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FISCAL IMPACT REPORT

SPONSOR Cervantes ORIGINAL DATE 03/01/17
 LAST UPDATED _____ HB _____

SHORT TITLE Architectural & Engineering Contract Limits SB 419

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 339

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)

General Services Department (GSD)

SUMMARY

Synopsis of Bill

Senate Bill 419 amends the multiple source contract provisions in the Procurement Code to:

- 1) Allow local public bodies to solicit for multiple source engineering and design contracts, as well as construction contracts, procured through a single request for proposals (RFP);
- 2) Increase the cap for all contracts to a single firm from \$2 million to \$6 million; and
- 3) Clarify the term of the cap by changing it from “over the course of four years” to “at any point in time.”

FISCAL IMPLICATIONS

No fiscal impact to the State is anticipated.

SIGNIFICANT ISSUES

GSD comments that this bill provides increased efficiencies in the procurement of architectural and engineering contracts, as well as construction contracts, by increasing the dollar value of those types of contracts that are procured through an open, competitive process for multiple unspecified projects.

Under the existing Procurement Code provision governing multiple source contract procurement, a state agency may procure multiple architectural or engineering service contracts, along with construction contracts, for multiple projects under a single RFP. Section 13-1-154.1 NMSA 1987. The firms selected under this method each have a contract with set rates, terms and conditions. When a state agency needs a specific service, it may be able to more quickly hire a firm through a task order issued against that contract. SB 419 amends the Procurement Code to allow local public bodies to use this same procurement method.

DOT explains its use of the single qualifications-based RFP process for engineering work, which may involve unforeseen maintenance activities resulting from vehicle crashes, flooding, or other weather-related damage that cannot be addressed by its internal design staff without causing significant delays to existing projects:

NMDOT primarily uses multiple source contracts for emergency/on-call engineering services. For example, when a serious accident occurs shutting down a highway, NMDOT is able to quickly get a firm out to the accident site to plan necessary travel detours and road repairs. Without multiple source contracts, these services may take three months or more to procure through other procurement code contracting mechanisms. Currently, NMDOT has 10 firms under multiple source contracts for bridge/structural design work, 11 for drainage services, 11 for traffic engineer services, and 14 for geo-technical services. Each of these has been procured under the existing version of Section 13-1-154.1.

This bill would provide this same process to cities, counties and other local public bodies which may face similar time-sensitive projects.

SB 419 also raises the existing cap for contracts under such an RFP, along with the cap for indefinite quantity construction contracts, from \$6 million to \$10 million. Again, DOT provides an example of the significance of the cap:

Raising the cap would benefit NMDOT, which currently finds the multi-source awarded contracts can reach the current cap before the term of agreement is met. For example, of the firms under contract procured through the multiple source contract procurement, 6 of the 41 engineering firms performing services for NMDOT in the state are at or nearing the \$2,000,000 cap, even though the contract term for each has not yet reached expiration.

Further, DOT advises:

The services required for NMDOT projects is highly specialized and includes cultural resources and related mitigation, archeological data recovery, National Environmental Policy Act (NEPA) compliance, and State Historic Preservation Office (SHPO)

compliance. There are a limited number of firms that provide survey, environmental and hazardous material services for transportation projects. The current cap restricts NMDOT’s ability to procure the additional engineering and specialty services from the firms that have the expertise required for transportation projects.

However, as DFA noted in its analysis of a similar bill pending in the current session (SB 339), raising this cap could have an unforeseen consequence of eliminating some smaller firms from contention for awards when an agency desires to work with a single contractor on a large number of projects under a single procurement, as the smaller firm might not be capable of handling such a workload.

In addition, SB 419 clarifies the term of the cap. It removes the current four year limitation for contracts with a particular firm, replacing it with “at any point in time”. This change makes it clear that any firm that has reached the \$6 million amount cannot perform any additional work or enter into additional contracts with the same public body until one or more of the existing contracts have terminated or expired, so that the total value of active contracts is below that amount.

CONFLICT

GSD provides this chart depicting the differences, and thus conflicts, between SB 419 and SB 339:

	SB 339	SB 419
A/E Contracts Total Contract Limit for Multiple Contracts	\$2,000,000 Unchanged	\$6,000,000
A/E Single Contract Limit	\$500,000 Unchanged	\$500,000 Unchanged
A/E Contract Term (Cap)	4 Years Unchanged	At any point in time
Construction Total Contract Limit for Multiple Contracts	\$10,000,000	\$6,000,000
Construction Single Purchase Order Limit	\$1,000,000	\$500,000 Unchanged
Construction Contract Term (Cap)	3 Years	At any point in time

OTHER SUBSTANTIVE ISSUES

DOT notes that, when multiple source contracts are unavailable because the caps have been reached, it has two alternatives, both of which are time consuming and push back project timelines. One method is the small purchase of professional services not exceeding \$50,000 under Section 13-1-125(B), which may take three to six weeks to accomplish. Another method is to issue a RFP based on Section 13-1-111(D), which may take three to six months from initiation to notice to proceed. Under a multiple source contract with an expanded cap, NMDOT could have a contractor on the job within a week.