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SENATE BILL 271

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO PROCUREMENT; REMOVING THE EDUCATIONAL FACILITY
RESTRICTIONS FROM THE EDUCATIONAL FACILITY CONSTRUCTION MANAGER
AT RISK ACT AND RENAMING THE ACT; ADDING RULEMAKING
REQUIREMENTS.

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

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

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

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

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- 1 B. Section 13-1-125 NMSA 1978, small purchases;
2 C. Section 13-1-126 NMSA 1978, sole source
3 procurement;
4 D. Section 13-1-127 NMSA 1978, emergency
5 procurements;
6 E. Section 13-1-129 NMSA 1978, existing contracts;
7 F. Section 13-1-130 NMSA 1978, purchases from
8 antipoverty program businesses; and
9 G. the [Educational Facility] Construction Manager
10 At Risk Act."

11 SECTION 2. Section 13-1-111 NMSA 1978 (being Laws 1984,
12 Chapter 65, Section 84, as amended) is amended to read:

13 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
14 USE.--

15 A. A procurement shall be accomplished by
16 competitive sealed proposals, except as provided in Subsection
17 G of Section 13-1-119.1 NMSA 1978, when a state agency or a
18 local public body is procuring professional services or a
19 design and build project delivery system or when the state
20 purchasing agent, a central purchasing office or a designee of
21 either officer makes a written determination that the use of
22 competitive sealed bidding for items of tangible personal
23 property or services is either not practicable or not
24 advantageous to the state agency or a local public body [~~a~~
25 ~~procurement shall be effected by competitive sealed proposals~~].

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1 B. Competitive sealed proposals may [~~also~~] be used
2 for contracts for construction and facility maintenance,
3 service and repairs.

4 C. Competitive sealed proposals may [~~also~~] be used
5 for construction manager at risk contracts [~~if a three-step~~
6 ~~selection procedure is used~~] pursuant to the [~~Educational~~
7 ~~Facility~~] provisions of the Construction Manager At Risk Act.

8 D. Competitive qualifications-based proposals shall
9 be used for procurement of professional services of architects,
10 engineers, landscape architects, construction managers and
11 surveyors who submit proposals pursuant to Sections 13-1-120
12 through 13-1-124 NMSA 1978.

13 E. Competitive sealed proposals shall [~~also~~] be
14 used for contracts for the design and installation of measures
15 the primary purpose of which is to conserve natural resources,
16 including guaranteed utility savings contracts entered into
17 pursuant to the Public Facility Energy Efficiency and Water
18 Conservation Act."

19 SECTION 3. Section 13-1-124.1 NMSA 1978 (being Laws 2007,
20 Chapter 141, Section 3) is amended to read:

21 "13-1-124.1. SHORT TITLE.--Sections 13-1-124.1 through
22 13-1-124.5 NMSA 1978 may be cited as the "[~~Educational~~
23 ~~Facility~~] Construction Manager At Risk Act"."

24 SECTION 4. Section 13-1-124.2 NMSA 1978 (being Laws 2007,
25 Chapter 141, Section 4) is amended to read:

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1 "13-1-124.2. APPLICABILITY--RULES.--

2 A. The provisions of the [~~Education~~ Facility]
3 Construction Manager At Risk Act [~~apply to~~] may be used for
4 contracts for the construction of [~~educational~~] state
5 facilities if the governing [~~body~~] authority chooses, pursuant
6 to the provisions of that act, to use the services of a
7 construction manager at risk.

8 B. The Construction Manager at Risk Act shall be
9 implemented pursuant to rules promulgated by the secretary in
10 consultation with the public school facilities authority and
11 other agencies deemed appropriate by the secretary."

