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HOUSE BILL 861

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Daniel P. Silva

AN ACT

RELATING TO PROCUREMENT; REQUIRING PAYMENT OF A RECOMPENSE TO  
SHORT-LISTED FIRMS AND THE HIGHEST-RANKED FIRM TO COVER  
PROPOSAL EXPENSES.

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

Section 1. Section 13-1-119.1 NMSA 1978 (being Laws 1997,  
Chapter 171, Section 5, as amended) is amended to read:

"13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN  
AND BUILD PROJECTS AUTHORIZED.--

A. Except for road and highway construction or  
reconstruction projects, a design and build project delivery  
system may be authorized when the state purchasing agent or a  
central purchasing office makes a determination in writing that  
it is appropriate and in the best interest of the state or  
local public body to use the system on a specific project with

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1 a [~~maximum~~] minimum allowable construction cost of [~~more than~~  
2 ~~ten million dollars (\$10,000,000)] five million dollars  
3 (\$5,000,000). The determination shall be issued only after the  
4 state purchasing agent or a central purchasing office has taken  
5 into consideration the following criteria, which shall be used  
6 as the minimum basis in determining when to use the design and  
7 build process:~~

8 (1) the extent to which the project  
9 requirements have been or can be adequately defined;

10 (2) time constraints for delivery of the  
11 project;

12 (3) the capability and experience of potential  
13 teams with the design and build process;

14 (4) the suitability of the project for use of  
15 the design and build process as concerns time, schedule, costs  
16 and quality; and

17 (5) the capability of the using agency to  
18 manage the project, including experienced personnel or outside  
19 consultants, and to oversee the project with persons who are  
20 familiar with the design and build process.

21 B. When a determination has been made by the state  
22 purchasing agent or a central purchasing office that it is  
23 appropriate to use a design and build project delivery system,  
24 the design and build team shall include, as needed, a New  
25 Mexico registered engineer or architect and a contractor

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1 properly licensed in New Mexico for the type of work required.

2 C. Except as provided in Subsections F and G of  
3 this section, for each proposed state or local public works  
4 design and build project, a two-phase procedure for awarding  
5 design and build contracts shall be adopted and shall include  
6 at a minimum the following:

7 (1) during phase one, and prior to  
8 solicitation, documents shall be prepared for a request for  
9 qualifications by a registered engineer or architect, either  
10 in-house or selected in accordance with Sections 13-1-120  
11 through 13-1-124 NMSA 1978, and shall include minimum  
12 qualifications, a scope of work statement and schedule,  
13 documents defining the project requirements, the composition of  
14 the selection committee and a description of the phase-two  
15 requirements and subsequent management needed to bring the  
16 project to completion. Design and build qualifications of  
17 responding firms shall be evaluated and a maximum of five firms  
18 shall be short-listed in accordance with technical and  
19 qualifications-based criteria; and

20 (2) during phase two, the short-listed firms  
21 shall be invited to submit detailed specific technical concepts  
22 or solutions, costs and scheduling. In consideration of the  
23 costs of submitting a response to the invitation and of the  
24 subsequent documentation of the costs incurred, unsuccessful  
25 firms ~~may~~ on the short list and the highest-ranked firm shall

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1 be paid a [~~stipend~~] recompense to cover actual proposal  
2 expenses in an amount not to exceed one percent of the total  
3 project cost. Payment shall not entitle an agency to ownership  
4 of the documents or ideas represented in the documents. After  
5 evaluation of these submissions, selection shall be made and  
6 the contract awarded to the highest-ranked firm and payment  
7 made to the short-listed firms.

8 D. Except as provided in Subsections F and G of  
9 this section, to ensure fair, uniform, clear and effective  
10 procedures that will strive for the delivery of a quality  
11 project on time and within budget, the secretary, in  
12 conjunction with the appropriate and affected professional  
13 associations and contractors, shall promulgate rules applicable  
14 to all using agencies, which shall be followed by all using  
15 agencies when procuring a design and build project delivery  
16 system.

17 E. A state agency shall make the decision on a  
18 design and build project delivery system for a state public  
19 works project, and a local public body shall make that decision  
20 for a local public works project. A state agency shall not  
21 make the decision on a design and build project delivery system  
22 for a local public works project.

23 F. The requirements of Subsections C and D of this  
24 section and the minimum construction cost requirement of  
25 Subsection A of this section do not apply to a design and build

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1 project delivery system and the services procured for the  
2 project if:

3 (1) the maximum allowable construction cost of  
4 the project is four hundred thousand dollars (\$400,000) or  
5 less; and

6 (2) the only requirement for architects,  
7 engineers, landscape architects or surveyors is limited to  
8 either site improvements or [~~adaption~~] adaptation for a pre-  
9 engineered building or system.

10 G. The procurement of a design and build project  
11 delivery system qualifying for exemptions pursuant to  
12 Subsection F of this section, including the services of any  
13 architect, engineer, landscape architect, construction manager  
14 or surveyor needed for the project, shall be accomplished by  
15 competitive sealed bids pursuant to Sections 13-1-102 through  
16 13-1-110 NMSA 1978."