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HOUSE BILL 1317

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN LUJAN

AN ACT

RELATING TO PUBLIC PURCHASING; AMENDING AND ENACTING CERTAIN
SECTIONS OF THE NMSA 1978.

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

Section 1. A new Section 13-1-40.1 NMSA 1978 is enacted to
read:

"Section 13-1-40.1. [NEW MATERIAL] DEFINITION--
CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER. --

A. "Construction management" means consulting
services related to the process of management applied to a
public works project for any duration from conception to
completion of the project for the purpose of controlling time,
cost and quality of the project.

B. "Construction manager" means a person who acts as
an agent of the state agency or local public body for

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1 construction management, for whom the state agency or local
2 public body shall assume all the risks and responsibilities."

3 Section 2. Section 13-1-76 NMSA 1978 (being Laws 1984,
4 Chapter 65, Section 49, as amended) is amended to read:

5 "13-1-76. DEFINITION--PROFESSIONAL SERVICES.--
6 "Professional services" means the services of architects,
7 archeologists, engineers, surveyors, landscape architects,
8 medical arts practitioners, scientists, management and systems
9 analysts, certified public accountants, registered public
10 accountants, lawyers, psychologists, planners, researchers,
11 construction managers and other persons or businesses providing
12 similar professional services, which may be designated as such
13 by a determination issued by the state purchasing agent or a
14 central purchasing office."

15 Section 3. A ne Section 13-1-100.1 NMSA 1978 is enacted to
16 read:

17 "13-1-100.1 [NEW MATERIAL] CONSTRUCTION CONTRACTS--
18 CONSTRUCTION MANAGEMENT SERVICES.

19 A. A construction management services contract may
20 be entered into for any construction or public works project
21 when a state agency or local public body makes a determination
22 that it is in the public's interest to utilize construction
23 management services. Construction management services shall not
24 duplicate and are in addition to the normal scope of separate
25 architect or engineer contracts, the need for which may arise

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1 due to the complexity or unusual requirements of a project as
2 request by a state agency or local public body.

3 B. To insure fair, uniform, clear and effective
4 procedures that will strive for the delivery of a quality
5 project, on time and within budget, the secretary, in
6 conjunction with the appropriate and affected professional
7 associations and contractors, shall promulgate regulations
8 which shall be adopted by the governing bodies of all using
9 agencies and shall be followed by all using agencies when
10 procuring construction management services as authorized in
11 Subsection A of this section."

12 Section 4. Section 13-1-111 NMSA 1978 (being Laws 1984,
13 Chapter 65, Section 84, as amended) is amended to read:

14 "13-1-111. COMPETITIVE SEALED PROPOSALS--CONDITIONS FOR
15 USE.--When a state agency or a local public body is procuring
16 professional services or a design and build project delivery
17 system, or when the state purchasing agent, a central purchasing
18 office or a designee of either officer makes a written
19 determination that the use of competitive sealed bidding for
20 items of tangible personal property or services is either not
21 practicable or not advantageous to the state agency or a local
22 public body, a procurement shall be effected by competitive
23 sealed proposals. Competitive qualifications-based proposals
24 shall be used for procurement of professional services of
25 architects, engineers, landscape architects, construction

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1 managers and surveyors who submit proposals pursuant to Sections
2 13-1-120 through 13-1-124 NMSA 1978. "

3 Section 5. A new Section 13-1-119.1 NMSA 1978 is enacted
4 to read:

5 "13-1-119.1. [NEW MATERIAL] PUBLIC WORKS PROJECT DELIVERY
6 SYSTEM- DESIGN AND BUILD PROJECTS AUTHORIZED. --

7 A. A design and build project delivery system may be
8 authorized when the state purchasing agent or a central
9 purchasing office makes a determination in writing that it is
10 appropriate and in the best interest of the state or local
11 public body to use on a specific project with a maximum
12 allowable construction cost of more than five million dollars
13 (\$5,000,000). The determination shall be issued only after the
14 state purchasing or central purchasing office has taken into
15 consideration the following criteria which shall be used as the
16 minimum basis in determining when to use the design and build
17 process:

- 18 (1) the extent to which the project
19 requirements have, or can be, adequately defined;
- 20 (2) time constraints for delivery of the
21 project;
- 22 (3) the capability and experience of potential
23 teams with the design and build process;
- 24 (4) the suitability of the project for use of
25 the design and build process as concerns time, schedule, costs

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1 and quality; and

2 (5) the capability of the using agency to
3 manage the project, including experienced personnel or outside
4 consultants, to oversee the project who are familiar with the
5 design and build process.

