

AN ACT

RELATING TO PROCUREMENT; AMENDING THE PROCUREMENT CODE TO PROVIDE FOR CONSTRUCTION MANAGER AT RISK CONTRACTS IN THE CONSTRUCTION OF EDUCATIONAL FACILITIES; ENACTING THE EDUCATIONAL FACILITY CONSTRUCTION MANAGER AT RISK ACT; PROVIDING PROCEDURES FOR SELECTING A CONSTRUCTION MANAGER AT RISK; DECLARING AN EMERGENCY.

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

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

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

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

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

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

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

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

F. Section 13-1-130 NMSA 1978, purchases from

antipoverty program businesses; and

G. the Educational Facility Construction Manager At Risk Act."

Section 2. Section 13-1-111 NMSA 1978 (being Laws 1984, Chapter 65, Section 84, as amended) is amended to read:

"13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR USE.--

A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.

B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.

C. Competitive sealed proposals may also be used for construction manager at risk contracts if a three-step selection procedure is used pursuant to the Educational Facility Construction Manager At Risk Act.

D. Competitive qualifications-based proposals

shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

E. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act."

Section 3. A new section of the Procurement Code, Section 13-1-124.1 NMSA 1978, is enacted to read:

"13-1-124.1. SHORT TITLE.--Sections 13-1-124.1 through 13-1-124.5 NMSA 1978 may be cited as the "Educational Facility Construction Manager At Risk Act"."

Section 4. A new section of the Procurement Code, Section 13-1-124.2 NMSA 1978, is enacted to read:

"13-1-124.2. APPLICABILITY.--The provisions of the Educational Facility Construction Manager At Risk Act apply to contracts for the construction of educational facilities if the governing body chooses, pursuant to the provisions of that act, to use the services of a construction manager at risk."

Section 5. A new section of the Procurement Code, Section 13-1-124.3 NMSA 1978, is enacted to read:

"13-1-124.3. DEFINITIONS.--As used in the Educational

Facility Construction Manager At Risk Act:

A. "construction manager at risk" means a person who, pursuant to a contract with a governing body, provides the preconstruction services and construction management required in a construction manager at risk delivery method;

B. "construction manager at risk delivery method" means a construction method for an educational facility wherein a construction manager at risk provides a range of preconstruction services and construction management, including cost estimation and consultation regarding the design of the building project, preparation and coordination of bid packages, scheduling, cost control, value engineering and, while acting as the general contractor during construction, detailing the trade contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating trade contractors and subcontractors and providing management and construction services, all at a guaranteed maximum price for which the construction manager at risk is financially responsible;

C. "educational facility" means a public school, including a locally chartered or state-chartered charter school or a facility of a state educational institution listed in Section 6-17-1.1 NMSA 1978;

D. "governing body" means:

- (1) the public school facilities authority

if the authority is the using agency that requires the construction of an educational facility;

(2) a local school board if the board is the using agency that requires the construction of an educational facility;

(3) the governing body of a charter school if the governing body is the using agency that requires the construction of an educational facility; or

(4) the governing body of a state educational institution if the governing body is the using agency that requires the construction of an educational facility; and

E. "guaranteed maximum price" means the maximum amount to be paid by the governing body for the construction of the educational facility, including the cost of the work, the general conditions and the fees charged by the construction manager at risk."

Section 6. A new section of the Procurement Code, Section 13-1-124.4 NMSA 1978, is enacted to read:

"13-1-124.4. CONSTRUCTION MANAGER AT RISK DELIVERY METHOD AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

A. A construction manager at risk delivery method may be used when a governing body determines that it is in its interest to use that method on a specific educational facility construction project, provided that the construction manager

at risk shall be selected pursuant to the provisions of this section.

B. The governing body shall form a selection committee of at least three members with at least one member being an architect or engineer. The selection committee shall develop an evaluation process, including a multiphase procedure consisting of two or three steps. A two-step procedure may be used when the total amount of money available for the project is less than five hundred thousand dollars (\$500,000) and shall include a request for qualifications and an interview. A three-step procedure shall consist of a request for qualifications, a request for proposals and an interview.

C. A request for qualifications shall be published in accordance with Section 13-1-104 NMSA 1978 and shall include at a minimum the following:

(1) a statement of the minimum qualifications for the construction manager at risk, including the requirements for:

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

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

(c) a minimum bond capacity;

(2) a statement of the scope of work to be performed, including:

(a) the location of the project and the total amount of money available for the project;

(b) a proposed schedule, including a deadline for submission of the statements of qualification;

(c) specific project requirements and deliverables;

(d) the composition of the selection committee;

(e) a description of the process the selection committee shall use to evaluate qualifications;

(f) a proposed contract; and

(g) a detailed statement of the relationships and obligations of all parties, including the construction manager at risk, agents of the governing body, such as an architect or engineer, and the governing body;

(3) a verification of the maximum allowable construction cost; and

(4) a request for a proposal bond as required by Section 13-1-146 NMSA 1978.

