

1 HOUSE BILL 307

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Patricio Ruiloba and Cathrynn N. Brown  
5 and Jane E. Powdrell-Culbert and Rebecca Dow  
6 and Patricia A. Lundstrom

7  
8  
9  
10 AN ACT

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

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

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

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

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

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

.216672.3SA

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

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

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

11           C. "department" means the department of  
12 transportation;

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

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

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

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

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

25           **SECTION 3.** A new section of the Procurement Code is  
26 .216672.3SA

underscoring material = new  
[bracketed material] = delete

1 enacted to read:

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

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

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

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

16 B. The secretary shall adopt a procedure for  
17 solicitation and award of construction manager general  
18 contractor contracts. The procedure shall establish criteria  
19 for selecting, procuring and contracting a project using the  
20 construction manager general contractor delivery method. The  
21 procedure shall define the scope of the project and require the  
22 construction manager general contractor to:

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

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

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

18                   A. If the department determines that the  
19 construction manager general contractor delivery method is  
20 appropriate for an eligible project, the department shall  
21 establish a multi-phased procedure for soliciting and awarding  
22 the construction manager general contractor contract. The  
23 selection procedure shall use a competitive, sealed  
24 qualifications-based proposal method that conforms with  
25 Sections 13-1-111 through 13-1-117 NMSA 1978.

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

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

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

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

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

13                           (b) registration pursuant to Section  
14 13-4-13.1 NMSA 1978;

15                           (c) minimum bond capacity;

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

21                           (e) current registration as a  
22 prequalified contractor;

23                   (2) the procedures for submitting proposals,  
24 the criteria for evaluation of qualifications and the relative  
25 weight of each criteria;

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

- 1 (3) the form of contract to be awarded;
- 2 (4) a listing or description of the types of  
3 preconstruction and construction services that will be  
4 required;
- 5 (5) identification of requirements for  
6 liability insurance, a proposal bond pursuant to Section  
7 13-1-146 NMSA 1978 and performance and payment bonds pursuant  
8 to Section 13-4-18 NMSA 1978;
- 9 (6) a description of the method to be used for  
10 pricing or negotiation of construction manager general  
11 contractor fees for the scope of services; and
- 12 (7) any other information the department deems  
13 necessary for the solicitation.

14 D. The department shall use a selection committee  
15 for the evaluation of the qualifications submitted by offerors  
16 and shall determine the offerors that qualify for award of the  
17 construction manager general contractor contract. The  
18 department shall establish a construction manager general  
19 contractor selection committee in accordance with Section  
20 13-1-121 NMSA 1978. The selection committee shall rank the  
21 offerors and provide a recommendation to the department  
22 identifying the offeror most qualified based on the highest  
23 ranking score.

24 E. Nothing in this section precludes the selection  
25 committee from recommending the termination of the selection

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 procedure pursuant to Section 13-1-131 NMSA 1978.

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

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

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

20 I. The department shall secure and use an  
21 independent cost estimate for the project or each work package  
22 associated with the project to validate the negotiated costs  
23 for the construction services contract. The independent cost  
24 estimate shall remain confidential until notice of award of the  
25 construction contract.

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

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

5           K. Negotiations may begin between the department  
6 and the construction manager general contractor for the project  
7 construction services when the design work reaches ninety  
8 percent completion. Upon successful negotiation, the  
9 department shall execute the contract with the construction  
10 manager general contractor for construction of the project or  
11 work packages associated with the project. If the department  
12 is unable to reach a price agreement with the construction  
13 manager general contractor, the negotiations shall be  
14 terminated. In the event negotiations are terminated, the  
15 department may competitively bid the construction phase of the  
16 project in accordance with the department's procedures  
17 applicable to public works construction projects.

18           L. The construction manager general contractor may  
19 be allowed to bid or provide subcontracting services for the  
20 project, unless prohibited by Section 10-16-13 NMSA 1978.

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

25           N. After a construction manager general contractor

.216672.3SA

underscored material = new  
[bracketed material] = delete

1 contract is awarded for the preconstruction services, the  
2 department shall make the names of each offeror and the ranking  
3 and evaluation scores for each available for public  
4 inspection."

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

7 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All  
8 procurement shall be achieved by competitive sealed bid  
9 pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978,  
10 except procurement achieved pursuant to the following sections  
11 of the Procurement Code:

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

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

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

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

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

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

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

24 H. the Construction Manager General Contractor  
25 Act."

.216672.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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