6 B. When a determination has been made by the state
7 purchasing agent or a central purchasing office that it is
8 appropriate to use a design and build project delivery system,
9 the design and build team shall include, as needed, a New Mexico
10 registered engineer or architect, and a contractor properly
11 licensed in New Mexico for the type of work required.

12 C. For each proposed state or local public works
13 design and build project, a two-phase procedure for awarding
14 design and build contracts shall be adopted and shall include at
15 a minimum the following:

16 (1) during phase one, and prior to
17 solicitation, documents shall be prepared for a request for
18 qualifications by a registered engineer or architect, either in
19 house or selected in accordance with Sections 13-1-120 through
20 13-1-124 NMSA 1978, and shall include minimum qualifications, a
21 scope of work statement, schedule, documents defining the
22 project requirements, composition of selection committee, phase
23 two requirements, and subsequent management of project to
24 completion. Design and build qualifications of responding firms
25 shall be evaluated and a maximum of five firms shall be short

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1 listed in accordance with technical and qualifications based
2 criteria.

3 (2) during phase two, the short-listed firms
4 shall be invited to submit detailed specific technical concepts
5 or solutions, costs and scheduling. Unsuccessful firms may be
6 paid a stipend to cover proposal expenses. After evaluation of
7 these submissions of selection shall be made and the contract
8 awarded to the highest ranked firm.

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

16 Section 6. Section 13-1-120 NMSA 1978 (being Laws 1984,
17 Chapter 65, Section 93, as amended) is amended to read:

18 "13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED
19 PROPOSALS-- ARCHITECTS-- ENGINEERS-- LANDSCAPE ARCHITECTS--
20 SURVEYORS-- SELECTION PROCESS. --

21 A. For each proposed state public works project or
22 local public works project or construction management contract,
23 the architect, engineer, landscape architect, construction
24 management and surveyor selection committee, state highway and
25 transportation department selection committee or local selection

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1 committee, as appropriate, shall evaluate statements of
2 qualifications and performance data submitted by at least three
3 businesses in regard to the particular project and may conduct
4 interviews with and may require public presentation by all
5 businesses applying for selection regarding their
6 qualifications, their approach to the project and their ability
7 to furnish the required services.

8 B. The appropriate selection committee shall select,
9 ranked in the order of their qualifications, no less than three
10 businesses deemed to be the most highly qualified to perform the
11 required services, after considering the following criteria
12 together with any criteria, except price, established by the
13 using agency authorizing the project:

14 (1) specialized design and technical competence
15 of the business, including a joint venture or association,
16 regarding the type of services required;

17 (2) capacity and capability of the business,
18 including any consultants their representatives qualifications
19 and locations, perform the work, including any specialized
20 services, within the time limitations;

21 (3) past record of performance on contracts
22 with government agencies or private industry with respect to
23 such factors as control of costs, quality of work and ability to
24 meet schedules;

25 (4) proximity to or familiarity with the area

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1 in which the project is located;

2 (5) the amount of design work that will be
3 produced by a New Mexico business within this state; ~~and]~~

4 (6) the volume of work previously done for the
5 entity requesting proposals which is not seventy-five percent
6 complete with respect to basic professional design services,
7 with the objective of effecting an equitable distribution of
8 contracts among qualified businesses and of assuring that the
9 interest of the public in having available a substantial number
10 of qualified businesses is protected; provided, however, that
11 the principle of selection of the most highly qualified
12 businesses is not violate; and

13 (7) notwithstanding any other provisions of
14 this subsection, price may be considered in connection with
15 construction management contracts, unless the services are those
16 of an architect, engineer, landscape architect or surveyor.

