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FISCAL IMPACT REPORT

SPONSOR: Varela DATE TYPED: 02/05/01 HB 230
 SHORT TITLE: Performance Contracting Act SB _____
 ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Below	Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Duplicates Senate Bill 166

SOURCES OF INFORMATION

- LFC files
- Attorney General
- Department of Finance and Administration (DFA)
- Public Employees Retirement Association (PERA)
- State Investment Council (SIC)
- Public Regulation Commission (PRC)
- Department of Tourism
- Division of Vocational Rehabilitation (DVR)
- State Department of Education (SDE)
- State Agency on Aging
- Health Policy Commission
- Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 230 adds a new section of law to require the Department of Finance and Administration (DFA) to implement a comprehensive system of managing the development and oversight of professional services contracts that are entered into by state agencies. It requires agencies that enter into professional services contracts to improve the decision making process they use when determining whether to contract out government services and to prepare cost-benefit analyses. Agencies must certify to DFA that they have completed the cost-benefit analysis. The bill requires agencies to review professional services contracts for legal sufficiency.

House Bill 230 - Page 2

The bill requires that professional services contracts be “performance contracts” which means that they must include elements designed to improve accountability, including performance measures, provisions to use against contractors who do not meet performance standards; and provisions to monitor the contractor’s performance.

The bill applies to all state, legislative and judicial agencies and to post-secondary institutions. Legislative and judicial agencies and post-secondary institutions could formulate their own policies to meet the goals of the bill.

The bill exempts emergency procurements and those entities exempted by DFA rule or order.

Significant Issues

LFC staff studies in 1999 and 2000 have shown that New Mexico state government’s contract management and accountability system needs improvement. The 1999 study noted that the state’s expenditures for contract services have grown by \$1.6 billion from FY95 to FY00. The 2000 study reviewed six state agencies’ contract policies and procedures and found they are generally inadequate for financial accountability or quality control. A joint study by Governing magazine and Rutgers University study released in January 2001 noted that contracting in New Mexico is “very decentralized, leaving problems with the potential to fester unnoticed.”

This bill would require DFA to implement a management system for professional services contracts by state agencies that would include:

- Training for agencies on contract development and management;
- Policies and procedures for contract management;
- A role for DFA in the development of major contracts
- Selective monitoring of contract procedures;
- Guidelines for state agencies on preparing cost-benefit analyses;
- Guidelines for state agencies on performance contracting and monitoring;

Enactment of this bill would provide greater accountability for the use of taxpayer dollars to fund professional services contracts entered into by state agencies. Expanding DFA’s role in the management of professional services contracts would potentially improve accountability in two areas: at the decision-making stage, by helping agencies to determine the benefits of contracting out, and in the ongoing management of contracts, by supporting agencies to use performance contracting.

DFA has stated that agency contract management and accountability needs improvement. DFA believes individual agencies should bear principal responsibility for ensuring accountability. DFA also believes that any changes to contracting processes for professional services should apply to all branches of government.

Performance contracting, which the bill mandates, is becoming more widely practiced in the public sector, especially in the areas of health and human services. Performance contracts focus on the outputs, quality and outcomes of service provision and may tie at least a portion of a contractor’s payment as well as any contract extension or renewal to the achievement of those goals. In several recent studies, the need for adequately trained contract managers has been highlighted as one of the principal challenges of moving to performance contracting.

FISCAL IMPLICATIONS

House Bill 230 - Page 3

The bill contains no appropriations.

In order for the Department of Finance and Administration to adequately carry out the provisions of the bill, several additional FTE are likely to be required. LFC analyst estimates one FTE. DFA did not address this issue.

Fiscal implications for other agencies are indeterminate. Some agencies, including the SIC, the PRC and EMNRD argue that additional performance requirements would increase the cost of professional services contracts because of the additional reporting and monitoring requirements. Other agencies believe that the bill would have positive fiscal implications by ensuring that all contracts contribute in a measurable way to their overall missions.

Positive long-term fiscal implications of the bill deriving from better management of the contracting process and improved accountability are indeterminate. Better management of professional services contracts, both the initial decision to contract out services and the ongoing oversight of contracts, would likely have significant positive fiscal impact. Performance contracts should provide a means to ensure that deliverables are of high quality and are related to the overall performance goals and targets of the contracting agency.

PERFORMANCE IMPLICATIONS

As New Mexico state government moves to performance-based budgeting as required by the Accountability in Government Act of 1999, integration of professional services contracts into a results-oriented management structure is, for many agencies, a logical next step. The SIC, for example, says that the bill would help agencies tie their overall performance to the performance of contractors. The Department of Tourism notes that the bill would set standards for professional services contracts and that “this will help agencies tie the professional services that were provided to the agency’s budget based on performance measures.” The Health Policy Commission notes that the bill would help it “to monitor achievement of outcomes under the upcoming performance-based budgeting system.”

ADMINISTRATIVE IMPLICATIONS

The bill does not add FTE to DFA, but would likely require DFA to increase staffing as the bill expands DFA’s role in contracts management. DFA did not address this potential impact.

Several agencies believe that the bill would require additional staff time to perform the required cost-benefit analysis. EMNRD, for example, says that they would have to employ two FTE to meet the requirements of the bill. Other agencies, however, such as the Department of Tourism say that additional staff time or FTEs would not be needed to comply with the act. Instead, staff would need to integrate new processes into their regular work.

TECHNICAL ISSUES

The bill goes into effect July 1, 2001. A number of agencies question whether this would give adequate time for DFA to provide training and develop guidelines for agencies. DFA did not address this issue.

OTHER SUBSTANTIVE ISSUES

House Bill 230 - Page 4

Several agencies raised concerns about the effect of the bill on contractors. SIC, for example, asked whether the number of potential bidders might be reduced to new requirements of performance contracting.

Several agencies raised concerns about the bill's requirement in Section 4. D. that they submit contracts for DFA review at least 30 days prior to their effective date. Current statute, however, requires that DFA approve certain professional services contracts, including those of EMNRD. Because many agencies do not provide enough lead time, DFA often approves contracts retroactively. This section of the bill is designed to help prevent retroactive approvals.

AMENDMENTS

To address the technical issue addressed above, replace lines 16 and 17 on page 6 to read "EFFECTIVE DATE – The effective date of the provisions of this act is July 1, 2002."

POSSIBLE QUESTIONS

1. Will the costs that might accrue to agencies, particularly in the beginning stages of performance contracting, outweigh the benefits of improved accountability, especially in regard to small contracts?
2. What would it mean in practice for DFA to actively participate in the development of major requests for proposals and contracts? Could Section 5.F. be changed to allow DFA to act as a resource instead of requiring direct participation.?
3. The bill requires state agencies to review contract decisions and the RFP process for form and legal sufficiency. A review of this type is currently performed by the Contracts Review Bureau at DFA, per Section 13-1-118 NMSA 1978. Is this duplication necessary to ensure good management of professional services contracting?

LMP/ar