

HOUSE TRANSPORTATION, PUBLIC WORKS AND CAPITAL IMPROVEMENTS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 190

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO PROCUREMENT; AMENDING AND ENACTING SECTIONS OF THE
PROCUREMENT CODE; ALLOWING PUBLIC PARTNERS TO CONTRACT WITH
PRIVATE PARTNERS FOR THE PERFORMANCE OF PUBLIC PROJECTS;
REQUIRING THE BOARD OF FINANCE DIVISION OF THE DEPARTMENT OF
FINANCE AND ADMINISTRATION TO PROMULGATE RULES FOR, REVIEW AND
APPROVE PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS.

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] PUBLIC-PRIVATE PARTNERSHIP--DEFINITIONS.--
As used in Sections 1 through 5 of this 2024 act:

A. "concession" means a lease, license, franchise,
easement or other binding agreement transferring rights for the
use or control, in whole or in part, of a public project by a

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1 public partner for a definite term during which a private
2 partner provides services in return for the right to receive
3 all or a portion of the revenue of a public project;

4 B. "develop" means to plan, design, create,
5 finance, lease, acquire, install, construct or expand a public
6 project;

7 C. "division" means the board of finance division
8 of the department of finance and administration;

9 D. "operate" means to finance, maintain, improve,
10 equip, modify, repair or manage a public project;

11 E. "private partner" means one or multiple
12 individuals, foreign or domestic corporations, general
13 partnerships, limited liability companies, limited
14 partnerships, joint ventures, business trusts, public benefit
15 corporations, nonprofit entities or other private business
16 entities or combinations thereof;

17 F. "proposal" means a plan for a public project
18 submitted by a private partner with detail beyond a conceptual
19 level containing defined terms determined to be necessary by
20 the public partner, including costs, payment schedules,
21 financing, deliverables and project schedules;

22 G. "public partner" means a state agency or local
23 public body;

24 H. "public-private partnership" means an
25 arrangement between one or more public partners and one or more

1 private partners for the development of a public project;

2 I. "public-private partnership agreement" means a
3 contract between one or more public partners and one or more
4 private partners in connection with the development of a public
5 project;

6 J. "public project" means:

7 (1) the construction of a public
8 transportation facility or the construction of public
9 transportation infrastructure other than a toll road;

10 (2) public construction of broadband
11 telecommunications network facilities; or

12 (3) public construction of electric vehicle
13 charging facilities;

14 K. "revenue" means revenue, income, earnings, user
15 fees, lease payments or other service payments that support the
16 development of a public project, including money received as a
17 grant or otherwise from the federal government or a public
18 partner; and

19 L. "user fees" means rates, fees or other charges
20 imposed by the public partner or the private partner for use of
21 all or part of a public project."

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

24 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--REQUEST FOR
25 PROPOSALS.--

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1 A. A public partner shall request proposals to
2 enter into a public-private partnership agreement using a
3 competitive procurement process for competitive sealed
4 proposals or for competitive sealed qualifications-based
5 proposals and subsequent negotiation. A request for proposals
6 to enter into a public-private partnership agreement shall
7 include, at a minimum:

8 (1) the proposed parameters of the proposed
9 public-private partnership agreement;

10 (2) proposed duties and responsibilities to be
11 performed by the private partner;

12 (3) proposed duties and responsibilities that
13 are to be performed by the public partner acting as the
14 contracting body and those proposed to be performed by any
15 other partners to the contract;

16 (4) proposed plans for financing and operating
17 the public project and the estimated cost for the public
18 project;

19 (5) requirements for documentation of the
20 experience, capabilities, capitalization and financial
21 condition and other relevant qualifications of the private
22 partner;

23 (6) requirements for the determination of the
24 ability of a private partner to respond to the needs presented
25 in the request for proposals and the economic development

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1 opportunities represented by the public project; and

2 (7) any other information required by the
3 public partner acting as the contracting body or the division
4 to evaluate the proposals submitted by respondents and the
5 overall proposed public-private partnership.

6 B. The public partner shall publish public notice
7 of the request for proposals as provided for competitive sealed
8 proposals and competitive sealed qualifications-based proposals
9 pursuant to the Procurement Code."

10 SECTION 3. A new section of the Procurement Code is
11 enacted to read:

12 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIPS--UNSOLICITED
13 PROPOSALS.--

14 A. A prospective private partner may submit an
15 unsolicited proposal to a public partner or to the division. A
16 public partner that receives an unsolicited proposal shall
17 notify the division. Within ninety days of receiving an
18 unsolicited proposal, the public partner may elect to consider
19 further action on the proposal, at which point the public
20 partner shall provide public notice of the proposal.
21 Discussion of the project shall not be deemed a solicitation of
22 the project or its concepts after public notice is given. The
23 public notice shall:

24 (1) provide information regarding the proposed
25 nature, timing and scope of the unsolicited proposal, except

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1 that trade secrets, financial records or other records of the
2 prospective private partner making the proposal shall not be
3 posted unless otherwise agreed to by the public partner and the
4 prospective private partner; and

5 (2) provide for a notice period on the home
6 page of the public partner's website clearly identifying the
7 proposal as being unsolicited and requesting comments from the
8 public or other potential offerors for the submission of
9 competing proposals as follows:

10 (a) unsolicited proposals valued below
11 five million dollars (\$5,000,000) shall be posted for thirty
12 days;

13 (b) unsolicited proposals valued at or
14 between five million dollars (\$5,000,000) and twenty-five
15 million dollars (\$25,000,000) shall be posted for sixty days;
16 and

17 (c) unsolicited proposals valued over
18 twenty-five million dollars (\$25,000,000) shall be posted for
19 ninety days.

