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## FISCAL IMPACT REPORT

SPONSOR Sandoval DATE TYPED 2/24/05 HB 369/aHBIC  
 SHORT TITLE Electronic Procurement Bid Submission SB \_\_\_\_\_  
 ANALYST Geisler

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

Duplicates: SB 351

### SOURCES OF INFORMATION

LFC Files  
 General Services Department (GSD)  
 Attorney General (AG)  
 Department of Finance and Administration (DFA)  
 Human Services Department (HSD)

### SUMMARY

#### Synopsis of HBIC Amendments

The House Business and Industry Committee amendments to House Bill 369 clarify that electronic submission of bids and proposals shall be made to an email account or other secure electronic location.

#### Synopsis of Original Bill

House Bill 369 authorizes electronic submission of bids and proposals, and provides for a reverse auction bidding process in the Procurement Code. The bill specifically prohibits the use of reverse auctions for the procurement of construction, construction services, construction maintenance, or construction based on unit price as well as related construction materials.

This bill contains an emergency clause.

#### Significant Issues

Allowing electronic submission of bids and proposals would modernize the Procurement Code, and save time and costs for government entities and for vendors. Reverse auction is a purchasing strategy where bids are entered and visible electronically during a prescribed period. Bidders can see their competitors' bids, anonymously, in real time over the Internet. This is a purchasing

option used in spend management, which is part of a major initiative during the past two years to enhance competition and save money for government entities.

### **PERFORMANCE IMPLICATIONS**

The State Purchasing Division is currently participating with a spend management contractor to establish procedures that leverage the state's purchasing power.

### **FISCAL IMPLICATIONS**

Allowing electronic receipt of bids and proposals, where appropriate, would save money for vendors and government entities (paper products and postage). Reverse auction is an increasingly popular method to increase competition and get better prices for goods and non-professional services.

### **ADMINISTRATIVE IMPLICATIONS**

A GSD rule change and training for agencies and vendors will be required. There would be no significant increase in workload for GSD or other entities under the Procurement Code.

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

SB 351 and HB 369 are duplicate bills

### **TECHNICAL ISSUES**

HSD suggests that HB 369 should be amended to provide a definition of reverse auction.

### **OTHER SUBSTANTIVE ISSUES**

#### Concern over Emergency Clause

HSD notes that Section 13-1-95.1 requires the state purchasing agent to develop guidelines for central purchasing offices to use electronic media including acceptance of sealed bids and competitive sealed proposals. These guidelines are to provide for appropriate security to prevent unauthorized access to electronically submitted bids and proposals prior to the date and time set for opening of bids or receipt of proposals and to allow conversion of electronic forms into a medium that permits inspection and copying. Since these "guidelines" will affect any state agency that procures by invitations for bids and requests for proposals, these procedures should be set in regulations. Regulations are required when any rule, regulation, order, standard or statement of policy affects persons not members or employees of the issuing agency. (See NMSA 1978, Section 14-4-2 and 1.24.1.7 NMAC.) The procedures must prevent unauthorized access to bids and proposals prior to the time set for opening of bids or receipt of proposals.

The bill states that "it is necessary for the public peace, health and safety that this act take effect immediately." Since the "guidelines" for implementation of the electronic submission procedure require the promulgation of regulations, the act should not take effect immediately, but take into account the time required to promulgate the necessary regulations.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Electronic submission of bids or proposals, and the reverse auction methodology could not be used under the Procurement Code.

GGG/yr