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## FISCAL IMPACT REPORT

SPONSOR Komadina      DATE TYPED 02/04/04      HB \_\_\_\_\_

SHORT TITLE Construction Management Services Contracts      SB 20

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

Relates to SB454

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Department of Transportation (DOT)
- Regulation and Licensing (RLD)
- Public Education Department (PED)
- Public School Facilities Authority (PSFA)
- General Services Division (GSD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 20 authorizes the State and local public bodies to enter into construction management services contracts with a construction manager or a “construction manager at risk” on public works projects.

A “construction manager at risk” means a person who:

- Acts as an agent of the state agency or local public body for construction management;
- Cooperatively develops the project with the state or local public body and an architect;
- Guarantees a maximum price for the project to the state or local public body; and
- Obtains bids from qualified subcontractors for services and materials not provided by that person.

Significant Issues

GSD believes the construction manager at risk should be an independent fiduciary of the owner, the Property Control Division or equivalent oversight entity for political subdivisions, and not answerable to any contractor or agency. The construction manager at risk should be accountable for assuring compliance with project timelines and other requirements.

The common industry definition of a construction manager at risk includes responsibility for guaranteeing costs and schedules, but SB20 would only require a guaranteed maximum price for the project. It appears that the construction manager at risk would act much as a general contractor. However, there is no performance bond requirement for the construction manager at risk and it is not clear who assumes risks and responsibilities.

SB 20 allows all of the facets of a construction project to be under the influence of one construction manager at risk, including representing the governmental entity, assisting in design development, guaranteeing maximum price, and choosing to buy materials or services provided by the construction manager at risk instead of by competitive bid. A mechanism would be needed to ensure quality control when the construction manager at risk chooses to provide services and materials instead of obtaining competitive bids from qualified subcontractors.

PED explains that a number of construction management services contracts are being used by school districts as an alternative project delivery method. The intended advantage of this construction method is to eliminate general contractor markups of subcontractors work. In as much as most school districts do not have the staff or expertise to assume the added burden of project definition, coordination and control of the project, a construction manager is hired. Under this arrangement, the construction manager assists the owner in obtaining multiple prime contractors to complete the work. Each prime contractor is in direct contract with the owner, with each being responsible for a specific portion of the total project. Payment to the construction management firm is typically based on a fixed fee plus a predetermined percentage of the prime bids and requires the owner to hire a "project superintendent" to oversee the day-to-day operations. Under current law, the construction manager is not "at risk" and therefore not responsible to the owner for claims for project delays and extended overhead from nonperformance of one or multiple prime contractors. This methodology has had mixed results in New Mexico and has in some cases resulted in higher construction costs than traditional methods.

The Construction Industries Division (CID) of RLD states that on occasion, the question of whether a provider of construction management services on public works is required to be licensed by the CID is at issue. The Construction Industries Licensing Act (CILA) defines contracting for which a license is required to include construction management. (However, CID does not interpret the CILA to extend to a person or entity that does not have authority to actually direct a contractor in the performance of the contracting work.) This is sometimes not an easy distinction to make. In addition, licensed engineers and architects, who are separately licensed to engage in activities that can overlap with those authorized by the CILA, perform construction management services.

This bill defines a construction manager at risk to be a person who guarantees a maximum price for the project. To the extent that such a guarantee would require the construction manager to control the contracting work to keep to the guaranteed price, a CID contractor's license would probably be required, regardless of any other professional license held by the construction manager.

## **FISCAL IMPLICATIONS**

The PSFA states the added costs of hiring a construction manager will reduce the available funds for construction. When combined with design professional services, available funds for construction for a typical project would be reduced 10 – 18 percent.

Administering construction projects could change for governmental entities that opt to use services of a construction manager at risk.

CID notes poor performance by a construction manager can result in elevated costs and reduced quality of a project. Construction management is often used by owners who do not have “in-house” expertise. This creates a situation that is ripe for those who would take advantage. Conversely, when the services are performed well, the inexperienced owner’s interests are protected and efficiencies achieved.

It has been CID’s experience that projects on which construction management services are performed do not necessarily result in code compliant construction. Though these services generally promote “oversight and efficiency” of construction, too often the oversight is minimal, and the costs of the service are high.

## **ADMINISTRATIVE IMPLICATIONS**

The Secretary of GSD is required to promulgate rules to effectuate statute. The Secretary has done this and the rule on Construction Management Services has been promulgated at NMAC 1.5.8. This rule will have to be amended to accommodate construction managers at risk.

Administering construction projects could change for governmental entities that opt to use services of a construction manager at risk.

Because of potential overlap of duties and liability with these other professional groups, there will be a need to ensure that appropriate construction management contracts are established that do not conflict with engineer and architect contracts.

## **RELATIONSHIP**

SB 20 relates to SB454, Construction Manager Qualifications

**DW/prr:dm**