

1 SENATE BILL 725

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 H. Diane Snyder

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10 AN ACT

11 RELATING TO PROCUREMENT; LOWERING THE MINIMUM CONSTRUCTION COST
12 FOR DESIGN AND BUILD PROJECTS; REQUIRING PAYMENT OF A
13 RECOMPENSE TO SHORT-LISTED FIRMS AND THE HIGHEST-RANKED FIRM TO
14 COVER PROPOSAL EXPENSES.

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

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

19 "13-1-119.1. PUBLIC WORKS PROJECT DELIVERY SYSTEM--DESIGN
20 AND BUILD PROJECTS AUTHORIZED.--

21 A. Except for road and highway construction or
22 reconstruction projects, a design and build project delivery
23 system may be authorized when the state purchasing agent or a
24 central purchasing office makes a determination in writing that
25 it is appropriate and in the best interest of the state or

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

- 9 (1) the extent to which the project
10 requirements have been or can be adequately defined;
- 11 (2) time constraints for delivery of the
12 project;
- 13 (3) the capability and experience of potential
14 teams with the design and build process;
- 15 (4) the suitability of the project for use of
16 the design and build process as concerns time, schedule, costs
17 and quality; and
- 18 (5) the capability of the using agency to
19 manage the project, including experienced personnel or outside
20 consultants, and to oversee the project with persons who are
21 familiar with the design and build process.

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

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1 Mexico registered engineer or architect and a contractor
2 properly licensed in New Mexico for the type of work required.

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

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

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

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1 firms ~~[may]~~ on the short list and the highest-ranked firm shall
2 be paid a ~~[stipend]~~ recompense to cover actual proposal
3 expenses in an amount not to exceed one percent of the total
4 project cost. Payment shall not entitle an agency to ownership
5 of the documents or the ideas represented in the documents.

6 After evaluation of these submissions, selection shall be made
7 and the contract awarded to the highest-ranked firm and payment
8 made to the short-listed firms.

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

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

24 F. The requirements of Subsections C and D of this
25 section and the minimum construction cost requirement of

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1 Subsection A of this section do not apply to a design and build
2 project delivery system and the services procured for the
3 project if:

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

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

11 G. The procurement of a design and build project
12 delivery system qualifying for exemptions pursuant to
13 Subsection F of this section, including the services of any
14 architect, engineer, landscape architect, construction manager
15 or surveyor needed for the project, shall be accomplished by
16 competitive sealed bids pursuant to Sections 13-1-102 through
17 13-1-110 NMSA 1978."