

1 AN ACT
2 RELATING TO PROCUREMENT; ENACTING THE TRANSPORTATION
3 CONSTRUCTION MANAGER GENERAL CONTRACTOR ACT TO PROVIDE AN
4 ALTERNATIVE PROJECT DELIVERY METHOD FOR CERTAIN DEPARTMENT OF
5 TRANSPORTATION PROJECTS; PROVIDING ANOTHER EXCEPTION TO THE
6 COMPETITIVE SEALED BID REQUIREMENT; ELIMINATING THE CAP FOR
7 DESIGN AND BUILD PROCUREMENT FOR CERTAIN TRANSPORTATION
8 PROJECTS; SPECIFYING ALTERNATIVES TO THE DESIGN-BID-BUILD
9 PROJECT DELIVERY METHOD FOR TRANSPORTATION PROJECTS.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 SECTION 1. A new section of the Procurement Code,
13 Section 13-1-122.1 NMSA 1978, is enacted to read:

14 "13-1-122.1. SHORT TITLE.--Sections 13-1-122.1 through
15 13-1-122.4 NMSA 1978 may be cited as the "Transportation
16 Construction Manager General Contractor Act"."

17 SECTION 2. A new section of the Procurement Code,
18 Section 13-1-122.2 NMSA 1978, is enacted to read:

19 "13-1-122.2. DEFINITIONS.--As used in the
20 Transportation Construction Manager General Contractor Act:

21 A. "construction manager general contractor" means
22 a person who, pursuant to a contract with the department,
23 provides preconstruction services, construction management
24 and construction services required for a project;

25 B. "construction manager general contractor

1 delivery method" means a project delivery method in which a
2 contract for construction manager general contractor services
3 is procured separately from a contract for project design
4 services and a contract for independent cost estimate
5 services;

6 C. "department" means the department of
7 transportation;

8 D. "guaranteed maximum price" means the maximum
9 amount to be paid by the department for the construction of
10 the project;

11 E. "preconstruction services" means consulting
12 services related to construction management and construction
13 provided during the transportation project design stage;

14 F. "project" means a state public works project
15 for highway construction or reconstruction;

16 G. "project design services" means engineering
17 services, surveying services or landscape architectural
18 services; and

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

21 SECTION 3. A new section of the Procurement Code,
22 Section 13-1-122.3 NMSA 1978, is enacted to read:

23 "13-1-122.3. CONSTRUCTION MANAGER GENERAL CONTRACTOR
24 DELIVERY METHOD AUTHORIZED.--

25 A. The secretary may use a construction manager

1 general contractor delivery method on a project if the
2 department makes a written determination that it is
3 appropriate and in the best interest of the department to use
4 this method of project delivery to procure an eligible
5 project. The determination to use the construction manager
6 general contractor delivery method shall be issued only after
7 the department considers the following criteria, at a
8 minimum:

9 (1) the level of design and the extent to
10 which the project requirements have been or can be adequately
11 defined;

12 (2) time constraints for project delivery;

13 (3) project complexity;

14 (4) the suitability of use of the
15 construction manager general contractor delivery method; and

16 (5) the capability of the department to
17 manage the project, including experienced personnel or
18 outside consultants.

19 B. The secretary shall not make a determination to
20 use a construction manager general contractor delivery method
21 unless the project is posted with such determination on the
22 department's website for at least ninety days.

23 C. The secretary, in consultation with the
24 professional associations and contractors from within the
25 highway design and construction industry, shall promulgate

1 rules for solicitation and award of construction manager
2 general contractor contracts. The rules shall establish
3 criteria for selecting, procuring and contracting a project
4 using the construction manager general contractor delivery
5 method. The rules shall define the scope of the construction
6 manager general contractor contract to require the
7 construction manager general contractor to:

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

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

16 SECTION 4. A new section of the Procurement Code,
17 Section 13-1-122.4 NMSA 1978, is enacted to read:

18 "13-1-122.4. CONSTRUCTION MANAGER GENERAL CONTRACTOR--
19 MULTI-PHASED PROCEDURE.--

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

25 (1) phase one for design consultation and

1 preconstruction services; and

2 (2) phase two for project construction.

3 B. The department shall issue a separate request
4 for proposals for each project that uses a construction
5 manager general contractor delivery method.

