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SENATE BILL 228

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

INTRODUCED BY

Clemente Sanchez

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
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:

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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 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

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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 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

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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.

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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;

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- 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

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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.

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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

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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."

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