20 B. Upon the end of the proper notice period
21 provided in this section, the public partner may consider the
22 unsolicited proposal and any competing proposals received. If
23 the public partner determines it is in the best interest of the
24 public partner to implement some or all of the concepts
25 contained within the unsolicited proposal or competing

1 proposals received by it, the public partner may begin an open,
 2 competitive procurement process using a request for competitive
 3 sealed proposals or request for competitive sealed
 4 qualifications-based proposals. Notwithstanding any other
 5 provision of law, a prospective private partner that submits an
 6 unsolicited proposal pursuant to this section may submit a
 7 proposal in response to a request for proposals during the
 8 open, competitive procurement process.

9 C. An unsolicited proposal shall be deemed rejected
 10 if no written response is received from the public partner
 11 within ninety days of submission, during which time the public
 12 partner has not taken any action on the proposal."

13 SECTION 4. A new section of the Procurement Code is
 14 enacted to read:

15 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--DIVISION--
 16 RULES.--The division shall:

17 A. promulgate rules for public-private partnership
 18 agreements, including:

19 (1) when public-private partnership agreements
 20 may be used;

21 (2) the contents of a public-private
 22 partnership agreement; provided that:

23 (a) the agreement shall be in writing;

24 (b) the private partner shall employ
 25 public employees when possible for the private partner's

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1 performance of the agreement; and

2 (c) a fixed total price paid by the
3 public partner in exchange for full performance of the public
4 project by the private partner shall be specified;

5 (3) minimum requirements; and

6 (4) standards to limit liability of the issuer
7 of the request for proposals;

8 B. receive and review requests for proposals for
9 public-private partnerships; and

10 C. receive, review and approve public-private
11 partnership agreements prior to performance of the agreement."

12 SECTION 5. A new section of the Procurement Code is
13 enacted to read:

14 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--DIVISION--
15 RULES--EVALUATION--PERFORMANCE.--

16 A. A public partner and private partner may enter
17 into a public-private partnership agreement, subject to
18 approval by the division and rules promulgated by the division
19 pursuant to Paragraph (2) of Subsection A of Section 4 of this
20 2024 act. The public partner and the private partner may use
21 any project delivery method or combination of methods to
22 develop or operate a public project in devising the public-
23 private partnership agreement, including:

24 (1) a design and build agreement;

25 (2) a design, build and maintain agreement;

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1 (3) a design, build, finance and operate
2 agreement;

3 (4) a design, build, operate and maintain
4 agreement;

5 (5) a design, build, finance, operate and
6 maintain agreement; and

7 (6) concessions providing for the private
8 partner to design, build, operate, maintain, manage or lease a
9 public project.

10 B. The contracting public partner shall provide
11 continuous oversight, as determined to be necessary by the
12 division, of any function that is performed by a private
13 partner pursuant to the public-private partnership agreement.

14 C. The performance of a public project pursuant to
15 a public-private partnership agreement is a public work for the
16 purposes of the Public Works Minimum Wage Act, the
17 Subcontractors Fair Practices Act and the Public Works
18 Apprenticeship and Training Act."

19 **SECTION 6.** Section 13-1-150 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 123, as amended) is amended to read:

21 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

22 A. A multi-term contract for items of tangible
23 personal property, construction or services except for
24 professional services, in an amount under twenty-five thousand
25 dollars (\$25,000), may be entered into for any period of time

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1 deemed to be in the best interests of the state agency or a
2 local public body not to exceed four years; provided that the
3 term of the contract and conditions of renewal or extension, if
4 any, are included in the specifications and funds are available
5 for the first fiscal period at the time of contracting. If the
6 amount of the contract is twenty-five thousand dollars
7 (\$25,000) or more, the term shall not exceed ten years,
8 including all extensions and renewals, except that for a
9 contract entered into pursuant to the Public Facility Energy
10 Efficiency and Water Conservation Act or Sections 1 through 5
11 of this 2024 Act, the term shall not exceed twenty-five years,
12 including all extensions and renewals. Payment and performance
13 obligations for succeeding fiscal periods shall be subject to
14 the availability and appropriation of funds therefor.

15 B. A contract for professional services may not
16 exceed four years, including all extensions and renewals,
17 except for the following:

18 (1) services required to support or operate
19 federally certified medicaid, financial assistance and child
20 support enforcement management information or payment systems;

21 (2) services to design, develop or implement
22 the taxation and revenue information management systems project
23 authorized by Laws 1997, Chapter 125;

24 (3) a multi-term contract for the services of
25 trustees, escrow agents, registrars, paying agents, letter of

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1 credit issuers and other forms of credit enhancement and other
2 similar services, excluding bond attorneys, underwriters and
3 financial advisors with regard to the issuance, sale and
4 delivery of public securities, may be for the life of the
5 securities or as long as the securities remain outstanding;

6 (4) services relating to the implementation,
7 operation and administration of the Education Trust Act;

8 (5) services relating to measurement and
9 verification of conservation-related cost savings and utility
10 cost savings pursuant to the Public Facility Energy Efficiency
11 and Water Conservation Act;

12 (6) services relating to the design and
13 engineering of a state public works project:

14 (a) for a period not to exceed the
15 requisite time for project completion and a subsequent warranty
16 period; and

17 (b) upon approval of the secretary of
18 finance and administration; and

19 (7) services relating to the design and
20 engineering of a regional water project with an estimated cost
21 of more than five hundred million dollars (\$500,000,000):

22 (a) for a period not to exceed the
23 requisite time for project completion and a subsequent warranty
24 period; and

25 (b) upon approval of the secretary of

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1 finance and administration."

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