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

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

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

15 (b) registration pursuant to Section
16 13-4-13.1 NMSA 1978;

17 (c) minimum bond capacity;

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

23 (e) current registration as a
24 prequalified contractor pursuant to rule promulgated by the
25 department;

1 (2) the procedures for submitting proposals,
2 the criteria for evaluation of qualifications and the
3 relative weight of the criteria;

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

5 (4) a listing or description of the types of
6 preconstruction and construction services that will be
7 required;

8 (5) identification of requirements for
9 liability insurance, a proposal bond pursuant to Section
10 13-1-146 NMSA 1978 and performance and payment bonds pursuant
11 to Section 13-4-18 NMSA 1978;

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

15 (7) preferences as allowed by law in the
16 Procurement Code for New-Mexico-based businesses and others.

17 D. The department shall use a selection committee
18 for the evaluation of the qualifications submitted by
19 offerors and shall determine the offerors that qualify for
20 award of the construction manager general contractor
21 contract. The department shall establish a construction
22 manager general contractor selection committee by rule. The
23 selection committee shall rank the offerors and provide a
24 recommendation to the department identifying the offeror most
25 qualified based on the highest ranking score.

1 E. 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.

4 F. The department shall promulgate rules for the
5 selection process and award of contract that include
6 interviews with top-ranked offerors, price negotiations and
7 the authority to terminate negotiations.

8 G. The department rules shall address the
9 processes applicable to the award of a contract for
10 construction management and construction services, including
11 the process for conducting contract negotiations with the
12 construction manager general contractor for construction of
13 the project or work packages associated with the project in
14 accordance with contract documents and specifications.

15 H. The department shall secure and use an
16 independent cost estimate for the project or each work
17 package associated with the project to validate the
18 negotiated costs for the construction management and
19 construction services contract. The independent cost
20 estimate shall remain confidential until notice of award of
21 the construction contract.

22 I. The construction manager general contractor
23 shall submit a guaranteed maximum price proposal for
24 construction management and construction services for the
25 project or work packages associated with the project.

1 J. Negotiations may begin between the department
2 and the construction manager general contractor for the
3 construction services before completion of the design work.
4 Upon successful negotiation, the department shall execute the
5 contract with the construction manager general contractor for
6 construction of the project or work packages associated with
7 the project.

8 K. Negotiations shall be terminated if the
9 department is unable to reach a price agreement with the
10 construction manager general contractor. In the event that
11 negotiations are terminated, the department may competitively
12 bid the construction phase of the project, in accordance with
13 the department's procedures applicable to public works
14 construction projects. The construction manager general
15 contractor may be allowed to bid or provide subcontract
16 services for the project, unless prohibited by Section
17 10-16-13 NMSA 1978.

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

22 M. After a construction manager general contractor
23 contract is awarded for the preconstruction services, the
24 department shall make the names of each offeror and the
25 ranking and evaluation scores for each available for public

1 inspection."

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

4 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
5 procurement shall be achieved by competitive sealed bid
6 pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978,
7 except procurement achieved pursuant to the following
8 sections of the Procurement Code:

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

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

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

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

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

17 F. Section 13-1-130 NMSA 1978, purchases from
18 antipoverty program businesses;

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

21 H. the Transportation Construction Manager General
22 Contractor Act."

23 SECTION 6. Section 13-1-119.2 NMSA 1978 (being Laws
24 2009, Chapter 207, Section 1, as amended) is amended to read:

25 "13-1-119.2. DESIGN AND BUILD PROCUREMENT FOR CERTAIN

1 TRANSPORTATION PROJECTS.--Notwithstanding any prohibition on
2 road and highway construction or reconstruction projects in
3 Section 13-1-119.1 NMSA 1978, the department of
4 transportation may use a design and build project delivery
5 system pursuant to Section 13-1-119.1 NMSA 1978."

6 SECTION 7. A new Section 67-3-8.4 NMSA 1978 is enacted
7 to read:

8 "67-3-8.4. DEPARTMENT--POWERS.--

9 A. The secretary may use an alternative to the
10 design-bid-build project delivery method for project
11 procurement to allow the department to use the services of a
12 construction manager general contractor. No more than
13 twenty-five percent of the projects placed on the
14 department's letting schedule in any calendar year may be let
15 pursuant to the design and build project delivery method
16 pursuant to Section 13-1-119.2 NMSA 1978 or the construction
17 manager general contractor delivery method pursuant to the
18 Transportation Construction Manager General Contractor Act.

19 B. As used in this section, "letting schedule"
20 means the department's construction projects that are posted
21 to give notice to the public prior to receiving bids on any
22 project."

23 SECTION 8. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2022. _____