

This rule was filed as 1 NMAC 5.8.

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 5 PUBLIC PROPERTY MANAGEMENT
PART 8 CONSTRUCTION MANAGEMENT SERVICES

1.5.8.1 ISSUING AGENCY: General Services Department - State Purchasing Division.
[4/15/98; Recompiled 11/30/01]

1.5.8.2 SCOPE: All state agencies and local public bodies procuring construction management services in accordance with the Procurement Code, (Section 13-1-28 through Section 13-1-199 NMSA 1978).
[4/15/98; Recompiled 11/30/01]

1.5.8.3 STATUTORY AUTHORITY: Section 13-1-100.1 NMSA 1978 directs the secretary of the general services department, in conjunction with the appropriate and affected professional associations and contractors, to promulgate regulations which shall be adopted by the governing bodies of all using agencies and shall be followed by all using agencies when procuring construction management services.
[4/15/98; Recompiled 11/30/01]

1.5.8.4 DURATION: Permanent.
[4/15/98; Recompiled 11/30/01]

1.5.8.5 EFFECTIVE DATE: April 15, 1998 unless a later date is cited at the end of a section or paragraph.
[4/15/98; Recompiled 11/30/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

1.5.8.6 OBJECTIVE: To insure fair, uniform, clear and effective procedures for the utilization of construction management services to assist in the delivery of a quality project for the owner, on time and within budget.
[4/15/98; Recompiled 11/30/01]

1.5.8.7 DEFINITIONS:

A. "Construction management services" means a comprehensive array of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project; that applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the project owner; includes construction manager services, but does not include professional design or professional engineering services or acting in the capacity of contractor, general or subcontractor, for a construction project.

B. "Construction manager" means a person, properly licensed under the Construction Industries Licensing Act, or any successor agency as applicable, who acts as an agent of the state agency or local public body for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the owner, architect, engineer and other consultants that may be required for the project; and who utilizes his skill and knowledge of general contracting to assist in developing schedules, preparing project construction estimates, studying labor conditions and advising concerning construction, safety and other issues that may surface which are related to the project and may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the RFP solicitation issued by using agency.

C. "Agent" means a person who has been delegated specific authority by a state agency or local public body to act on its behalf and represent its interests throughout all phases of a construction project. The authority delegated by a state agency or local public body shall not include central purchasing authority as defined in the Procurement Code, (Section 13-1-37 NMSA 1978).

D. "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.

E. "Local public body" means every political subdivision of the state and the agencies, instrumentalities, and institutions thereof.

F. "Person" includes an individual, firm, partnership, corporation, limited liability company or partnership, association, or other organization or any combination thereof, including, but not limited to, a joint venture.

G. "State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of this state. State agency includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies. State agency also includes the property control division of the general services department.

H. "Using agency" means any state agency or local public body requiring services, construction, or items of tangible personal property.
[4/15/98; Recompiled 11/30/01]

1.5.8.8 DISCUSSION:

A. As used herein "construction management services" is given a broad and general meaning to describe a project delivery method that, for any duration from conception to completion of the construction project, applies appropriate management techniques to project planning, design and construction in order to control time and cost and assure quality for the project owner. Such overall services may include advisory consulting services, reviewing or preparing cost estimates, reviewing or suggesting program requirements or other similar functions. The program of services requested and applied to a particular project should be one which is appropriate to the size, type and complexity of the project and the needs of the using agency. The construction management process is most effective when employed from the beginning of the project, allowing the CM, the owner and the design professional(s) to identify and resolve issues of value and constructibility prior to the construction phase of the project.

B. Whereas in this rule, "construction manager" is more specific and applies to the necessary professional qualifications and experience of the "person" in order to meet the specified scope of work, goals and objectives as established by the using agency and set forth in a competitive solicitation. The construction manager's primary task is to represent the interests of the owner throughout all phases of the project.

C. When utilizing construction manager services for a construction project initiated by a state agency or local public, the responsible state agency or local public body rather than the construction manager assumes the risk and responsibility for the project.

D. Advisory consulting services such as cost estimating, reviewing, or suggesting program requirements, lighting and acoustical consulting and other special purpose services may be procured without meeting the specific requirements of these regulations.

[4/15/98; Recompiled 11/30/01]

1.5.8.9 DETERMINATION REQUIRED:

A. A using agency may issue a solicitation, and enter into, a construction management services contract when the using agency first makes a determination that it is in the public's interest to utilize such services.

B. The determination shall include findings of fact to support the decision that:

- (1) the construction management services would not duplicate, and would be in addition to the normal scope of separate architect or engineer contracts; and
- (2) a detailed description of the complexity or unusual requirements of the project, prompting the need for construction management services.

C. The determination may also include additional findings that:

- (1) the using agency does not otherwise have sufficient or qualified staff resources to adequately provide construction management services;
- (2) the provision of construction management services would better meet the needs of the using agency;
- (3) the utilization of construction management services could provide early completion of the public

works project is essential; or

(4) specialized expertise in specified construction areas is desirable for the construction project and may be reflected as an additional criterion under paragraph 9 [now 1.5.8.9 NMAC].
[4/15/98; Recomplied 11/30/01]

1.5.8.10 SOLICITATION OF CONSTRUCTION MANAGEMENT SERVICES:

A. Construction management services shall be solicited through a competitive sealed qualification-based request for proposals method of procurement.

B. The using agency shall appoint a construction management selection committee which shall consist of a procurement manager who manages and administers the procurement and others who are members of the committee and who shall perform the evaluation of offeror proposals. The size of the committee can be any number, however, it should be manageable and include both user and technical support representatives as appropriate.

C. For each proposed construction management contract, the construction management selection committee shall evaluate statements of qualifications and performance data submitted by all responsive businesses in regard to the particular project, and may conduct interviews with, and may require public presentation by, all businesses applying for selection regarding their qualifications, their approach to the project, and their ability to furnish the required services.

D. The construction management selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria, together with any criteria established by the using agency authorizing the project:

(1) specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;

(2) capacity and capability of the business, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;

(3) past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules;

(4) proximity to, or familiarity with, the area in which the project is located;

(5) the amount of design work that will be produced by a New Mexico business within this state;

(6) the volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of insuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated; and

(7) price of construction management fees may be considered as a criteria in the selection of construction management services; it is recommended that this criterion not exceed ten percent of the overall selection criteria, unless the using agency makes a determination that the characteristics of the construction management services warrant the designation of a higher percentage.

E. The use of the words "specialized design and technical competence," "design work," and "design services" in the selection criteria refers to such competence, work, and service pertinent to construction and construction management.

F. The using agency shall negotiate in a manner consistent with the selection criteria. The using agency shall negotiate a contract with the highest qualified business at compensation determined in writing to be fair and reasonable. In making this decision, the using agency shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services. Should the using agency be unable to negotiate a satisfactory contract with the business considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The using agency shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the using agency shall formally terminate negotiations with that business. The using agency shall then undertake negotiations with the third most qualified business. Should the using agency be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications, and the using agency shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for

proposals is initiated. The using agency shall publicly announce the business selected for award.

G. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, the construction management selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

H. Any proposal received in response to a solicitation that has been cancelled in accordance with Section 13-1-131 NMSA 1978 is not public information and shall not be made available to competing offerors. [4/15/98; Recompiled 11/30/01]

HISTORY OF 1.5.8 NMAC: [RESERVED]