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SENATE BILL 479

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO THE PROCUREMENT CODE; PROVIDING A LOWER MINIMUM  
CONSTRUCTION COST FOR DESIGN AND BUILD PROJECTS.

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  
a maximum allowable construction cost of more than [~~ten million~~

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1 ~~dollars (\$10,000,000)]~~ five hundred thousand dollars  
2 (\$500,000). The determination shall be issued only after the  
3 state purchasing agent or a central purchasing office has taken  
4 into consideration the following criteria, which shall be used  
5 as the minimum basis in determining when to use the design and  
6 build process:

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

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

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

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

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

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

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

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

19                   (2) during phase two, the short-listed firms  
20 shall be invited to submit detailed specific technical concepts  
21 or solutions, costs and scheduling. Unsuccessful firms may be  
22 paid a stipend to cover proposal expenses. After evaluation of  
23 these submissions, selection shall be made and the contract  
24 awarded to the highest-ranked firm.

25           D. Except as provided in Subsections F and G of

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1 this section, to ensure fair, uniform, clear and effective  
2 procedures that will strive for the delivery of a quality  
3 project on time and within budget, the secretary, in  
4 conjunction with the appropriate and affected professional  
5 associations and contractors, shall promulgate rules applicable  
6 to all using agencies, which shall be followed by all using  
7 agencies when procuring a design and build project delivery  
8 system.

9 E. A state agency shall make the decision on a  
10 design and build project delivery system for a state public  
11 works project, and a local public body shall make that decision  
12 for a local public works project. A state agency shall not  
13 make the decision on a design and build project delivery system  
14 for a local public works project.

15 F. The requirements of Subsections C and D of this  
16 section and the minimum construction cost requirement of  
17 Subsection A of this section do not apply to a design and build  
18 project delivery system and the services procured for the  
19 project if:

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

23 (2) the only requirement for architects,  
24 engineers, landscape architects or surveyors is limited to  
25 either site improvements or adaption for a pre-engineered

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1 building or system.

2 G. The procurement of a design and build project  
3 delivery system qualifying for exemptions pursuant to  
4 Subsection F of this section, including the services of any  
5 architect, engineer, landscape architect, construction manager  
6 or surveyor needed for the project, shall be accomplished by  
7 competitive sealed bids pursuant to Sections 13-1-102 through  
8 13-1-110 NMSA 1978."

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