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SENATE BILL 166

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ben D. Altamirano

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO GOVERNMENT CONTRACTING; ENACTING THE PERFORMANCE CONTRACTING ACT; PROVIDING FOR CONTRACT MANAGEMENT AND ACCOUNTABILITY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Performance Contracting Act".

Section 2. DEFINITIONS. -- As used in the Performance Contracting Act:

A. "department" means the department of finance and administration;

B. "performance contract" means a contract for professional services that focuses on the outputs, quality and outcomes of service provision and that ties at least a portion of the contractor's payment as well as any contract extension

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1 or renewal to the achievement of those goals; and

2 C. "professional services" means the services of
3 architects, archaeologists, engineers, surveyors, landscape
4 architects, medical arts practitioners, scientists, management
5 and systems analysts, certified public accountants, registered
6 public accountants, lawyers, psychologists, planners,
7 information technology experts, researchers, construction
8 managers and other persons or businesses providing similar
9 professional services.

10 Section 3. DETERMINATION OF CONTRACT NEED. --

11 A. Prior to making the decision to contract for
12 professional services, an agency shall perform a cost-benefit
13 analysis that uses a methodology similar to the federal office
14 of management and budget's cost-benefit evaluation for the
15 performance of commercial activities and that includes an
16 objective evaluation of state and private resources. The
17 cost-benefit analysis shall assess the need to contract,
18 considering whether the agency has the necessary skills and
19 expertise to deliver the service; whether the agency can
20 provide the service at a competitive price; and whether there
21 are deadline requirements that the agency may not be able to
22 meet. The agency shall proceed with the contracting process
23 only if the results of the analysis show that the benefits of
24 the contract are likely to exceed the costs.

25 B. The agency's administrative services division,

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1 general counsel and secretary, or their equivalent personnel
2 in noncabinet state agencies, shall substantively review the
3 decision to contract, the request for proposal process, final
4 contract negotiations and contract form and legal sufficiency.

5 C. Before entering into a contract for
6 professional services, an agency shall certify to the
7 department that the agency has complied with the provisions of
8 Subsections A and B of this section. The cost-benefit
9 analysis shall remain on file with the contracting agency.

10 Section 4. PERFORMANCE CONTRACTING REQUIRED--
11 SPECIFICATIONS--TERMS AND CONDITIONS--DOCUMENTATION.--

12 A. Unless exempted pursuant to the provisions of
13 the Performance Contracting Act, every contract for
14 professional services entered into by an agency shall be a
15 performance contract.

16 B. The following elements shall be included in a
17 performance contract:

18 (1) performance measures to be used by the
19 agency to evaluate the services provided to the agency and the
20 outcomes resulting from those services;

21 (2) an accountability section that requires
22 the contractor to report regularly on how performance levels
23 are meeting the performance measures and that allows the
24 agency to withhold payment until successful completion of all
25 or part of a contract; and

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1 (3) monitoring requirements that outline the
2 agency's evaluation of the contractor's performance, including
3 progress reports, activity data, site visits, inspections or
4 outcomes.

5 C. The agency shall use department guidelines or
6 similar guidelines to identify and develop an effective system
7 for contract management, including:

8 (1) documentation to support the contract
9 solicitation and selection process;

10 (2) policies and procedures to ensure that
11 contractors do not provide services until a fully executed and
12 approved contract is in place;

13 (3) cost-effective methods to track
14 contracts; and

15 (4) filing of contracts and related
16 documentation.

17 D. If review is required by rule of the department
18 or the general services department pursuant to Section
19 13-1-118 NMSA 1978, the contracting agency shall submit the
20 contract for review no less than thirty days prior to the
21 effective date.

22 Section 5. DEPARTMENT-- ADDITIONAL DUTIES. -- The
23 department shall:

24 A. assist agencies in performance contract
25 development and management, including providing training

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1 courses;

2 B. develop policies and procedures for performance
3 accountability in contract management;

4 C. prepare guidelines for agencies to conduct and
5 document a meaningful cost-benefit analysis;

6 D. prepare guidelines for agencies on performance
7 contract specifications, terms and conditions that include
8 performance measures, accountability clauses, monitoring
9 provisions and auditing;

10 E. actively participate in the development of
11 major requests for proposals and performance contract awards
12 of agencies for competitive procurement over twenty thousand
13 dollars (\$20,000); and

14 F. selectively monitor contract procedures and
15 projects in agencies.

16 Section 6. APPLICABILITY. --

17 A. Except as provided in Paragraphs (1) and (2) of
18 this subsection and Subsection B of this section, the
19 Performance Contracting Act applies to any department,
20 institution, board, bureau, commission, district or committee
21 of the state and every contract for professional services
22 entered into by any of the above; provided that the provisions
23 do not apply to a contract for professional services:

24 (1) in response to an emergency procurement
25 under Section 13-1-127 NMSA 1978; or

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(2) exempted by rule of the department or order of the secretary of finance and administration, but only to the extent specified in the rule or order.

B. The Performance Contracting Act applies to contracts entered into by agencies of the legislative branch of state government, the judicial branch of state government and public post-secondary educational institutions, but such agencies and institutions:

(1) may develop their own policies, procedures and guidelines similar to those required of the department in Section 5 of the Performance Contracting Act;

(2) may provide for exemptions similar to those allowed pursuant to Subsection A of this section; and

(3) are not required to report or make submissions to the department.

Section 7. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 2001.