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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Benny Shendo

AN ACT

RELATING TO PROCUREMENT; ENACTING THE CONSTRUCTION MANAGER
GENERAL CONTRACTOR ACT TO PROVIDE AN ALTERNATIVE PROJECT
DELIVERY METHOD FOR CERTAIN DEPARTMENT OF TRANSPORTATION
PROJECTS.

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

SECTION 1. A new section of the Procurement Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this
act may be cited as the "Construction Manager General
Contractor Act"."

SECTION 2. A new section of the Procurement Code is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Construction
Manager General Contractor Act:

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1 A. "construction manager general contractor" means
2 a person who, pursuant to a contract with the department,
3 provides preconstruction services, construction management and
4 construction services required for a project;

5 B. "construction manager general contractor
6 delivery method" means a project delivery method in which a
7 contract for construction manager general contractor services
8 is procured separately from a contract for project design
9 services and a contract for independent cost estimate services;

10 C. "department" means the department of
11 transportation;

12 D. "guaranteed maximum price" means the maximum
13 amount to be paid by the department for the construction of the
14 project;

15 E. "preconstruction services" means consulting
16 services related to construction management and construction
17 provided during the transportation project design stage;

18 F. "project" means a state public works project for
19 highway construction or reconstruction;

20 G. "project design services" means engineering
21 services, surveying services or landscape architectural
22 services; and

23 H. "secretary" means the secretary of
24 transportation."

25 **SECTION 3.** A new section of the Procurement Code is
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1 enacted to read:

2 "[NEW MATERIAL] DEPARTMENT--POWERS.--The secretary may use
3 an alternative to the preferred design-bid-build project
4 delivery method for project procurement to allow the department
5 to use the services of a construction manager general
6 contractor."

7 SECTION 4. A new section of the Procurement Code is
8 enacted to read:

9 "[NEW MATERIAL] CONSTRUCTION MANAGER GENERAL CONTRACTOR
10 DELIVERY METHOD AUTHORIZED.--

11 A. The secretary may use a construction manager
12 general contractor delivery method on a project if the
13 department makes a written determination that it is appropriate
14 and in the best interest of the department to use this method
15 of project delivery to procure an eligible project. The
16 determination to use the construction manager general
17 contractor delivery method shall be issued only after the
18 department considers the following criteria, at a minimum:

- 19 (1) the level of design and the extent to
20 which the project requirements have been or can be adequately
21 defined;
- 22 (2) time constraints for project delivery;
- 23 (3) project complexity;
- 24 (4) the suitability of use of the construction
25 manager general contractor delivery method; and

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1 (5) the capability of the department to manage
2 the project, including experienced personnel or outside
3 consultants.

4 B. The secretary, in consultation with the
5 professional associations and contractors from within the
6 highway design and construction industry, shall promulgate
7 rules for solicitation and award of construction manager
8 general contractor contracts. The rules shall establish
9 criteria for selecting, procuring and contracting a project
10 using the construction manager general contractor delivery
11 method. The rules shall define the scope of the construction
12 manager general contractor contract to require the construction
13 manager general contractor to:

14 (1) provide a range of preconstruction
15 services and participate in project design, cost control,
16 scheduling and value engineering efforts for the project; and

17 (2) if the second phase of the contract is
18 entered into, provide the construction work for the project or
19 work packages associated with the project at a guaranteed
20 maximum price for which the construction manager general
21 contractor is financially responsible."

22 SECTION 5. A new section of the Procurement Code is
23 enacted to read:

24 "[NEW MATERIAL] CONSTRUCTION MANAGER GENERAL CONTRACTOR--
25 MULTI-PHASED PROCEDURE.--

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1 A. The selection procedure shall use a competitive,
2 sealed qualifications-based proposal method that conforms with
3 Sections 13-1-111 through 13-1-117 NMSA 1978 and results in a
4 professional services contract. The contract scope of work
5 shall be divided into two separate but related phases:

6 (1) phase one for design consultation and
7 preconstruction services; and

8 (2) phase two for project construction.

9 B. The department shall issue a separate request
10 for proposals for each project that uses a construction manager
11 general contractor delivery method.