12 SECTION 5. Section 13-1-124.3 NMSA 1978 (being Laws 2007,
13 Chapter 141, Section 5) is amended to read:

14 "13-1-124.3. DEFINITIONS.--As used in the [~~Education~~
15 Facility] Construction Manager At Risk Act:

16 A. "construction manager at risk" means a person
17 who, pursuant to a contract with a governing [~~body~~] authority,
18 provides the preconstruction services and construction
19 management required in a construction manager at risk delivery
20 method;

21 B. "construction manager at risk delivery method"
22 means a construction method for [~~an educational~~] a facility
23 wherein a construction manager at risk provides a range of
24 preconstruction services and construction management, including
25 cost estimation and consultation regarding the design of the

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1 building project, preparation and coordination of bid packages,
2 scheduling, cost control, value engineering and, while acting
3 as the general contractor during construction, detailing the
4 trade contractor scope of work, holding the trade contracts and
5 other subcontracts, prequalifying and evaluating trade
6 contractors and subcontractors and providing management and
7 construction services, all at a guaranteed maximum price for
8 which the construction manager at risk is financially
9 responsible;

10 ~~[G. "educational facility" means a public school,~~
11 ~~including a locally chartered or state-chartered charter school~~
12 ~~or a facility of a state educational institution listed in~~
13 ~~Section 6-17-1.1 NMSA 1978;~~

14 ~~D.]~~ C. "governing ~~[body]~~ authority" means:

15 (1) the public school facilities authority if
16 the authority is the using agency that requires the
17 construction of ~~[an educational]~~ a facility;

18 (2) a local school board if the board is the
19 using agency that requires the construction of ~~[an educational]~~
20 a facility;

21 (3) the governing body of a charter school if
22 the governing body is the using agency that requires the
23 construction of ~~[an educational]~~ a facility; ~~[or]~~

24 (4) the governing body of a state educational
25 institution if the governing body is the using agency that

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1 requires the construction of [~~an educational~~] a facility; [~~and~~]
2 (5) the governing body of a local public body;
3 or

4 (6) the general services department; and
5 [~~E.~~] D. "guaranteed maximum price" means the
6 maximum amount to be paid by the governing [~~body~~] authority for
7 the construction of the [~~educational~~] facility, including the
8 cost of the work, the general conditions and the fees charged
9 by the construction manager at risk."

10 SECTION 6. Section 13-1-124.4 NMSA 1978 (being Laws 2007,
11 Chapter 141, Section 6) is amended to read:

12 "13-1-124.4. CONSTRUCTION MANAGER AT RISK DELIVERY METHOD
13 AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

14 A. A construction manager at risk delivery method
15 may be used when a governing [~~body~~] authority determines that
16 it is in its interest to use that method on a specific
17 [~~educational facility~~] construction project; provided that the
18 construction manager at risk shall be selected pursuant to the
19 provisions of this section.

20 B. The governing [~~body~~] authority shall form a
21 selection committee of at least three members with at least one
22 member being an architect or engineer. The selection committee
23 shall develop an evaluation process, including a multiphase
24 procedure consisting of two or three steps. A two-step
25 procedure may be used when the total amount of money available

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1 for the project is less than five hundred thousand dollars
2 (\$500,000) and shall include a request for qualifications and
3 an interview. A three-step procedure shall consist of a
4 request for qualifications, a request for proposals and an
5 interview.

6 C. A request for qualifications shall be published
7 in accordance with Section 13-1-104 NMSA 1978 and shall include
8 at a minimum the following:

9 (1) a statement of the minimum qualifications
10 for the construction manager at risk, including the
11 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; and

17 (c) a minimum bond capacity;

18 (2) a statement of the scope of work to be
19 performed, including:

20 (a) the location of the project and the
21 total amount of money available for the project;

22 (b) a proposed schedule, including a
23 deadline for submission of the statements of qualification;

24 (c) specific project requirements and
25 deliverables;

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1 (d) the composition of the selection
2 committee;

3 (e) a description of the process the
4 selection committee shall use to evaluate qualifications;

5 (f) a proposed contract; and

6 (g) a detailed statement of the
7 relationships and obligations of all parties, including the
8 construction manager at risk, agents of the governing ~~body~~
9 authority, such as an architect or engineer, and the governing
10 ~~body~~ authority;

11 (3) a verification of the maximum allowable
12 construction cost; and

13 (4) a request for a proposal bond as required
14 by Section 13-1-146 NMSA 1978.

