

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 84

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO PROCUREMENT; ENACTING THE TRANSPORTATION
CONSTRUCTION MANAGER GENERAL CONTRACTOR ACT TO PROVIDE AN
ALTERNATIVE PROJECT DELIVERY METHOD FOR CERTAIN DEPARTMENT OF
TRANSPORTATION PROJECTS; PROVIDING ANOTHER EXCEPTION TO THE
COMPETITIVE SEALED BID REQUIREMENT; ELIMINATING THE CAP FOR
DESIGN AND BUILD PROCUREMENT FOR CERTAIN TRANSPORTATION
PROJECTS; SPECIFYING ALTERNATIVES TO THE DESIGN-BID-BUILD
PROJECT DELIVERY METHOD FOR TRANSPORTATION PROJECTS.

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

SECTION 1. A new section of the Procurement Code, Section
13-1-122.1 NMSA 1978, is enacted to read:

"13-1-122.1. [NEW MATERIAL] SHORT TITLE.--Sections
13-1-122.1 through 13-1-122.4 NMSA 1978 may be cited as the
"Transportation Construction Manager General Contractor Act"."

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1 SECTION 2. A new section of the Procurement Code, Section
2 13-1-122.2 NMSA 1978, is enacted to read:

3 "13-1-122.2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Transportation Construction Manager General Contractor Act:

5 A. "construction manager general contractor" means
6 a person who, pursuant to a contract with the department,
7 provides preconstruction services, construction management and
8 construction services required for a project;

9 B. "construction manager general contractor
10 delivery method" means a project delivery method in which a
11 contract for construction manager general contractor services
12 is procured separately from a contract for project design
13 services and a contract for independent cost estimate services;

14 C. "department" means the department of
15 transportation;

16 D. "guaranteed maximum price" means the maximum
17 amount to be paid by the department for the construction of the
18 project;

19 E. "preconstruction services" means consulting
20 services related to construction management and construction
21 provided during the transportation project design stage;

22 F. "project" means a state public works project for
23 highway construction or reconstruction;

24 G. "project design services" means engineering
25 services, surveying services or landscape architectural

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1 services; and

2 H. "secretary" means the secretary of
3 transportation."

4 SECTION 3. A new section of the Procurement Code, Section
5 13-1-122.3 NMSA 1978, is enacted to read:

6 "13-1-122.3. [NEW MATERIAL] CONSTRUCTION MANAGER GENERAL
7 CONTRACTOR DELIVERY METHOD AUTHORIZED.--

8 A. The secretary may use a construction manager
9 general contractor delivery method on a project if the
10 department makes a written determination that it is appropriate
11 and in the best interest of the department to use this method
12 of project delivery to procure an eligible project. The
13 determination to use the construction manager general
14 contractor delivery method shall be issued only after the
15 department considers the following criteria, at a minimum:

16 (1) the level of design and the extent to
17 which the project requirements have been or can be adequately
18 defined;

19 (2) time constraints for project delivery;

20 (3) project complexity;

21 (4) the suitability of use of the construction
22 manager general contractor delivery method; and

23 (5) the capability of the department to manage
24 the project, including experienced personnel or outside
25 consultants.

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1 B. The secretary shall not make a determination to
2 use a construction manager general contractor delivery method
3 unless the project is posted with such determination on the
4 department's website for at least ninety days.

5 C. The secretary, in consultation with the
6 professional associations and contractors from within the
7 highway design and construction industry, shall promulgate
8 rules for solicitation and award of construction manager
9 general contractor contracts. The rules shall establish
10 criteria for selecting, procuring and contracting a project
11 using the construction manager general contractor delivery
12 method. The rules shall define the scope of the construction
13 manager general contractor contract to require the construction
14 manager general contractor to:

15 (1) provide a range of preconstruction
16 services and participate in project design, cost control,
17 scheduling and value engineering efforts for the project; and

18 (2) if the second phase of the contract is
19 entered into, provide the construction work for the project or
20 work packages associated with the project at a guaranteed
21 maximum price for which the construction manager general
22 contractor is financially responsible."

23 SECTION 4. A new section of the Procurement Code, Section
24 13-1-122.4 NMSA 1978, is enacted to read:

25 "13-1-122.4. [NEW MATERIAL] CONSTRUCTION MANAGER GENERAL
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1 CONTRACTOR--MULTI-PHASED PROCEDURE.--

2 A. The selection procedure shall use a competitive
3 sealed qualifications-based proposal method that conforms with
4 Sections 13-1-111 through 13-1-117 NMSA 1978 and results in a
5 professional services contract. The contract scope of work
6 shall be divided into two separate but related phases:

7 (1) phase one for design consultation and
8 preconstruction services; and

9 (2) phase two for project construction.

10 B. The department shall issue a separate request
11 for proposals for each project that uses a construction manager
12 general contractor delivery method.

13 C. The department's request for proposals for a
14 construction manager general contractor contract shall contain,
15 at a minimum, the following elements:

16 (1) a statement of the minimum qualifications
17 for the construction manager general contractor, including
18 requirements for:

19 (a) a contractor's license for the type
20 of work to be performed, issued pursuant to the Construction
21 Industries Licensing Act;

22 (b) registration pursuant to Section
23 13-4-13.1 NMSA 1978;

24 (c) minimum bond capacity;

25 (d) the ability to self-perform, with

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1 its own organization, a minimum percentage of construction work
2 as required and defined in the department's standard
3 specifications for highway and bridge construction, current
4 edition; and

5 (e) current registration as a
6 prequalified contractor pursuant to rule promulgated by the
7 department;

8 (2) the procedures for submitting proposals,
9 the criteria for evaluation of qualifications and the relative
10 weight of the criteria;

11 (3) the form of contract to be awarded;

12 (4) a listing or description of the types of
13 preconstruction and construction services that will be
14 required;

15 (5) identification of requirements for
16 liability insurance, a proposal bond pursuant to Section
17 13-1-146 NMSA 1978 and performance and payment bonds pursuant
18 to Section 13-4-18 NMSA 1978;

19 (6) a description of the method to be used for
20 pricing or negotiation of construction manager general
21 contractor fees for the scope of services; and

22 (7) preferences as allowed by law in the
23 Procurement Code for New-Mexico-based businesses and others.

