

HB 299 PPPs

2015 Legislature

- New PPP act covers all NM governmental entities
- design, development, financing, construction, operation or maintenance of a public project
- Agreements may be for up to 50 years
- PPP projects may include those constructed or operated - building or infrastructure for public purpose; includes schools, stadiums; hospitals, other health facilities, parking lots; cultural facilities, transportation facilities, utilities, telecomm, broadband, environmental facilities, dams, water, sewers, solid waste, radio, tv, real estate improvements
- Project delivery methods - predevelopment agreements leading to other implementing agreements; B. design-build agreements; C. design-build-finance agreements; D. construction manager at risk; E. agreements that provide for the private partner to design, build, manage, maintain, operate or lease a public project; or F. other project delivery methods or agreements or combination of methods or agreements that the public partner determines is most advantageous to the public interest.
- Project Procurement – all traditional methods (CMAR, RFP, RFQ, Short list, etc) and unsolicited proposals
- Evaluation - provides for consideration of a range of factors evaluators deem appropriate to obtain the best value for the state or local government; and (2) require specific justification and support for a proposal that may affect: (a) public employees' employment; or (b) the cost of public service delivery
- Evaluation fee which covers public body's costs is authorized; requires public partner to consult with legal and financial advisors
- Requires only one public hearing before a partnership is formed
- Proposers required to submit an executive summary, which is subject to IPRA; other details not required to be disclosed until the end of the protest period or court order; unsolicited proposals afforded same protection
- Minimum wage, subcontractors and other acts apply to PPPs
- Operating agreement required before award

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- Public employees may be replaced if they are offered “alternate equivalent employment”
- GSD required to establish “minimum set of guidelines”, not rules; approve all agreements more than \$50 million and greater than 35 years; manage public communication and education, including public hearings, regarding the scope, cost and impacts of proposed public-private partnerships in order to maximize the opportunity for public input on proposals; consider whether PPP or traditional process is appropriate; promote PPPs
- Evaluation criteria –

the ability of the public project to meet the needs of the community in which it is to be located, including improving and streamlining services to the public; providing or enhancing educational, cultural and recreational opportunities; promoting economic growth or job creation; or otherwise serving a public purpose; and the proposed cost and financial plan for the public project; the performance benchmarks contained in the proposal; the estimated operating costs of the public; the financial commitment of the private partner; F. the risk of proposed financing; the general reputation, qualifications, industry experience and financial capacity of the proposer; the compatibility of the public project with local and regional land and water plans or other infrastructure plans; the feasibility and proposed design and management of the public project; the degree of innovation; efficiency; and technical, scientific, technological and socioeconomic merit of the proposal; comments from potential users, local citizens, affected jurisdictions and other interested persons; benefits to the public, including improvements in economic growth, job creation, public safety and quality of life; the safety record of the proposer; efforts to be made through the public-private partnership to retain and train New Mexico residents in occupations and professions related to planning, design, construction, project management, general management, administration, legal, accounting and other areas of the public project over the life of the public-private partnership; the commitment to use New Mexico building materials and manufactured goods and local services to the extent possible; green building design and construction certification by a nationally recognized organization; innovations in energy efficiency or generation; and other criteria that the public partner and the department deem appropriate for consideration.

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- PPP agreement requirements - authorizes red-light cameras; agreement must specify maximum rate of return and fee adjustment formula; clawback and recapture provisions authorized
- Injunctive relief is waived by private partner but reasonable compensation for private partner allowed if an “unplanned” facility that impacts project revenue is constructed
- SBOF approval required for sale or assignment of project property
- Bonds, grants, loans, fees specifically authorized
- Project revenues may be pledged but pledge does not constitute a general obligation; senior, parity or subordinate pledges authorized
- Federal agreements authorized
- Bonds are not general obligations, only specifically authorized revenues are project obligations
- Failure to pay user fees on the part of anybody using the facilities constitutes a petty misdemeanor.