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HOUSE BILL 190

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

INTRODUCED BY

Joy Garratt and Patricia A. Lundstrom

AN ACT

RELATING TO PROCUREMENT; 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

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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 a project for which the
7 public partner believes a public-private partnership would best
8 suit the needs and requirements of the project;

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

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

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

19 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--REQUEST FOR
20 PROPOSALS.--

21 A. A public partner shall request proposals to
22 enter into a public-private partnership agreement using a
23 competitive procurement process for competitive sealed
24 proposals or for competitive sealed qualifications-based
25 proposals and subsequent negotiation. A request for proposals
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1 to enter into a public-private partnership agreement shall
2 include, at a minimum:

3 (1) the proposed parameters of the proposed
4 public-private partnership agreement;

5 (2) proposed duties and responsibilities to be
6 performed by the private partner;

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

11 (4) proposed plans for financing and operating
12 the public project and the estimated cost for the public
13 project;

14 (5) requirements for documentation of the
15 experience, capabilities, capitalization and financial
16 condition and other relevant qualifications of the private
17 partner;

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

22 (7) any other information required by the
23 public partner acting as the contracting body or the division
24 to evaluate the proposals submitted by respondents and the
25 overall proposed public-private partnership.

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

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

7 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIPS--UNSOLICITED
8 PROPOSALS.--

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

19 (1) provide information regarding the proposed
20 nature, timing and scope of the unsolicited proposal, except
21 that trade secrets, financial records or other records of the
22 prospective private partner making the proposal shall not be
23 posted unless otherwise agreed to by the public partner and the
24 prospective private partner; and

25 (2) provide for a notice period on the home

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1 page of the public partner's website clearly identifying the
2 proposal as being unsolicited and requesting comments from the
3 public or other potential offerors for the submission of
4 competing proposals as follows:

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

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

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

15 B. Upon the end of the proper notice period
16 provided in this section, the public partner may consider the
17 unsolicited proposal and any competing proposals received. If
18 the public partner determines it is in the best interest of the
19 public partner to implement some or all of the concepts
20 contained within the unsolicited proposal or competing
21 proposals received by it, the public partner may begin an open,
22 competitive procurement process using a request for competitive
23 sealed proposals or request for competitive sealed
24 qualifications-based proposals. Notwithstanding any other
25 provision of law, a prospective private partner that submits an

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1 unsolicited proposal pursuant to this section may submit a
2 proposal in response to a request for proposals during the
3 open, competitive procurement process.

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

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

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

12 A. promulgate rules for public-private partnership
13 agreements, including:

14 (1) when public-private partnership agreements
15 may be used;

16 (2) minimum requirements; and

17 (3) standards to limit liability of the issuer
18 of the request for proposals;

19 B. receive and review requests for proposals for
20 public-private partnerships; and

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

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

25 "[NEW MATERIAL] PUBLIC-PRIVATE PARTNERSHIP--DIVISION--

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1 RULES--EVALUATION--AGREEMENT--PERFORMANCE.--

2 A. A public partner and private partner may enter
3 into a public-private partnership agreement, subject to
4 approval by the division. The public partner and the private
5 partner may use any project delivery method or agreement or
6 combination of methods or agreements to develop or operate a
7 public project in devising the public-private partnership
8 agreement, including:

- 9 (1) a design and build agreement;
- 10 (2) a design, build and maintain agreement;
- 11 (3) a design, build, finance and operate
12 agreement;
- 13 (4) a design, build, operate and maintain
14 agreement;
- 15 (5) a design, build, finance, operate and
16 maintain agreement; and
- 17 (6) concessions providing for the private
18 partner to design, build, operate, maintain, manage or lease a
19 public project.

20 B. The contracting public partner shall provide
21 continuous oversight, as determined to be necessary by the
22 division, of any function that is performed by a private
23 partner pursuant to the public-private partnership agreement.

24 C. The performance of a public project pursuant to
25 a public-private partnership agreement is a public work for the

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1 purposes of the Public Works Minimum Wage Act, the
2 Subcontractors Fair Practices Act and the Public Works
3 Apprentice and Training Act."

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