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SENATE BILL 69

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; PROVIDING FOR CONTRACT
MANAGEMENT AND ACCOUNTABILITY; REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978.**

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

Section 1. CONTRACT DEVELOPMENT AND MANAGEMENT--

**DEPARTMENT OF FINANCE AND ADMINISTRATION DUTIES. --The
department of finance and administration shall:**

**A. organize the necessary resources and expertise
to assist executive agencies in quality contract development
and management, including providing training courses;**

**B. develop policies and procedures for quality and
performance accountability in contract management;**

**C. actively participate in the development of
major requests for proposals and contract awards of executive**

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1 agencies for competitive procurement over twenty thousand
2 dollars (\$20,000);

3 D. selectively monitor contract procedures and
4 projects in executive agencies;

5 E. prepare guidelines for executive agencies
6 conducting and documenting a meaningful cost-benefit analysis;

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

11 G. prepare guidelines for executive agencies on
12 contract documentation; and

13 H. track contracts of executive agencies and
14 monitor executive agency monitoring and enforcement efforts.

15 Section 2. CONTRACT MANAGEMENT AND ACCOUNTABILITY--
16 DETERMINING NEED. --

17 A. Prior to making the decision to contract for
18 services, a state agency shall assess the need to contract,
19 considering whether the agency has the necessary skills and
20 expertise to deliver the service; whether the agency can
21 provide the service at a competitive price; and whether there
22 are deadline requirements that the agency may not be able to
23 meet. As part of its assessment documentation, the agency
24 shall specify if the contract is needed because it does not
25 have the resources or expertise to perform the work or if the

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1 contract is a means to privatize state services.

2 B. Every decision to contract for services shall
3 be accompanied by a cost-benefit analysis that uses a
4 methodology similar to the federal office of management and
5 budget's cost-benefit evaluation for the performance of
6 commercial activities and that includes an objective
7 evaluation of state and private resources.

8 C. The state agency's administrative services
9 division, general counsel and secretary, or their equivalent
10 personnel in non-cabinet state agencies, shall substantively
11 review the decision to contract, the request for proposal
12 process, final contract negotiations and contract form and
13 legal sufficiency.

14 D. The legislative and judicial branches and state
15 educational institutions may use the guidelines, policies and
16 procedures prepared by the department of finance and
17 administration or may develop their own guidelines, policies
18 and procedures to ensure quality and performance
19 accountability in contract development and management,
20 including monitoring.

21 E. As used in this section and Section 3 of this
22 act, "state agency" means a branch, department, institution,
23 board, bureau, commission, district or committee of the state.

24 Section 3. CONTRACTS--SPECIFICATIONS, TERMS AND
25 CONDITIONS--DOCUMENTATION.--

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1 A. The following elements shall be included in all
2 contracts for services:

3 (1) performance measures that will be used by
4 the state agency to evaluate the services provided to the
5 state agency;

6 (2) an accountability section that requires
7 the contractor to meet the performance measures and that
8 allows the state agency to recover damages for poor
9 performance or to withhold payment until successful completion
10 of all or part of a contract; and

11 (3) monitoring terms that will be included in
12 the state agency's evaluation of the contractor's performance,
13 including progress reports, activity data, site visits,
14 inspections or outcomes.

15 B. The state agency shall use department of
16 finance and administration guidelines or similar guidelines to
17 identify and develop an effective documentation system for
18 contract management, including:

19 (1) documentation to support the contract
20 solicitation and selection process;

21 (2) policies and procedures to ensure that,
22 except for emergency contracts, contractors do not provide
23 services until a fully executed and approved contract is in
24 place;

25 (3) cost-effective methods to track

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contracts; and

(4) filing of contracts and related
documentation.

Section 4. REPEAL. -- Section 13-1-118 NMSA 1978 (being
Laws 1984, Chapter 65, Section 91) is repealed.

Section 5. EFFECTIVE DATE. -- The effective date of the
provisions of this act is July 1, 2001.