

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE TRANSPORTATION, PUBLIC WORKS AND CAPITAL IMPROVEMENTS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 190

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PROCUREMENT; AMENDING AND ENACTING SECTIONS OF THE
PROCUREMENT CODE; ALLOWING PUBLIC PARTNERS TO CONTRACT WITH
PRIVATE PARTNERS FOR THE PERFORMANCE OF PUBLIC PROJECTS;
Hf12→**RESTRICTING CERTAIN ACTIONS AND CAMPAIGN
CONTRIBUTIONS;**←Hf12 REQUIRING THE STATE BOARD OF FINANCE TO
PROMULGATE RULES FOR, REVIEW AND APPROVE PUBLIC-PRIVATE
PARTNERSHIP AGREEMENTS.

.227855.3AIC February 13, 2024 (1:38pm)

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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] PUBLIC-PRIVATE PARTNERSHIP--DEFINITIONS.--

As used in Sections 1 through 5 of this 2024 act:

A. "board" means the state board of finance;

B. "concession" means a lease, license, franchise, easement or other binding agreement transferring rights for the use or control, in whole or in part, of a public project by a public partner for a definite term during which a private partner provides services in return for the right to receive all or a portion of the revenue of a public project;

C. "develop" means to plan, design, create, finance, lease, acquire, install, construct or expand a public project;

D. "operate" means to finance, maintain, improve, equip, modify, repair or manage a public project;

E. "private partner" means one or multiple individuals, foreign or domestic corporations, general partnerships, limited liability companies, limited partnerships, joint ventures, business trusts, public benefit corporations, nonprofit entities or other private business entities or combinations thereof;

F. "proposal" means a plan for a public project

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submitted by a private partner with detail beyond a conceptual level containing defined terms determined to be necessary by the public partner, including costs, payment schedules, financing, deliverables and project schedules;

G. "public partner" means a state agency or local public body;

H. "public-private partnership" means an arrangement between one or more public partners and one or more private partners for the development of a public project;

I. "public-private partnership agreement" means a contract between one or more public partners and one or more private partners in connection with the development of a public project;

Hf11→~~J. "public project" means:~~

~~(1) the construction of a public transportation facility or the construction of public transportation infrastructure other than a toll road;~~

~~(2) public construction of broadband telecommunications network facilities; or~~

~~(3) public construction of electric vehicle charging facilities;~~←Hf11

Hf11→J. "public project" means the construction of:

(1) public transportation facilities or public transportation infrastructure other than a toll road;

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(2) broadband telecommunications network facilities; or

(3) electric vehicle charging facilities; ←Hf11

K. "revenue" means revenue, income, earnings, user fees, lease payments or other service payments that support the development of a public project, including money received as a grant or otherwise from the federal government or a public partner; and

L. "user fees" means rates, fees or other charges imposed by the public partner or the private partner for use of all or part of a public project."

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

"[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--REQUEST FOR PROPOSALS.--

A. A public partner shall request proposals to enter into a public-private partnership agreement using a competitive procurement process for competitive sealed proposals or for competitive sealed qualifications-based proposals and subsequent negotiation. A request for proposals to enter into a public-private partnership agreement shall include, at a minimum:

- (1) the proposed parameters of the proposed

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public-private partnership agreement;

(2) proposed duties and responsibilities to be performed by the private partner;

(3) proposed duties and responsibilities that are to be performed by the public partner acting as the contracting body and those proposed to be performed by any other partners to the contract;

(4) proposed plans for financing and operating the public project and the estimated cost for the public project;

(5) requirements for documentation of the experience, capabilities, capitalization and financial condition and other relevant qualifications of the private partner;

(6) requirements for the determination of the ability of a private partner to respond to the needs presented in the request for proposals and the economic development opportunities represented by the public project; and

(7) any other information required by the public partner acting as the contracting body or the board to evaluate the proposals submitted by respondents and the overall proposed public-private partnership.

B. The public partner shall publish public notice of the request for proposals as provided for competitive sealed

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proposals and competitive sealed qualifications-based proposals pursuant to the Procurement Code."

Hf12→~~SECTION 3. A new section of the Procurement Code is enacted to read:~~

~~"[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIPS--UNSOLICITED PROPOSALS.--~~

~~A. A prospective private partner may submit an unsolicited proposal to a public partner or to the board. A public partner that receives an unsolicited proposal shall notify the board. Within ninety days of receiving an unsolicited proposal, the public partner may elect to consider further action on the proposal, at which point the public partner shall provide public notice of the proposal. Discussion of the project shall not be deemed a solicitation of the project or its concepts after public notice is given. The public notice shall:~~

~~(1) provide information regarding the proposed nature, timing and scope of the unsolicited proposal, except that trade secrets, financial records or other records of the prospective private partner making the proposal shall not be posted unless otherwise agreed to by the public partner and the prospective private partner; and~~

