

HOUSE BILL 307

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PROCUREMENT; ENACTING THE CONSTRUCTION MANAGER
GENERAL CONTRACTOR ACT TO PROVIDE AN ALTERNATIVE PROJECT
DELIVERY METHOD FOR CERTAIN DEPARTMENT OF TRANSPORTATION
PROJECTS.

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

SECTION 1. A new section of the Procurement Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
act may be cited as the "Construction Manager General

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Contractor Act".

SECTION 2. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Construction Manager General Contractor Act:

A. "construction manager general contractor" means a person who, pursuant to a contract with the department, provides preconstruction services, construction management and construction services required in a construction manager general contractor delivery method;

B. "construction manager general contractor delivery method" means a project delivery method in which a contract for construction manager general contractor services is procured separately from a contract for project design services and a contract for independent cost estimate services;

C. "department" means the department of transportation;

D. "design services" means engineering services, surveying services or landscape architectural services;

E. "guaranteed maximum price" means the maximum amount to be paid by the department for the construction of the project;

F. "preconstruction services" means consulting services related to construction management and construction, provided during the project design stage;

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G. "project" means a state public works project for construction or highway reconstruction; and

H. "secretary" means the secretary of transportation."

SECTION 3. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] DEPARTMENT--POWERS.--The secretary may use an alternative to the preferred design-bid-build project delivery method for project procurement to allow the department to use the services of a construction manager general contractor."

SECTION 4. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] CONSTRUCTION MANAGER GENERAL CONTRACTOR DELIVERY METHOD AUTHORIZED.--

A. The secretary may use a construction manager general contractor delivery method on a project if the department determines that it is in the best interest of the department to use this method of project delivery to procure an eligible construction project.

B. The secretary shall adopt a procedure for solicitation and award of construction manager general contractor contracts. The procedure shall establish criteria for selecting, procuring and contracting a project using the construction manager general contractor delivery method. The

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procedure shall define the scope of the project and require the construction manager general contractor to:

(1) provide a range of preconstruction services and participate in project design, cost control, scheduling and value engineering efforts for the project; and

(2) if the second phase of the contract is entered into, provide the construction work for the project or work packages associated with the project at a guaranteed maximum price for which the construction manager general contractor is financially responsible.

C. The department shall establish an advisory board of outside stakeholders, including stakeholders from within the road construction industry, who are familiar with, and engaged in, the classification of work to be performed in the development of policies and procedures implementing the Construction Manager General Contractor Act. The advisory board shall be constituted so as to ensure fair and equitable processes are developed and applied consistently statewide."

SECTION 5. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] CONSTRUCTION MANAGER GENERAL CONTRACTOR--
MULTI-PHASED PROCEDURE.--

A. If the department determines that the construction manager general contractor delivery method is appropriate for an eligible project, the department shall

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establish a multi-phased procedure for soliciting and awarding the construction manager general contractor contract. The selection procedure shall use a competitive, sealed qualifications-based proposal method that conforms with Sections 13-1-111 through 13-1-117 NMSA 1978.

B. The department shall issue a separate request for proposals for each project that uses a construction manager general contractor.

C. The department's request for proposals for construction manager general contractor contracts shall contain, at a minimum, the following elements:

(1) a statement of the minimum qualifications for the construction manager general contractor, including requirements for:

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

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

(c) minimum bond capacity;

(d) the ability to self-perform, with its own organization, a minimum percentage of construction work as required and defined in the department's standard specifications for highway and bridge construction, current edition; and

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- (e) current registration as a prequalified contractor;
- (2) the procedures for submitting proposals, the criteria for evaluation of qualifications and the relative weight of each criteria;
- (3) the form of contract to be awarded;
- (4) a listing or description of the types of preconstruction and construction services that will be required;
- (5) identification of requirements for liability insurance, a proposal bond pursuant to Section 13-1-146 NMSA 1978 and performance and payment bonds pursuant to Section 13-4-18 NMSA 1978;
- (6) a description of the method to be used for pricing or negotiation of construction manager general contractor fees for the scope of services; and
- (7) any other information the department deems necessary for the solicitation.

D. The department shall use a selection committee for the evaluation of the qualifications submitted by offerors and shall determine the offerors that qualify for award of the construction manager general contractor contract. The department shall establish a construction manager general contractor selection committee in accordance with Section 13-1-121 NMSA 1978. The selection committee shall rank the

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offerors and provide a recommendation to the department identifying the offeror most qualified based on the highest ranking score.

E. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-131 NMSA 1978.

F. The department shall adopt procedures for the selection process and award of contract that include interviews with top-ranked offerors, price negotiations and the authority to terminate negotiations.

G. The department procedures and each request for proposals for a construction manager general contractor contract solicitation shall address confidentiality of records, obligations to identify trade secrets and proprietary information and any exclusion from the provisions of the Inspection of Public Records Act that may apply during the term of the construction manager general contractor contract.

H. The department procedures shall address the processes applicable to the award of contract for construction services, including the process for conducting contract negotiations with the construction manager general contractor for construction of the project or work packages associated with the project in accordance with contract documents and specifications.

I. The department shall secure and use an

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independent cost estimate for the project or each work package associated with the project to validate the negotiated costs for the construction services contract. The independent cost estimate shall remain confidential until notice of award of the construction contract.

J. The construction manager general contractor must submit a guaranteed maximum price proposal for the construction services for the project or work packages associated with the project.

K. Negotiations may begin between the department and the construction manager general contractor for the project construction services HCEDC→when←HCEDC HCEDC→before completion of←HCEDC the design work HCEDC→reaches ninety percent completion←HCEDC. Upon successful negotiation, the department shall execute the contract with the construction manager general contractor for construction of the project or work packages associated with the project. If the department is unable to reach a price agreement with the construction manager general contractor, the negotiations shall be terminated. In the event negotiations are terminated, the department may competitively bid the construction phase of the project in accordance with the department's procedures applicable to public works construction projects.

L. The construction manager general contractor may be allowed to bid or provide subcontracting services for the

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project, unless prohibited by Section 10-16-13 NMSA 1978.

M. Data developed during the design services and the construction manager general contractor's preconstruction services, unless otherwise protected by law, shall be made available to all bidders.

N. After a construction manager general contractor contract is awarded for the preconstruction services, the department shall make the names of each offeror and the ranking and evaluation scores for each available for public inspection."

SECTION 6. Section 13-1-102 NMSA 1978 (being Laws 1984, Chapter 65, Section 75, as amended) is amended to read:

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

A. Sections 13-1-111 through 13-1-122 NMSA 1978, competitive sealed proposals;

B. Section 13-1-125 NMSA 1978, small purchases;

C. Section 13-1-126 NMSA 1978, sole source procurement;

D. Section 13-1-127 NMSA 1978, emergency procurements;

E. Section 13-1-129 NMSA 1978, existing contracts;

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

G. the Educational Facility Construction Manager At Risk Act; and

H. the Construction Manager General Contractor Act."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.

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