

NMASBO
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PROCUREMENT
Construction Services

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Construction
Services

Procurement Basics
Public Works
SB 339



Invitation For Bid – IFB or ITB



- Formal Invitation to Bid
- Legal notice to be published 10 days before deadline (Bid opening date)
- Receipt, Rejection of Bids
- Late Bids, Identical Bids
- Responsive Bids
- Responsible Bidders

13-1-102 thru 13-1-110

Definitions



13-1-52. Definition; determination.

“Determination means the *written documentation* of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

Request for Proposals - RFP



13-1-111 through 13-1-124.5 includes:

Professional Services

Qualified Professional Services

**(Architects/Engineers/Landscape
Architects & Surveyors)**

Design/Build Construction Delivery

**Educational Construction Manager at Risk
(CMAR)**

Request for Proposals - RFP



**13-1-111. Competitive sealed proposals;
conditions for use.**

- ...makes a *written determination* that the use of IFB is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals (RFP)

Request for Proposals - RFP



- Requires public notice, in the same manner as the Invitation for Bid
- However, the NMAC 1.4.1 recommend a minimum of 20 days.
- Requires evaluation factors
- Allows for negotiations
- Not a public record until award
- Price is a consideration except for qualified professional services

Contractor Bonding



- **13-4-18. Construction contract performance and payment bonds.**

When a construction contract is awarded in excess of \$25,000, the following bonds or security shall be delivered to the local public body and shall become binding on the parties upon execution of the contract.

Contractor Bonding



- **13-4-18. Construction Bonds – continued**

If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected, its bid security (bid bond) shall be enforced to the extent of actual damages.

NOTE: Bonds to be executed by a surety company authorized to do business in this state – see Federal Circular 570, US Treasury.

State of NM & Federal Wages



- **13-4-10. Public Works Minimum Wage Act.**

States in part: 'every contract or project in excess of \$60,000 shall acquire a wage decision to pay prevailing wages.'

NOTE: If there are any federal dollars flowing through the project, you shall obtain a Federal wage decision when project is in excess of \$2,000.

Subcontractor Bonding



- **13-1-148.1 Bonding of subcontractors**

Note this is not in the Public Works section of the Code, which is Article 4.

“A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor’s contract for work to be performed on a project is one hundred twenty five thousand dollars (\$125,000) or more.”

NM Contractor Registration



- **13-4-14.1 Labor enforcement fund; creation; use.**

Created by the state treasury.

Licensed NM Contractors & subcontractors must register

If they are not registered, you cannot award a contract.



Protests

- 13-1-172 through 13-1-175.
- Right to protest the *solicitation, bid or award*
- Aggrieved bidder or Offeror must notify in writing within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest
- Procurements after protest
- Authority to resolve
- Written determinations – required



Debar or Suspend?

13-1-177 to 13-1-180. Authority to debar or suspend.

- May “debar” for three years
- May “suspend” for 3 months
- Very detailed, and treacherous procedures must be followed

See: NMAC 1.4.7 SUSPENSION OR DEBARMENT OF BIDDERS, OFFERORS OR CONTRACTORS



Debar or Suspend?

Federal Government now uses the term 'Exclusions' instead of Debarment or Suspension.

Question: How do I comply with the Statute?

**Answer: Go to SAM – System for Award Management
www.sam.gov**

1. **Set up user account and password**
2. **Accept the user agreement**
3. **Click on SEARCH RECORDS**
4. **Save records to your files as PDF**



Debar or Suspend?

1. **Required by FAR to check SAM twice**
2. **Check after opening of bids or RFPs**
 - A. **Must reject any bid from an excluded contractor (unless compelling needs determination made)**
 - B. **Immediately prior to award (FAR 9.405(d)(4))**
 - C. **Be sure to save screen shots to your procurement file after opening bids or RFPs and prior to award of a contract.**



Penalties

13-1-190 to 13-1-199.

- ▶ Includes penalties for bribes, kickbacks, gratuities, and unlawful employee participation
- ▶ Describes fiduciary penalties and well as misdemeanor charges
- ▶ Other sections of state law cover employee conduct.
- ▶ See the Government Conduct Code, Section 16.



2017 LEGISLATIVE SESSION & SB339

The NM 2017 Legislature amended the Procurement Code, 13-1-154.1 NMSA 1978

Multiple source contracts, architectural and engineering services contracts – indefinite quantity construction contracts.

A. A state agency or local public body may procure multiple architectural or engineering services contracts



2017 LEGISLATIVE SESSION & SB339

Multiple source contracts, architectural and engineering services contracts – indefinite quantity construction contracts.

A. Continued.

For multiple projects under a single qualifications-based request for proposals; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed six million dollars (\$6,000,000) over four years and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000).



2017 LEGISLATIVE SESSION & SB339

Multiple source contracts – continued.

B. A state agency or **local public body** may procure multiple indefinite quantity construction contracts pursuant to a price agreement for multiple projects under a single request for proposals; provided that the total amount of a contract and all renewals does not exceed ten million dollars (\$10,000,000) over three years and the contract provides that any one purchase order under the contract may not exceed one million dollars (\$1,000,000).

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Multiple source contracts – continued.

C. A state agency or local public body may make procurements in accordance with the provisions of Subsection A or B of this section if:

(1) the advertisement and request for proposals states that multiple contracts may or will be awarded, states the number of contracts that may or will be awarded and describes the services or construction to be performed under each contract;

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Multiple source contracts – continued.

(2) there is a single selection process for all of the multiple contracts, except that for each contract there may be a separate final list and a separate negotiation of contract terms;

(3) each of the multiple contracts for architectural or engineering services has a term not exceeding four years, or for construction has a term not exceeding three years, each including all extensions and renewals;

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Multiple source contracts – continued.

(4) a contract to be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section will not cause the total amount of all contracts issued pursuant to this section to that firm to exceed:

(a) six million dollars (\$6,000,000) in any four-year period for architectural or engineering services; or

2017 LEGISLATIVE SESSION & SB339



Multiple source contracts – continued.

(b) ten million dollars (\$10,000,000) in any three-year period for construction; and

(5) the procurement is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSA 1978.

SECTION 2. EFFECTIVE DATE. – The effective date of the provisions of this act is July 1, 2017.

CES Contracts and the Amended Law



1. The amended 13-1-154.1 statute went into effect July 1, 2017.
2. Our legal counsel has determined that CES JOC construction contracts awarded prior to July 1, 2017 are not affected by the limitation in the amended statute.
3. Therefore, 2013-026, 027, 028 and 029 JOC Contracts are not affected up to expiration on 11/30/2017.

CES Contracts and the Amended Law



4. And, the 2016 JOC construction contracts are not affected by the amended statute until expiration on 11/17/2019.
5. The new CES RFP for JOC Construction Services will be affected by the amended law.
6. Contracts will be awarded for up to three years or \$10,000,000, whichever comes first.
7. No single PO can exceed \$1,000,000

CES Contracts and the Amended Law



CES and the Contractor will track the Projects and Purchase Orders to avoid violation of the law.

QUESTIONS OR COMMENTS?

I thank you for your time and attention. Please feel free to contact me any time with your procurement questions.

