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SENATE BILL 661

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PROCUREMENT; REMOVING THE EDUCATIONAL FACILITY  
RESTRICTIONS FROM THE EDUCATIONAL FACILITY CONSTRUCTION MANAGER  
AT RISK ACT AND RENAMING THE ACT; ADDING CERTAIN PRICING  
EVALUATION CRITERIA AND RULEMAKING REQUIREMENTS.

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, as amended) 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;

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- 1           B. Section 13-1-125 NMSA 1978, small purchases;  
2           C. Section 13-1-126 NMSA 1978, sole source  
3 procurement;  
4           D. Section 13-1-127 NMSA 1978, emergency  
5 procurements;  
6           E. Section 13-1-129 NMSA 1978, existing contracts;  
7           F. Section 13-1-130 NMSA 1978, purchases from  
8 antipoverty program businesses; and  
9           G. the [Educational Facility] Construction Manager  
10 At Risk Act."

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

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

15           A. A procurement shall be accomplished by  
16 competitive sealed proposals, except as provided in Subsection  
17 G of Section 13-1-119.1 NMSA 1978, when a state agency or a  
18 local public body is procuring professional services or a  
19 design and build project delivery system or when the state  
20 purchasing agent, a central purchasing office or a designee of  
21 either officer makes a written determination that the use of  
22 competitive sealed bidding for items of tangible personal  
23 property or services is either not practicable or not  
24 advantageous to the state agency or a local public body [~~a~~  
25 ~~procurement shall be effected by competitive sealed proposals~~].

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1           B. Competitive sealed proposals may [~~also~~] be used  
2 for contracts for construction and facility maintenance,  
3 service and repairs.

4           C. Competitive sealed proposals may [~~also~~] be used  
5 for construction manager at risk contracts [~~if a three-step~~  
6 ~~selection procedure is used~~] pursuant to the [~~Educational~~  
7 ~~Facility~~] provisions of the Construction Manager At Risk Act.

8           D. Competitive qualifications-based proposals shall  
9 be used for procurement of professional services of architects,  
10 engineers, landscape architects, construction managers and  
11 surveyors who submit proposals pursuant to Sections 13-1-120  
12 through 13-1-124 NMSA 1978.

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

19           SECTION 3. Section 13-1-124.1 NMSA 1978 (being Laws 2007,  
20 Chapter 141, Section 3) is amended to read:

21           "13-1-124.1. SHORT TITLE.--Sections 13-1-124.1 through  
22 13-1-124.5 NMSA 1978 may be cited as the "[~~Educational~~  
23 ~~Facility~~] Construction Manager At Risk Act"."

24           SECTION 4. Section 13-1-124.2 NMSA 1978 (being Laws 2007,  
25 Chapter 141, Section 4) is amended to read:

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1           "13-1-124.2. APPLICABILITY--PRICING EVALUATION CRITERIA--  
2 RULES.--

3           A. The provisions of the [~~Educational Facility~~]  
4 Construction Manager At Risk Act [~~apply to~~] may be used for  
5 contracts for the construction of [~~educational~~] state  
6 facilities if the governing [~~body~~] authority chooses, pursuant  
7 to the provisions of that act, to use the services of a  
8 construction manager at risk.

9           B. A governing authority's or state agency's  
10 request for competitive sealed proposals shall indicate that:

11                   (1) a proposal's price shall be assigned a  
12 weight of at least fifty percent but no more than seventy  
13 percent for purposes of evaluating all competitive sealed  
14 proposals; and

15                   (2) when a proposal's price exceeds by more  
16 than seven percent the average price of all competitive sealed  
17 proposals received pursuant to the request, the price shall be  
18 deemed to be outside of the competitive range and the proposal  
19 shall be eliminated from consideration.

20           C. The secretary of general services shall  
21 promulgate rules for the implementation of the Construction  
22 Manager at Risk Act."

23           SECTION 5. Section 13-1-124.3 NMSA 1978 (being Laws 2007,  
24 Chapter 141, Section 5) is amended to read:

25           "13-1-124.3. DEFINITIONS.--As used in the [~~Educational~~  
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1 Facility] Construction Manager At Risk Act:

2 A. "construction manager at risk" means a person  
3 who, pursuant to a contract with a governing [body] authority,  
4 provides the preconstruction services and construction  
5 management required in a construction manager at risk delivery  
6 method;

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

21 [~~G. "educational facility" means a public school,~~  
22 ~~including a locally chartered or state-chartered charter school~~  
23 ~~or a facility of a state educational institution listed in~~  
24 ~~Section 6-17-1.1 NMSA 1978;~~

25 D.] C. "governing [body] authority" means:

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1 (1) the public school facilities authority if  
2 the authority is the using agency that requires the  
3 construction of [~~an educational~~] a facility;

4 (2) a local school board if the board is the  
5 using agency that requires the construction of [~~an educational~~]  
6 a facility;

7 (3) the governing body of a charter school if  
8 the governing body is the using agency that requires the  
9 construction of [~~an educational~~] a facility; [~~or~~]

10 (4) the governing body of a state educational  
11 institution if the governing body is the using agency that  
12 requires the construction of [~~an educational~~] a facility; [~~and~~]

13 (5) the governing body of a local public body;  
14 or

15 (6) a state agency that has the authority to  
16 sell, lease or otherwise dispose of a facility subject to the  
17 Construction Manager at Risk Act; and

18 [~~E-~~] D. "guaranteed maximum price" means the  
19 maximum amount to be paid by the governing [~~body~~] authority for  
20 the construction of the [~~educational~~] facility, including the  
21 cost of the work, the general conditions and the fees charged  
22 by the construction manager at risk."

