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## FISCAL IMPACT REPORT

SPONSOR Sanchez ORIGINAL DATE 2/6/2020 LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Construction Manager General Contractor Act SB 228  
ANALYST Jorgensen

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB307

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

Senate Bill 228 (SB228) enacts a new section of the Procurement Code to be titled the Construction Manager General Contractor Act. The bill would allow the Secretary of the Department of Transportation to use an alternate, qualifications-based construction manager general contractor (CMGC) delivery method. SB228 defines construction manager general contractor as: “a project delivery method in which a contract for construction manager general contractor services is procured separately from a contract for project design services and a contract for independent cost estimate services.”

SB228 requires the secretary of transportation to adopt procedures for selecting, procuring, and contracting a project using the CMGC method. The procedures shall define the scope of the project and require the CMGC to:

- Provide a range of preconstruction services and participate in project design, cost control, scheduling, and value engineering efforts;
- Provide construction work at a guaranteed maximum price.

SB228 establishes a two-phase process during which, in the first phase, a selected CMGC works with the project designers on cost control and value engineering until a project design reaches 90

percent complete. The second phase begins when 90 percent design completion is attained, the CMGC submits a guaranteed maximum price for construction of the project and negotiation begins between the CMGC and the DOT. If negotiations are successful, DOT will enter a contract for construction services with the CMGC. Should negotiations fail, SB228 allows the department to competitively bid the construction phase of the project.

SB228 adds the Construction Manager General Contractor Act to the list of exemptions from the competitive sealed bid requirements in Section 13-1-102 NMSA 1978.

## **FISCAL IMPLICATIONS**

The CMGC project delivery method has the potential to reduce costs to the department by creating efficiencies in project design and construction and insulates DOT from cost overages by holding the CMGC liable for project costs exceeding the guaranteed maximum price. However, there is no data available to estimate potential cost savings to the department therefore the estimated additional operating budget impact is unknown.

## **SIGNIFICANT ISSUES**

The Federal Highway Administration (FHWA) adopted regulations governing use of CMGC in 2016. FHWA defines CMGC as:

The Construction Manager / General Contractor (CMGC) project delivery method allows an owner to engage a construction manager during the design process to provide constructability input. The Construction Manager is generally selected on the basis of qualifications, past experience or a best-value basis. During the design phase, the construction manager provides input regarding scheduling, pricing, phasing and other input that helps the owner design a more constructible project. At approximately an average of 60 percent to 90 percent design completion, the owner and the construction manager negotiate a 'guaranteed maximum price' for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. The CMGC delivery method is also called the Construction Manager at-Risk (CMR) method by state law in some states.

CMGC contracting requires the general contractor to provide a guaranteed maximum price for construction work with any cost overruns to be paid by the CMGC.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB228 duplicates House Bill 307.

## **TECHNICAL ISSUES**

DOT notes the following:

SB228 relates to Section 13-1-121 NMSA 1978, which sets the criteria for state public works project selection committees in the review of competitive, sealed, qualifications-based proposals. Section 13-1-121(E) exempts the NMDOT for the selection of “an

architect, engineer, landscape architect and surveyor selection committee” formed for NMDOT projects. This section should be amended to include a CMGC selection committee in the exemption.

SB228 proposes that NMDOT may enter negotiation with the construction manager when the design is 90 percent complete. Rather than set the percentage by statute, establishing the completion percentage could instead be determined by the NMDOT through its CMGC procedures or rule.

CJ/al