12 C. The department's request for proposals for a
13 construction manager general contractor contract shall contain,
14 at a minimum, the following elements:

15 (1) a statement of the minimum qualifications
16 for the construction manager general contractor, including
17 requirements for:

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

21 (b) registration pursuant to Section
22 13-4-13.1 NMSA 1978;

23 (c) minimum bond capacity;

24 (d) the ability to self-perform, with
25 its own organization, a minimum percentage of construction work

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1 as required and defined in the department's standard
2 specifications for highway and bridge construction, current
3 edition; and

4 (e) current registration as a
5 prequalified contractor pursuant to rule promulgated by the
6 department;

7 (2) the procedures for submitting proposals,
8 the criteria for evaluation of qualifications and the relative
9 weight of the criteria;

10 (3) the form of contract to be awarded;

11 (4) a listing or description of the types of
12 preconstruction and construction services that will be
13 required;

14 (5) identification of requirements for
15 liability insurance, a proposal bond pursuant to Section
16 13-1-146 NMSA 1978 and performance and payment bonds pursuant
17 to Section 13-4-18 NMSA 1978;

18 (6) a description of the method to be used for
19 pricing or negotiation of construction manager general
20 contractor fees for the scope of services; and

21 (7) any other information the department deems
22 necessary for the solicitation.

23 D. The department shall use a selection committee
24 for the evaluation of the qualifications submitted by offerors
25 and shall determine the offerors that qualify for award of the

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1 construction manager general contractor contract. The
2 department shall establish a construction manager general
3 contractor selection committee by rule. The selection
4 committee shall rank the offerors and provide a recommendation
5 to the department identifying the offeror most qualified based
6 on the highest ranking score.

7 E. Nothing in this section precludes the selection
8 committee from recommending the termination of the selection
9 procedure pursuant to Section 13-1-131 NMSA 1978.

10 F. The department shall promulgate rules for the
11 selection process and award of contract that include interviews
12 with top-ranked offerors, price negotiations and the authority
13 to terminate negotiations.

14 G. The department rules and each request for
15 proposals for a construction manager general contractor
16 contract solicitation shall address confidentiality of records,
17 obligations to identify trade secrets and proprietary
18 information and any exclusion from the provisions of the
19 Inspection of Public Records Act that may apply during the term
20 of the construction manager general contractor contract.

21 H. The department rules shall address the processes
22 applicable to the award of a contract for construction
23 management and construction services, including the process for
24 conducting contract negotiations with the construction manager
25 general contractor for construction of the project or work

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1 packages associated with the project in accordance with
2 contract documents and specifications.

3 I. The department shall secure and use an
4 independent cost estimate for the project or each work package
5 associated with the project to validate the negotiated costs
6 for the construction management and construction services
7 contract. The independent cost estimate shall remain
8 confidential until notice of award of the construction
9 contract.

10 J. The construction manager general contractor
11 shall submit a guaranteed maximum price proposal for
12 construction management and construction services for the
13 project or work packages associated with the project.

14 K. Negotiations may begin between the department
15 and the construction manager general contractor for the
16 construction services before completion of the design work.
17 Upon successful negotiation, the department shall execute the
18 contract with the construction manager general contractor for
19 construction of the project or work packages associated with
20 the project.

21 L. Negotiations shall be terminated if the
22 department is unable to reach a price agreement with the
23 construction manager general contractor. In the event that
24 negotiations are terminated, the department may competitively
25 bid the construction phase of the project, in accordance with

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1 the department's procedures applicable to public works
2 construction projects. The construction manager general
3 contractor may be allowed to bid or provide subcontract
4 services for the project, unless prohibited by Section 10-16-13
5 NMSA 1978.

6 M. Data developed during the design services and
7 the construction manager general contractor's preconstruction
8 services, unless otherwise protected by law, shall be made
9 available to all bidders.

10 N. After a construction manager general contractor
11 contract is awarded for the preconstruction services, the
12 department shall make the names of each offeror and the ranking
13 and evaluation scores for each available for public
14 inspection."

15 SECTION 6. Section 13-1-102 NMSA 1978 (being Laws 1984,
16 Chapter 65, Section 75, as amended) is amended to read:

17 "13-1-102. COMPETITIVE SEALED BIDS REQUIRED.--All
18 procurement shall be achieved by competitive sealed bid
19 pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978,
20 except procurement achieved pursuant to the following sections
21 of the Procurement Code:

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

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

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

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- 1 procurement;
- 2 D. Section 13-1-127 NMSA 1978, emergency
- 3 procurements;
- 4 E. Section 13-1-129 NMSA 1978, existing contracts;
- 5 F. Section 13-1-130 NMSA 1978, purchases from
- 6 antipoverty program businesses; ~~[and]~~
- 7 G. the Educational Facility Construction Manager At
- 8 Risk Act; and
- 9 H. the Construction Manager General Contractor
- 10 Act."

11 SECTION 7. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2022.