D. The selection committee shall evaluate the statements of qualifications submitted and determine the offerors that qualify for the construction manager at risk.

If the selection committee has chosen a three-step procedure,

the committee shall issue a request for proposals to the offerors that qualify.

E. If the selection committee has chosen a two-step procedure, the committee shall rank the persons that qualify based upon the statements of qualification and interview up to three of the highest-ranked offerors.

F. In a three-step procedure, the selection committee shall issue a request for proposals and evaluate the proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA 1978 except that:

(1) the request for proposals shall be sent only to those determined to be qualified pursuant to Subsection D of this section;

(2) the selection committee shall evaluate the proposals and conduct interviews with up to three of the highest-ranked offerors instead of negotiating with responsible offerors found to be reasonably likely to be selected; and

(3) pursuant to Subsection G of this section, the contract award may be made after the interviews.

G. After conducting interviews with the highest-ranked offerors and after considering the factors listed in Subsection H of this section, the selection committee shall recommend to the governing body the offeror that will be most advantageous to the governing body. Should the governing body

or designee be unable to negotiate a satisfactory contract with the offeror considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that offeror shall be formally terminated. The governing body or designee shall then undertake negotiations with the second most qualified offeror. Failing accord with the second most qualified offeror, the governing body or designee shall formally terminate negotiations with the offeror. The governing body or designee shall then undertake negotiations with the third most qualified offeror. Should the governing body or designee be unable to negotiate a contract with any of the offerors selected by the committee, additional offerors shall be ranked in order of their qualifications and the governing body or designee shall continue negotiations in accordance with this section until a contract is signed with a qualified offeror or the procurement process is terminated and a new request for proposals is initiated.

H. In evaluating and ranking statements of qualifications, proposals and results of interviews, and in the final recommendation of a construction manager at risk, the selection committee shall consider:

(1) the offeror's experience with construction of similar types of projects;

(2) the qualifications and experience of the offeror's personnel and consultants and the role of each in

the project;

(3) the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;

(4) the offeror's experience with the construction manager at risk method; and

(5) all other selection criteria, as stated in the request for qualifications and the request for proposals.

I. Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to Section 13-1-131 NMSA 1978 and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is terminated shall not be disclosed so as to be available to competing offerors.

J. After a contract is awarded, the selection committee shall make the names of all offerors and the names of all offerors selected for interview available for public inspection along with the selection committee's final ranking and evaluation scores. Offerors who were interviewed but not selected for contract award shall be notified in writing within fifteen days of the award."

Section 7. A new section of the Procurement Code, Section 13-1-124.5 NMSA 1978, is enacted to read:

"13-1-124.5. RESPONSIBILITIES OF CONSTRUCTION MANAGER
AT RISK FOLLOWING AWARD OF PROJECT.--

A. The contract with the construction manager at risk shall specify:

- (1) the guaranteed maximum price; and
- (2) the percentage of the guaranteed price that the construction manager at risk will perform with its own work force.

B. The construction manager at risk, in cooperation with the governing body, shall seek to develop subcontractor interest in the project and shall furnish to the governing body and any architect or engineer representing the governing body a list of subcontractors who state in writing that they are a responsible bidder or a responsible offeror, including suppliers who are to furnish materials or equipment fabricated to a special design and from whom proposals or bids will be requested for each principal portion of the project. The governing body and its architect or engineer shall promptly reply in writing to the construction manager at risk if the governing body, architect or engineer knows of any objection to a listed subcontractor or supplier, provided that the receipt of the list shall not require the governing body, architect or engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the governing body, architect or engineer later to

object to or reject any proposed subcontractor or supplier.

C. The construction manager at risk shall:

- (1) conduct pre-bid or pre-proposal meetings;
- (2) advise the governing body about bidding or proposals;
- (3) enter into contracts; and
- (4) assist the governing body in evaluating submissions by responsible bidders and offerors."

Section 8. A new section of Chapter 13, Article 4 NMSA 1978 is enacted to read:

"DEFINITIONS--CONSTRUCTION CONTRACT--CONTRACTOR.--As used in Chapter 13, Article 4 NMSA 1978:

A. "contract" or "construction contract" includes a construction manager at risk contract entered into pursuant to the Educational Facility Construction Manager At Risk Act; and

B. "contractor" includes a construction manager at risk selected pursuant to the Educational Facility Construction Manager At Risk Act."

Section 9. Section 13-1-146 NMSA 1978 (being Laws 1984, Chapter 65, Section 119) is amended to read:

"13-1-146. REQUIREMENT FOR BID SECURITY.--Bid security shall be required of bidders or offerors for construction contracts when the price is estimated by the procurement

officer to exceed twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the state agency or a local public body."

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