15 D. The selection committee shall evaluate the
16 statements of qualifications submitted and determine the
17 offerors that qualify for the construction manager at risk. If
18 the selection committee has chosen a three-step procedure, the
19 committee shall issue a request for proposals to the offerors
20 that qualify.

21 E. If the selection committee has chosen a two-step
22 procedure, the committee shall rank the persons that qualify
23 based upon the statements of qualification and interview up to
24 three of the highest-ranked offerors.

25 F. In a three-step procedure, the selection

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1 committee shall issue a request for proposals and evaluate the
2 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA
3 1978 except that:

4 (1) the request for proposals shall be sent
5 only to those determined to be qualified pursuant to Subsection
6 D of this section;

7 (2) the selection committee shall evaluate the
8 proposals and conduct interviews with up to three of the
9 highest-ranked offerors instead of negotiating with responsible
10 offerors found to be reasonably likely to be selected; and

11 (3) pursuant to Subsection G of this section,
12 the contract award may be made after the interviews.

13 G. After conducting interviews with the highest-
14 ranked offerors and after considering the factors listed in
15 Subsection H of this section, the selection committee shall
16 recommend to the governing [~~body~~] authority the offeror that
17 will be most advantageous to the governing [~~body~~] authority.
18 Should the governing [~~body~~] authority or its designee be unable
19 to negotiate a satisfactory contract with the offeror
20 considered to be the most qualified at a price determined to be
21 fair and reasonable, negotiations with that offeror shall be
22 formally terminated. The governing [~~body~~] authority or its
23 designee shall then undertake negotiations with the second most
24 qualified offeror. Failing accord with the second most
25 qualified offeror, the governing [~~body~~] authority or its

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1 designee shall formally terminate negotiations with the
2 offeror. The governing ~~[body]~~ authority or its designee shall
3 then undertake negotiations with the third most qualified
4 offeror. Should the governing ~~[body]~~ authority or its designee
5 be unable to negotiate a contract with any of the offerors
6 selected by the committee, additional offerors shall be ranked
7 in order of their qualifications and the governing ~~[body]~~
8 authority or its designee shall continue negotiations in
9 accordance with this section until a contract is signed with a
10 qualified offeror or the procurement process is terminated and
11 a new request for proposals is initiated.

12 H. In evaluating and ranking statements of
13 qualifications, proposals and results of interviews, and in the
14 final recommendation of a construction manager at risk, the
15 selection committee shall consider:

16 (1) the offeror's experience with construction
17 of similar types of projects;

18 (2) the qualifications and experience of the
19 offeror's personnel and consultants and the role of each in the
20 project;

21 (3) the plan for management actions to be
22 undertaken on the project, including services to be rendered in
23 connection with safety and the safety plan for the project;

24 (4) the offeror's experience with the
25 construction manager at risk method; and

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1 (5) all other selection criteria, as stated in
2 the request for qualifications and the request for proposals.

3 I. Nothing in this section precludes the selection
4 committee from recommending the termination of the selection
5 procedure pursuant to Section 13-1-131 NMSA 1978 and repeating
6 the selection process pursuant to this section. Any material
7 received by the selection committee in response to a
8 solicitation that is terminated shall not be disclosed so as to
9 be available to competing offerors.

10 J. After a contract is awarded, the selection
11 committee shall make the names of all offerors and the names of
12 all offerors selected for interview available for public
13 inspection along with the selection committee's final ranking
14 and evaluation scores. Offerors who were interviewed but not
15 selected for contract award shall be notified in writing within
16 fifteen days of the award."

17 SECTION 7. Section 13-4-1.1 NMSA 1978 (being Laws 2007,
18 Chapter 141, Section 8) is amended to read:

19 "13-4-1.1. DEFINITIONS--CONSTRUCTION CONTRACT--
20 CONTRACTOR.--As used in Chapter 13, Article 4 NMSA 1978:

21 A. "contract" or "construction contract" includes a
22 construction manager at risk contract entered into pursuant to
23 the [~~Educational Facility~~] Construction Manager At Risk Act;
24 and

25 B. "contractor" includes a construction manager at
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1 risk selected pursuant to the ~~[Educational Facility]~~
2 Construction Manager At Risk Act."

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