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SENATE BILL 769

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO GOVERNMENT CONTRACTING; ENACTING THE CONTRACT
MANAGEMENT ACT; PROVIDING FOR CONTRACT MANAGEMENT AND
ACCOUNTABILITY; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Contract Management Act".

Section 2. DEFINITIONS.--As used in the Contract
Management Act:

A. "agency" means a department, institution, board,
bureau, commission, district or committee of the state that
enters into or proposes to enter into a contract;

B. "contract" means an agreement for the
procurement of professional and consulting services, including
contract management and information technology;

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1 C. "department" means the department of finance and
2 administration; and

3 D. "performance contract" means a contract that
4 focuses on the outputs, quality and outcomes of service
5 provision and that ties at least a portion of the contractor's
6 payment to the achievement of those goals.

7 Section 3. DETERMINATION OF CONTRACT NEED.--

8 A. Prior to making the decision to contract, an
9 agency shall evaluate the need for the contract using an
10 evaluation methodology that is similar to the federal office of
11 management and budget's evaluation for the performance of
12 commercial activities. The agency shall include an objective
13 evaluation of state resources. The evaluation methodology
14 shall consider whether:

15 (1) the agency has the necessary skills and
16 expertise to provide the service;

17 (2) the service would duplicate similar
18 services already being provided by the agency in the same
19 geographic area; and

20 (3) there are deadline requirements that the
21 agency may not be able to meet.

22 B. The agency's administrative services division,
23 general counsel and secretary, or their equivalent personnel in
24 noncabinet agencies, shall substantively review the decision to
25 contract, request for proposal process, final contract

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1 negotiations and contract form and legal sufficiency.

2 C. Before entering into a contract, an agency shall
3 certify to the department that the agency has complied with the
4 provisions of Subsections A and B of this section. The
5 evaluation shall remain on file with the contracting agency.

6 Section 4. CONTRACT MANAGEMENT AND IMPLEMENTATION.--

7 A. An agency shall not enter into a contract in
8 which the maximum amount payable under the contract is equal to
9 or greater than one million dollars (\$1,000,000) unless the
10 agency has developed specific guidelines for the administration
11 and implementation of that contract.

12 B. For contracts in which the maximum amount
13 payable is less than one million dollars (\$1,000,000), an
14 agency shall use department guidelines or similar guidelines to
15 identify and develop an effective system for the management of
16 the contracts. The guidelines shall include:

17 (1) documentation to support the contract
18 solicitation and selection process;

19 (2) policies and procedures to ensure that
20 contractors do not provide services until a fully executed and
21 approved contract is in place;

22 (3) cost-effective methods to track contracts
23 and contracts deliverable in accordance with the scope of work
24 of the contract; and

25 (4) filing of contracts and related

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1 documentation.

2 C. All contracts in which the maximum amount
3 payable is equal to or greater than one million dollars
4 (\$1,000,000), including any amendments, shall be reviewed for
5 approval by the office of the attorney general, except that
6 public post-secondary educational institutions are exempt from
7 this subsection.

8 D. If review is required by rule of the department
9 or the general services department pursuant to Section 13-1-118
10 NMSA 1978, the agency shall submit the contract for review no
11 less than thirty days prior to the effective date.

12 Section 5. PERFORMANCE CONTRACTING REQUIRED--
13 SPECIFICATIONS--TERMS AND CONDITIONS.--

14 A. Unless exempted pursuant to the provisions of
15 the Contract Management Act, a contract entered into by an
16 agency shall be a performance contract if the maximum amount
17 payable under the contract is three hundred thousand dollars
18 (\$300,000) or more.

19 B. The following elements shall be included in a
20 performance contract:

21 (1) performance measures developed by the
22 agency specifically for that contract. The measures shall be
23 used by the agency to evaluate the services provided to the
24 agency and the outcomes resulting from those services;

25 (2) an accountability section that requires

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1 the contractor to report regularly on how performance levels
2 are meeting the performance measures and that allows the agency
3 to withhold payment until successful completion of all or part
4 of a contract; and

5 (3) monitoring requirements that outline the
6 agency's evaluation of the contractor's performance, including
7 progress reports, activity data, site visits, inspections or
8 outcomes.