17 C. Notwithstanding the requirements of Subsections A
18 and B of this section, if fewer than three businesses have
19 submitted a statement of qualifications for a particular
20 project, the appropriate committee may:

21 (1) rank in order of qualifications and submit
22 to the secretary or local governing authority of the public body
23 for award those businesses which have submitted a statement of
24 qualifications; or

25 (2) recommend termination of the selection

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1 process pursuant to Section 13-1-131 NMSA 1978 and sending out
2 of new notices of the resolicitation of the proposed procurement
3 pursuant to Section 13-1-104 NMSA 1978. Any proposal received
4 in response to the terminated solicitation is not public
5 information and shall not be made available to competing
6 officers.

7 D. The names of all businesses submitting proposals
8 and the names of all businesses, if any, selected for interview
9 shall be public information. After an award has been made, the
10 appropriate selection committee's final ranking and evaluation
11 scores for all proposals shall become public information.
12 Businesses which have not been selected for contract award shall
13 be so notified in writing within [~~twenty-one~~] fifteen days after
14 an award is made. "

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 11, 1997

Mr. Speaker:

Your LABOR AND HUMAN RESOURCES COMMITTEE, to
whom has been referred

HOUSE BILL 1317

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 4, line 7, strike "A" and insert in lieu thereof
"Except for road and highway construction or reconstruction
projects of the state highway and transportation department or any
local public body, a".,

and thence referred to the BUSINESS AND INDUSTRY
COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Rick Mi era, Chai rman

Adopted _____ Not Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

Excused: Foy, Macko, Marquardt

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

HB 1317/a

3
4 March 18, 1997

5
6 Mr. President:

7
8 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
9 whom has been referred

10 HOUSE BILL 1317, as amended

11
12 has had it under consideration and reports same with
13 recommendation that it DO PASS, amended as follows:

- 14
- 15 1. On page 2, line 15, after "A" strike "ne" and insert in
16 lieu thereof "new".
 - 17 2. On page 2, line 17, after "13-1-100.1" insert a period.
 - 18 3. On page 2, line 18, after the period insert a dash.
 - 19 4. On page 2, line 20, after "or" insert "state or local".
 - 20 5. On page 3, line 2, before "by" strike "request" and insert
21 in lieu thereof "requested".
 - 22 6. On page 3, line 7, after "regulations" insert a comma.
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**FORTY-THIRD LEGISLATURE
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7. On page 3, line 11, strike the quotation mark.

8. On page 3, between lines 11 and 12, insert the following new subsection:

"C. A state agency shall make the decision on a construction management services contract for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a construction management services contract for a local public works project."

9. On page 4, line 11, after "use" insert "the system".

10. On page 4, line 15, after "criteria" insert a comma.

11. On page 4, line 19, after "have" insert "been".

**FORTY-THIRD LEGISLATURE
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Page 14

12. On page 5, line 4, before "to" insert "and".

13. On page 5, line 4, after "project" insert "with persons".

14. On page 5, line 21, strike the first comma and insert in lieu thereof "and".

15. On page 5, line 22, after the first comma strike the remainder of the line and insert in lieu thereof "the composition of the selection committee and a description of the phase".

16. On page 5, line 23, strike the comma and after "management" strike "of" and insert in lieu thereof "needed to bring the".

17. On page 6, line 1, strike "qualifications based" and insert in lieu thereof "qualifications-based".

18. On page 6, line 2, strike the period and insert in lieu thereof "; and".

19. On page 6, line 7, after "submissions" strike "of" and insert in lieu thereof a comma.

20. On page 6, line 15, strike the quotation mark.

**FORTY-THIRD LEGISLATURE
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21. On page 6, between lines 15 and 16, insert the following new subsection:

"E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project. "".

22. On page 6, line 21, after "project" strike "or" and insert in lieu thereof a comma.

23. On page 7, line 18, after "consultants" insert a comma and after "representative" insert a comma.

24. On page 7, line 19, before "perform" insert "to".

25. On page 8, line 12, after "not" strike "violate" and insert in lieu thereof "violated".

26. On page 9, line 6, strike "officers" and insert in lieu

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thereof "offerors". ,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Howes, Robinson

Absent: None

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

March 21, 1997

SENATE FLOOR AMENDMENT number _____ to HOUSE BILL 1317, as amended

AMENDMENT sponsored by SENATOR VERNON

1. On page 4, line 12, strike "five" and insert "ten".
2. On page 4, line 13, strike "\$5,000,000" and insert "\$10,000,000".

Senator L. Skip Vernon

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FIRST SESSION, 1997**

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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