

1 SENATE BILL 37

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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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:

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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 for a project;

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

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

12 D. "guaranteed maximum price" means the maximum
13 amount to be paid by the department for the construction of the
14 project;

15 E. "preconstruction services" means consulting
16 services related to construction management and construction,
17 provided during the transportation project design stage;

18 F. "project" means a state public works project for
19 highway construction or reconstruction;

20 G. "project design services" means engineering
21 services, surveying services or landscape architectural
22 services; and

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

25 **SECTION 3.** A new section of the Procurement Code is
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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 makes a written determination that it is appropriate
14 and in the best interest of the department to use this method
15 of project delivery to procure an eligible construction
16 project. The determination to use the construction manager
17 general contractor project delivery method shall be issued only
18 after the department considers the following criteria, at a
19 minimum:

20 (1) the level of design and the extent to
21 which the project requirements have been or can be adequately
22 defined;

23 (2) time constraints for project delivery;

24 (3) project complexity;

25 (4) suitability of use of the construction

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1 manager general contractor delivery method; and

2 (5) capability of the department to manage the
3 project, including experienced personnel or outside
4 consultants.

5 B. The secretary, in consultation with the
6 professional associations and contractors from within the
7 highway design and construction industry, shall promulgate
8 rules for solicitation and award of construction manager
9 general contractor contracts. The rules shall establish
10 criteria for selecting, procuring and contracting a project
11 using the construction manager general contractor delivery
12 method. The rules shall define the scope of the construction
13 manager general contractor contract to require the construction
14 manager general contractor to:

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

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

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

25 "[NEW MATERIAL] CONSTRUCTION MANAGER GENERAL CONTRACTOR--

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1 MULTI-PHASED PROCEDURE.--

2 A. The selection procedure shall use a competitive,
3 sealed qualifications-based proposal method that conforms with
4 Sections 13-1-111 through 13-1-117 NMSA 1978 and results in a
5 professional services contract. The contract scope of work
6 shall be divided into two separate but related phases:

7 (1) phase one for design consultation and
8 preconstruction services; and

9 (2) phase two for project construction.

10 B. The department shall issue a separate request
11 for proposals for each project that uses a construction manager
12 general contractor delivery method.

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

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

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

22 (b) registration pursuant to Section
23 13-4-13.1 NMSA 1978;

24 (c) minimum bond capacity;

25 (d) the ability to self-perform, with

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1 its own organization, a minimum percentage of construction work
2 as required and defined in the department's standard
3 specifications for highway and bridge construction, current
4 edition; and

5 (e) current registration as a
6 prequalified contractor pursuant to rule promulgated by the
7 department;

8 (2) the procedures for submitting proposals,
9 the criteria for evaluation of qualifications and the relative
10 weight of the criteria;

11 (3) the form of contract to be awarded;

12 (4) a listing or description of the types of
13 preconstruction and construction services that will be
14 required;

15 (5) identification of requirements for
16 liability insurance, a proposal bond pursuant to Section
17 13-1-146 NMSA 1978 and performance and payment bonds pursuant
18 to Section 13-4-18 NMSA 1978;

19 (6) a description of the method to be used for
20 pricing or negotiation of construction manager general
21 contractor fees for the scope of services; and

22 (7) any other information the department deems
23 necessary for the solicitation.

24 D. The department shall use a selection committee
25 for the evaluation of the qualifications submitted by offerors

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1 and shall determine the offerors that qualify for award of the
2 construction manager general contractor contract. The
3 department shall establish a construction manager general
4 contractor selection committee by rule. The selection
5 committee shall rank the offerors and provide a recommendation
6 to the department identifying the offeror most qualified based
7 on the highest ranking score.

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

11 F. The department shall promulgate rules for the
12 selection process and award of contract that include interviews
13 with top-ranked offerors, price negotiations and the authority
14 to terminate negotiations.

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

22 H. The department rules shall address the processes
23 applicable to the award of a contract for construction
24 management and construction services, including the process for
25 conducting contract negotiations with the construction manager

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1 general contractor for construction of the project or work
2 packages associated with the project in accordance with
3 contract documents and specifications.

4 I. The department shall secure and use an
5 independent cost estimate for the project or each work package
6 associated with the project to validate the negotiated costs
7 for the construction management and construction services
8 contract. The independent cost estimate shall remain
9 confidential until notice of award of the construction
10 contract.

11 J. The construction manager general contractor
12 shall submit a guaranteed maximum price proposal for
13 construction management and construction services for the
14 project or work packages associated with the project.

15 K. Negotiations may begin between the department
16 and the construction manager general contractor for the
17 construction services before completion of the design work.
18 Upon successful negotiation, the department shall execute the
19 contract with the construction manager general contractor for
20 construction of the project or work packages associated with
21 the project.

22 L. Negotiations shall be terminated if the
23 department is unable to reach a price agreement with the
24 construction manager general contractor. In the event that
25 negotiations are terminated, the department may competitively

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1 bid the construction phase of the project, in accordance with
2 the department's procedures applicable to public works
3 construction projects. The construction manager general
4 contractor may be allowed to bid or provide subcontract
5 services for the project, unless prohibited by Section 10-16-13
6 NMSA 1978.

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

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

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

18 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
19 procurement shall be achieved by competitive sealed bid
20 pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978,
21 except procurement achieved pursuant to the following sections
22 of the Procurement Code:

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

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

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- 1 C. Section 13-1-126 NMSA 1978, sole source
- 2 procurement;
- 3 D. Section 13-1-127 NMSA 1978, emergency
- 4 procurements;
- 5 E. Section 13-1-129 NMSA 1978, existing contracts;
- 6 F. Section 13-1-130 NMSA 1978, purchases from
- 7 antipoverty program businesses; ~~[and]~~
- 8 G. the Educational Facility Construction Manager At
- 9 Risk Act; and
- 10 H. the Construction Manager General Contractor
- 11 Act."

12 SECTION 7. EFFECTIVE DATE.--The effective date of the

13 provisions of this act is July 1, 2021.