9 C. All contracts in which the maximum amount
10 payable is equal to or greater than three hundred thousand
11 dollars (\$300,000), including any amendments, shall be reviewed
12 for approval by the state budget division of the department for
13 the availability of funds and any applicable performance
14 measures.

15 Section 6. DEPARTMENT--ADDITIONAL DUTIES.--The department
16 shall:

17 A. assist agencies in performance contract
18 development and management, including providing training
19 courses;

20 B. develop policies and procedures for performance
21 accountability in contract management;

22 C. use principles similar to those developed by the
23 federal office of management and budget to prepare guidelines
24 for agencies to conduct and document a meaningful contract
25 evaluation and to provide for different types of evaluations

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1 depending on the types and amounts of the contracts;

2 D. prepare guidelines for agencies on performance
3 contract specifications, time frames for completion of the
4 study, terms and conditions that include performance measures,
5 accountability clauses, monitoring provisions and auditing; and

6 E. selectively monitor contract procedures and
7 projects in agencies.

8 Section 7. APPLICABILITY.--

9 A. Except as provided in this section and pursuant
10 to the schedule developed by the department, the Contract
11 Management Act applies to any contract entered into by an
12 agency; provided that the provisions do not apply to a
13 contract:

14 (1) for litigation expenses in connection with
15 proceedings before administrative agencies or state or federal
16 courts, including experts, mediators, court reporters, process
17 servers and witness fees, but not including attorney contracts;

18 (2) for hospital and health-care-related
19 services exempt from the provisions of the Procurement Code
20 pursuant to Section 13-1-98.1 NMSA 1978;

21 (3) in response to an emergency procurement
22 under Section 13-1-127 NMSA 1978; or

23 (4) exempted by rule of the department or
24 order of the secretary of finance and administration, but only
25 to the extent specified in the rule or order.

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1 B. The department shall develop an agency schedule
2 so that all agencies, including the legislative and judicial
3 branches of government and institutions of higher education,
4 are implementing the provisions of the Contract Management Act
5 by the end of fiscal year 2009.

6 C. The Contract Management Act applies to contracts
7 entered into by agencies of the legislative branch of state
8 government, the judicial branch of state government and public
9 post-secondary educational institutions, but such agencies and
10 institutions:

11 (1) may develop their own policies, procedures
12 and guidelines similar to those required of the department
13 pursuant to Section 6 of the Contract Management Act;

14 (2) may provide for exemptions similar to
15 those allowed pursuant to Subsection A of this section; and

16 (3) are not required to report or make
17 submissions to the department.

18 D. No provision of the Contract Management Act
19 shall be applied to any situation, decision, proposed contract
20 or contract if the application of that provision to the
21 situation, decision, proposed contract or contract would
22 directly or indirectly impair a legally protected right.

23 Section 8. WARRANTIES.--When applicable, contracts shall
24 include a warranty provision whereby contractors expressly
25 warrant deliverables as correct and compliant with the terms of

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1 the contract. A warranty shall encompass correction of
2 defective deliverables for a period of two years from the final
3 acceptance of deliverables.

4 Section 9. RIGHT TO RETAIN.--When applicable, contracts
5 shall include a provision to retain at least twenty percent of
6 the value of deliverables as security for full performance
7 under the terms of the contract. All amounts retained shall be
8 released under the contract thirty days after the final
9 acceptance of deliverables.

10 Section 10. APPROPRIATION.--Two hundred fifty thousand
11 dollars (\$250,000) is appropriated from the general fund to the
12 department of finance and administration for expenditure in
13 fiscal year 2008 for three full-time employees to implement the
14 provisions of the Contract Management Act. Any unexpended or
15 unencumbered balance remaining at the end of fiscal year 2008
16 shall revert to the general fund.

17 Section 11. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2007.