~~(2) provide for a notice period on the home page of the public partner's website clearly identifying the~~

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~~proposal as being unsolicited and requesting comments from the public or other potential offerors for the submission of competing proposals as follows:~~

~~(a) unsolicited proposals valued below five million dollars (\$5,000,000) shall be posted for thirty days;~~

~~(b) unsolicited proposals valued at or between five million dollars (\$5,000,000) and twenty-five million dollars (\$25,000,000) shall be posted for sixty days; and~~

~~(c) unsolicited proposals valued over twenty-five million dollars (\$25,000,000) shall be posted for ninety days.~~

~~B. Upon the end of the proper notice period provided in this section, the public partner may consider the unsolicited proposal and any competing proposals received. If the public partner determines it is in the best interest of the public partner to implement some or all of the concepts contained within the unsolicited proposal or competing proposals received by it, the public partner shall begin an open, competitive procurement process using a request for competitive sealed proposals or request for competitive sealed qualifications-based proposals. Notwithstanding any other provision of law, a prospective private partner that submits an~~

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~~unsolicited proposal pursuant to this section may submit a proposal in response to a request for proposals during the open, competitive procurement process.~~

~~C. An unsolicited proposal shall be deemed rejected if no written response is received from the public partner within ninety days of submission, during which time the public partner has not taken any action on the proposal."~~←Hf12

Hf12→SECTION 3. A new section of the Procurement Code is enacted to read:

"[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--CAMPAIGN CONTRIBUTION RESTRICTIONS.--

A. As used in this section:

(1) "officer" means an officer of a corporation identified pursuant to Section 53-11-48 NMSA 1978; and

(2) "principal owner or shareholder" means a person who owns five percent or more of the assets or net worth of a private partner.

B. An elected official of a public partner shall not vote on or participate in the discussion or review of a proposed public-private partnership agreement if a board member, officer or principal owner or shareholder of a private partner to the proposed agreement has contributed to a political campaign for the elected official within six years of

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the discussion, review or vote.

C. An elected official of a public partner shall not accept campaign contributions from a private partner or a board member, officer or principal owner or shareholder of a private partner for the duration of a public-private partnership agreement."←Hf12

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

"[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--BOARD--RULES.--The board shall:

A. promulgate rules for public-private partnership agreements, including:

(1) when public-private partnership agreements may be used;

(2) the contents of a public-private partnership agreement; provided that:

(a) the agreement shall be in writing;

(b) the private partner shall employ public employees when possible for the private partner's performance of the agreement; and

(c) a fixed total price paid by the public partner in exchange for full performance of the public project by the private partner shall be specified;

(3) minimum requirements; and

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(4) standards to limit liability of the issuer of the request for proposals;

B. receive and review requests for proposals for public-private partnerships; and

C. receive, review and approve public-private partnership agreements prior to performance of the agreement."

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

"[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--BOARD--RULES--EVALUATION--PERFORMANCE.--

A. A public partner and private partner may enter into a public-private partnership agreement, subject to approval by the board and rules promulgated by the board pursuant to Paragraph (2) of Subsection A of Section 4 of this 2024 act. The public partner and the private partner may use any project delivery method or combination of methods to develop or operate a public project in devising the public-private partnership agreement, including:

- (1) a design and build agreement;
- (2) a design, build and maintain agreement;
- (3) a design, build, finance and operate agreement;
- (4) a design, build, operate and maintain agreement;

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(5) a design, build, finance, operate and maintain agreement; and

(6) concessions or user fees providing for the private partner to design, build, operate, maintain, manage or lease a public project.

Hf11→B. Public transportation facilities and public transportation infrastructure shall be operated and maintained by the public partner.←Hf11

Hf11→B.←Hf11 Hf11→C.←Hf11 The contracting public partner shall provide continuous oversight, as determined to be necessary by the board, of any function that is performed by a private partner pursuant to the public-private partnership agreement.

Hf11→C.←Hf11 Hf11→D.←Hf11 The performance of a public project pursuant to a public-private partnership agreement is a public work for the purposes of the Public Works Minimum Wage Act, the Subcontractors Fair Practices Act and the Public Works Apprentice and Training Act.

Hf11→D.←Hf11 Hf11→E.←Hf11 A public-private partnership agreement shall require a private partner to provide or cause to be provided performance and payment bonds as required pursuant to Section 13-4-18 NMSA 1978."

SECTION 6. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

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"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed ten years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act or Sections 1 through 5 of this 2024 act, the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child

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support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

(3) a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;

(4) services relating to the implementation, operation and administration of the Education Trust Act;

(5) services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act;

(6) services relating to the design and engineering of a state public works project:

(a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and

(b) upon approval of the secretary of finance and administration; and

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(7) services relating to the design and engineering of a regional water project with an estimated cost of more than five hundred million dollars (\$500,000,000):

(a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and

(b) upon approval of the secretary of finance and administration."

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