualified at a price  
14 determined to be fair and reasonable, negotiations with that  
15 offeror shall be formally terminated. The governing body or  
16 its designee shall then undertake negotiations with the second  
17 most qualified offeror. Failing accord with the second most  
18 qualified offeror, the governing body or its designee shall  
19 formally terminate negotiations with the offeror. The  
20 governing body or its designee shall then undertake  
21 negotiations with the third most qualified offeror. Should the  
22 governing body or its designee be unable to negotiate a  
23 contract with any of the offerors selected by the committee,  
24 additional offerors shall be ranked in order of their  
25 qualifications and the governing body or its designee shall

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1 continue negotiations in accordance with this section until a  
2 contract is signed with a qualified offeror or the procurement  
3 process is terminated and a new request for proposals is  
4 initiated.

5 H. In evaluating and ranking statements of  
6 qualifications, proposals and results of interviews, and in the  
7 final recommendation of a construction manager at risk, the  
8 selection committee shall consider:

9 (1) the offeror's experience with construction  
10 of similar types of projects;

11 (2) the qualifications and experience of the  
12 offeror's personnel and consultants and the role of each in the  
13 project;

14 (3) the plan for management actions to be  
15 undertaken on the project, including services to be rendered in  
16 connection with safety and the safety plan for the project;

17 (4) the offeror's experience with the  
18 construction manager at risk method; and

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

21 I. Nothing in this section precludes the selection  
22 committee from recommending the termination of the selection  
23 procedure pursuant to Section 13-1-131 NMSA 1978 and repeating  
24 the selection process pursuant to this section. Any material  
25 received by the selection committee in response to a

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1 solicitation that is terminated shall not be disclosed so as to  
2 be available to competing offerors.

3 J. After a contract is awarded, the selection  
4 committee shall make the names of all offerors and the names of  
5 all offerors selected for interview available for public  
6 inspection along with the selection committee's final ranking  
7 and evaluation scores. Offerors who were interviewed but not  
8 selected for contract award shall be notified in writing within  
9 fifteen days of the award."

10 SECTION 5. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2012.