

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
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 STATE BOARD OF FINANCE 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. "board" means the state board of finance;

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

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

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

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

20 G. "public partner" means a state agency or local
21 public body;

22 H. "public-private partnership" means an
23 arrangement between one or more public partners and one or more
24 private partners for the development of a public project;

25 I. "public-private partnership agreement" means a

1 contract between one or more public partners and one or more
2 private partners in connection with the development of a public
3 project;

4 J. "public project" means:

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

8 (2) public construction of broadband
9 telecommunications network facilities; or

10 (3) public construction of electric vehicle
11 charging facilities;

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

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

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

22 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--REQUEST FOR
23 PROPOSALS.--

24 A. A public partner shall request proposals to
25 enter into a public-private partnership agreement using a

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

6 (1) the proposed parameters of the proposed
7 public-private partnership agreement;

8 (2) proposed duties and responsibilities to be
9 performed by the private partner;

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

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

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

21 (6) requirements for the determination of the
22 ability of a private partner to respond to the needs presented
23 in the request for proposals and the economic development
24 opportunities represented by the public project; and

25 (7) any other information required by the

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1 public partner acting as the contracting body or the board to
2 evaluate the proposals submitted by respondents and the overall
3 proposed public-private partnership.

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

8 SECTION 3. A new section of the Procurement Code is
9 enacted to read:

10 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIPS--UNSOLICITED
11 PROPOSALS.--

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

22 (1) provide information regarding the proposed
23 nature, timing and scope of the unsolicited proposal, except
24 that trade secrets, financial records or other records of the
25 prospective private partner making the proposal shall not be

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1 posted unless otherwise agreed to by the public partner and the
2 prospective private partner; and

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

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

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

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

18 B. Upon the end of the proper notice period
19 provided in this section, the public partner may consider the
20 unsolicited proposal and any competing proposals received. If
21 the public partner determines it is in the best interest of the
22 public partner to implement some or all of the concepts
23 contained within the unsolicited proposal or competing
24 proposals received by it, the public partner shall begin an
25 open, competitive procurement process using a request for

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

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

11 SECTION 4. A new section of the Procurement Code is
 12 enacted to read:

13 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--BOARD--
 14 RULES.--The board shall:

15 A. promulgate rules for public-private partnership
 16 agreements, including:

17 (1) when public-private partnership agreements
 18 may be used;

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

21 (a) the agreement shall be in writing;

22 (b) the private partner shall employ
 23 public employees when possible for the private partner's
 24 performance of the agreement; and

25 (c) a fixed total price paid by the

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1 public partner in exchange for full performance of the public
2 project by the private partner shall be specified;

3 (3) minimum requirements; and

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

6 B. receive and review requests for proposals for
7 public-private partnerships; and

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

10 SECTION 5. A new section of the Procurement Code is
11 enacted to read:

12 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--BOARD--RULES--
13 EVALUATION--PERFORMANCE.--

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

22 (1) a design and build agreement;

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

24 (3) a design, build, finance and operate
25 agreement;

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

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

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

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

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

17 D. A public-private partnership agreement shall
18 require a private partner to provide or cause to be provided
19 performance and payment bonds as required pursuant to Section
20 13-4-18 NMSA 1978."

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

23 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

24 A. A multi-term contract for items of tangible
25 personal property, construction or services except for

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

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

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

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

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1 (3) a multi-term contract for the services of
2 trustees, escrow agents, registrars, paying agents, letter of
3 credit issuers and other forms of credit enhancement and other
4 similar services, excluding bond attorneys, underwriters and
5 financial advisors with regard to the issuance, sale and
6 delivery of public securities, may be for the life of the
7 securities or as long as the securities remain outstanding;

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

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

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

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

19 (b) upon approval of the secretary of
20 finance and administration; and

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

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

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1 period; and

2 (b) upon approval of the secretary of
3 finance and administration."

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