24 D. The department shall use a selection committee
25 for the evaluation of the qualifications submitted by offerors

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1 and shall determine the offerors that qualify for award of the
2 construction manager general contractor contract. The
3 department shall establish a construction manager general
4 contractor selection committee by rule. The selection
5 committee shall rank the offerors and provide a recommendation
6 to the department identifying the offeror most qualified based
7 on the highest ranking score.

8 E. Nothing in this section precludes the selection
9 committee from recommending the termination of the selection
10 procedure pursuant to Section 13-1-131 NMSA 1978.

11 F. The department shall promulgate rules for the
12 selection process and award of contract that include interviews
13 with top-ranked offerors, price negotiations and the authority
14 to terminate negotiations.

15 G. The department rules shall address the processes
16 applicable to the award of a contract for construction
17 management and construction services, including the process for
18 conducting contract negotiations with the construction manager
19 general contractor for construction of the project or work
20 packages associated with the project in accordance with
21 contract documents and specifications.

22 H. The department shall secure and use an
23 independent cost estimate for the project or each work package
24 associated with the project to validate the negotiated costs
25 for the construction management and construction services

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1 contract. The independent cost estimate shall remain
2 confidential until notice of award of the construction
3 contract.

4 I. The construction manager general contractor
5 shall submit a guaranteed maximum price proposal for
6 construction management and construction services for the
7 project or work packages associated with the project.

8 J. Negotiations may begin between the department
9 and the construction manager general contractor for the
10 construction services before completion of the design work.
11 Upon successful negotiation, the department shall execute the
12 contract with the construction manager general contractor for
13 construction of the project or work packages associated with
14 the project.

15 K. Negotiations shall be terminated if the
16 department is unable to reach a price agreement with the
17 construction manager general contractor. In the event that
18 negotiations are terminated, the department may competitively
19 bid the construction phase of the project, in accordance with
20 the department's procedures applicable to public works
21 construction projects. The construction manager general
22 contractor may be allowed to bid or provide subcontract
23 services for the project, unless prohibited by Section 10-16-13
24 NMSA 1978.

25 L. Data developed during the design services and
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1 the construction manager general contractor's preconstruction
2 services, unless otherwise protected by law, shall be made
3 available to all bidders.

4 M. After a construction manager general contractor
5 contract is awarded for the preconstruction services, the
6 department shall make the names of each offeror and the ranking
7 and evaluation scores for each available for public
8 inspection."

9 SECTION 5. Section 13-1-102 NMSA 1978 (being Laws 1984,
10 Chapter 65, Section 75, as amended) is amended to read:

11 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
12 procurement shall be achieved by competitive sealed bid
13 pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978,
14 except procurement achieved pursuant to the following sections
15 of the Procurement Code:

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

18 B. Section 13-1-125 NMSA 1978, small purchases;

19 C. Section 13-1-126 NMSA 1978, sole source
20 procurement;

21 D. Section 13-1-127 NMSA 1978, emergency
22 procurements;

23 E. Section 13-1-129 NMSA 1978, existing contracts;

24 F. Section 13-1-130 NMSA 1978, purchases from
25 antipoverty program businesses; [~~and~~]

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1 G. the Educational Facility Construction Manager At
2 Risk Act; and

3 H. the Transportation Construction Manager General
4 Contractor Act."

5 SECTION 6. Section 13-1-119.2 NMSA 1978 (being Laws 2009,
6 Chapter 207, Section 1, as amended) is amended to read:

7 "13-1-119.2. DESIGN AND BUILD PROCUREMENT FOR CERTAIN
8 TRANSPORTATION PROJECTS.--Notwithstanding any prohibition on
9 road and highway construction or reconstruction projects in
10 Section 13-1-119.1 NMSA 1978, the department of transportation
11 may use a design and build project delivery system pursuant to
12 Section 13-1-119.1 NMSA 1978 [~~for projects with a maximum~~
13 ~~allowable construction cost of more than fifty million dollars~~
14 ~~(\$50,000,000)]."~~

15 SECTION 7. A new Section 67-3-8.4 NMSA 1978 is enacted to
16 read:

17 "67-3-8.4. [NEW MATERIAL] DEPARTMENT--POWERS.--

18 A. The secretary may use an alternative to the
19 design-bid-build project delivery method for project
20 procurement to allow the department to use the services of a
21 construction manager general contractor. No more than
22 twenty-five percent of the projects placed on the department's
23 letting schedule in any calendar year may be let pursuant to
24 the design and build project delivery method pursuant to
25 Section 13-1-119.2 NMSA 1978 or the construction manager

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1 general contractor delivery method pursuant to the
2 Transportation Construction Manager General Contractor Act.

3 B. As used in this section, "letting schedule"
4 means the department's construction projects that are posted to
5 give notice to the public prior to receiving bids on any
6 project."

7 SECTION 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2022.

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