

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 28 HIGHWAY CONTRACTING AND BIDDING
PART 6 TRANSPORTATION CONSTRUCTION MANAGER GENERAL CONTRACTOR RULE

18.28.6.1 ISSUING AGENCY: The New Mexico Department of Transportation, PO Box 1149, Santa Fe, New Mexico, 87504-1149.
[18.28.6.1 NMAC - N, 12/5/2023]

18.28.6.2 SCOPE: This rule applies to the New Mexico Department of Transportation construction projects.
[18.28.6.2 NMAC - N, 12/5/2023]

18.28.6.3 STATUTORY AUTHORITY: Sections 13-1-122.1 through 13-1-122.4 NMSA 1978 (2022), Section 67-3-8.4 NMSA 1978 (2022), Section 67-3-11 NMSA 1978 (2003), Section 67-3-14 NMSA 1978 (2003); 23 USC Section 112(b), 23 CFR Section 635.504.
[18.28.6.3 NMAC - N, 12/5/2023]

18.28.6.4 DURATION: Permanent.
[18.28.6.4 NMAC - N, 12/5/2023]

18.28.6.5 EFFECTIVE DATE: December 5, 2023, unless a later date is cited at the end of a section.
[18.28.6.5 NMAC - N, 12/5/2023]

18.28.6.6 OBJECTIVE: To establish procedures for the solicitation and award of a construction manager general contractor project delivery procurement method for department transportation projects. The construction manager general contractor project delivery method may be used to improve project quality, completion time and costs through early collaborative project development participation. This rule provides additional requirements and procedures for use of the construction manager general contractor project delivery method and is to be used in conjunction with the statutory requirements found in the transportation construction manager general contractor act, Sections 13-1-122.1 through 13-1-122.4 NMSA 1978.
[18.28.6.6 NMAC - N, 12/5/2023]

18.28.6.7 DEFINITIONS:

- A.** All definitions in the procurement code.
- B.** “**CMGC**” means construction manager general contractor.
- C.** “**Department**” means the New Mexico department of transportation.
- D.** “**GMP**” means guaranteed maximum price.
- E.** “**RFP**” means request for proposals.

[18.28.6.7 NMAC - N, 12/5/2023]

18.28.6.8 USE OF CMGC DELIVERY METHOD: The department may use a CMGC project delivery method after making written determination that a transportation project is eligible for procurement using the alternate method and posting the same on the department’s website for 90 days.

A. Project selection criteria: To determine whether a project is eligible for use of the CMGC delivery method, the department must consider the criteria established in Subsection A of Section 13-1-122.3 NMSA 1978. The department must also ensure that any statutory limitations, established by Section 67-3-8.4 NMSA 1978, on the use of the project delivery method alternate to standard design-bid-build project procurement will not be exceeded by the proposed use.

B. Scope of services: The scope of any CMGC procurement shall identify two separate phases of work to be performed:

(1) project specific range of preconstruction services, including design consultation and obligation to participate in project design, cost control, scheduling and value engineering efforts; and

(2) construction services for the project or work packages associated with the project at a guaranteed maximum price for which the CMGC shall be financially responsible, in the event the second phase of the contract is executed.

C. Procurement: The department shall select a CMGC for a single project by using a sealed, qualifications-based proposal method, resulting in a professional services agreement.

(1) The department will issue a request for proposals (RFP) that contains, at a minimum, the elements established in Section 13-1-122.4 NMSA 1978.

(2) The RFP may require separate technical and price proposals.

(3) The RFP may require a minimum mandatory technical score, minimum contractor prequalification score, or both.

(4) The RFP shall include forms addressing required bid security, payment bonds and performance bonds in conformance with Sections 13-1-146 and 13-4-18 NMSA 1978.

(5) The RFP may include use of a short-list procedure.

[18.28.6.8 NMAC - N, 12/5/2023]

18.28.6.9 EVALUATION CRITERIA: The department shall evaluate proposals in accordance with the evaluation criteria and scoring parameters set forth in the RFP.

A. The evaluation criteria may require, at a minimum, offerors demonstrate:

(1) construction experience with similar projects;

(2) financial, manpower and equipment resources available for the project;

(3) preconstruction or design support experience;

(4) partnering approach to the project; and

(5) approach to safety, risk, schedule, and cost estimating.

B. The department may require offerors to participate in formal interviews as part of the evaluation process.

[18.28.6.9 NMAC - N, 12/5/2023]

18.28.6.10 SELECTION COMMITTEE: The department shall use a selection committee for the evaluation of the qualifications submitted by offerors and to determine the offerors that qualify for award of the CMGC contract.

A. The selection committee composition shall be identified in the RFP; and

(1) shall include the following voting members, a minimum of three of whom will be registered New Mexico professional engineers:

(a) two employees of the department as requested to serve on the committee designated by the chief engineer for the department;

(b) two employees of the department as requested to serve on the committee designated by the deputy secretary of highway operations for the department;

(c) the employee of the department in responsible charge of the project; and

(2) may include the following advisory (non-voting) members:

(a) the department chief procurement officer or designee;

(b) any other employee of the department requested to serve by the secretary; or

(c) any other advisory members requested to serve by the secretary based on

industry recommendation.

B. No selection committee member may be an employee of any offeror or firm selected to provide design services or independent cost estimates for the project.

C. Every member of the selection committee must disclose conflicts of interest pursuant to the requirements of state and federal ethics and procurement laws and the department's policies.

D. The selection committee will rank offerors in accordance with the RFP evaluation and scoring criteria and provide a recommendation for award to the secretary.

[18.28.6.10 NMAC - N, 12/5/2023]

18.28.6.11 AWARD OF CONTRACTS: Nothing in this rule requires the department to award a contract during either of the contract phases.

A. The basis for selection for award of contract shall be stated in the RFP and may be based on any of the following approaches:

(1) responsible offeror with lowest priced, responsive proposal. If the RFP includes minimum technical level, no proposal shall be considered responsive unless it meets that level;

(2) responsible offeror whose proposal is evaluated as providing the best value to the department;

(3) responsible offeror whose proposal is evaluated as the most qualified; or
(4) other approaches determined by the chief engineer or designee, which satisfy the requirements of the procurement code.

B. The second phase construction services contract may be awarded after the project plans have been sufficiently developed and the GMP for construction services has been successfully validated and accepted by the department.

C. In the event a GMP is not validated and accepted, the department may:
(1) terminate the CMGC contract; and
(2) proceed to award the second phase construction services contract through the competitive sealed bid process.

D. If the department proceeds to award the second phase construction services contract through the competitive sealed bid process, the CMGC is prohibited from bidding.
[18.28.6.11 NMAC - N, 12/5/2023]

HISTORY OF 18.28.6 NMAC: [RESERVED]

Pre-NMAC History: None