23 SECTION 6. Section 13-1-124.4 NMSA 1978 (being Laws 2007,  
24 Chapter 141, Section 6) is amended to read:

25 "13-1-124.4. CONSTRUCTION MANAGER AT RISK DELIVERY METHOD  
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1 AUTHORIZED--MULTIPHASE SELECTION PROCEDURE.--

2 A. A construction manager at risk delivery method  
3 may be used when a governing ~~[body]~~ authority determines that  
4 it is in its interest to use that method on a specific  
5 ~~[educational facility]~~ construction project, provided that the  
6 construction manager at risk shall be selected pursuant to the  
7 provisions of this section.

8 B. The governing ~~[body]~~ authority shall form a  
9 selection committee of at least three members with at least one  
10 member being an architect or engineer. The selection committee  
11 shall develop an evaluation process, including a multiphase  
12 procedure consisting of two or three steps. A two-step  
13 procedure may be used when the total amount of money available  
14 for the project is less than five hundred thousand dollars  
15 (\$500,000) and shall include a request for qualifications and  
16 an interview. A three-step procedure shall consist of a  
17 request for qualifications, a request for proposals and an  
18 interview.

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

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

25 (a) a contractor's license for the type

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1 of work to be performed, issued pursuant to the Construction  
2 Industries Licensing Act;

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

5 (c) a minimum bond capacity;

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

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

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

12 (c) specific project requirements and  
13 deliverables;

14 (d) the composition of the selection  
15 committee;

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

18 (f) a proposed contract; and

19 (g) a detailed statement of the  
20 relationships and obligations of all parties, including the  
21 construction manager at risk, agents of the governing ~~[body]~~  
22 authority, such as an architect or engineer, and the governing  
23 ~~[body]~~ authority;

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

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

3 D. The selection committee shall evaluate the  
4 statements of qualifications submitted and determine the  
5 offerors that qualify for the construction manager at risk. If  
6 the selection committee has chosen a three-step procedure, the  
7 committee shall issue a request for proposals to the offerors  
8 that qualify.

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

13 F. In a three-step procedure, the selection  
14 committee shall issue a request for proposals and evaluate the  
15 proposals pursuant to Sections 13-1-112 through 13-1-117 NMSA  
16 1978 except that:

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

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

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

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1           G. After conducting interviews with the highest-  
2 ranked offerors and after considering the factors listed in  
3 Subsection H of this section, the selection committee shall  
4 recommend to the governing [~~body~~] authority the offeror that  
5 will be most advantageous to the governing [~~body~~] authority.  
6 Should the governing [~~body~~] authority or its designee be unable  
7 to negotiate a satisfactory contract with the offeror  
8 considered to be the most qualified at a price determined to be  
9 fair and reasonable, negotiations with that offeror shall be  
10 formally terminated. The governing [~~body~~] authority or its  
11 designee shall then undertake negotiations with the second most  
12 qualified offeror. Failing accord with the second most  
13 qualified offeror, the governing [~~body~~] authority or its  
14 designee shall formally terminate negotiations with the  
15 offeror. The governing [~~body~~] authority or its designee shall  
16 then undertake negotiations with the third most qualified  
17 offeror. Should the governing [~~body~~] authority or its designee  
18 be unable to negotiate a contract with any of the offerors  
19 selected by the committee, additional offerors shall be ranked  
20 in order of their qualifications and the governing [~~body~~]  
21 authority or its designee shall continue negotiations in  
22 accordance with this section until a contract is signed with a  
23 qualified offeror or the procurement process is terminated and  
24 a new request for proposals is initiated.

25           H. In evaluating and ranking statements of

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1 qualifications, proposals and results of interviews, and in the  
2 final recommendation of a construction manager at risk, the  
3 selection committee shall consider:

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

6 (2) the qualifications and experience of the  
7 offeror's personnel and consultants and the role of each in the  
8 project;

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

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

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

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

23 J. After a contract is awarded, the selection  
24 committee shall make the names of all offerors and the names of  
25 all offerors selected for interview available for public

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1 inspection along with the selection committee's final ranking  
2 and evaluation scores. Offerors who were interviewed but not  
3 selected for contract award shall be notified in writing within  
4 fifteen days of the award."

5 SECTION 7. Section 13-4-1.1 NMSA 1978 (being Laws 2007,  
6 Chapter 141, Section 8) is amended to read:

7 "13-4-1.1. DEFINITIONS--CONSTRUCTION CONTRACT--  
8 CONTRACTOR.--As used in Chapter 13, Article 4 NMSA 1978:

9 A. "contract" or "construction contract" includes a  
10 construction manager at risk contract entered into pursuant to  
11 the [~~Educational Facility~~] Construction Manager At Risk Act;  
12 and

13 B. "contractor" includes a construction manager at  
14 risk selected pursuant to the [~~Educational Facility~~]  
15 Construction Manager At Risk Act."

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