

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Silva DATE TYPED 03/12/05 HB 860/aHBIC

SHORT TITLE Lower Design & Build Project Threshold SB _____

ANALYST Geisler

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB 897

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 Regulation and Licensing Department (RLD)
 Public Schools Facility Authority (PSFA)

SUMMARY

Synopsis of HBIC Amendments

The House and Business and Industry Committee amendments to House Bill 860 clarify that unsuccessful firms on the short list and the highest-ranked firm shall be compensated for actual, documented proposal expenses in an amount not to exceed one percent of total project cost. Payment shall not entitle an agency to ownership of the documents or ideas represented in the documents. Payment shall be made to the short listed firms immediately after contract award.

Synopsis of Original Bill

House Bill 860 would add to the public works projects that can use the design and build project delivery system those projects with an estimated construction cost between \$5 million and \$10 million.

Significant Issues

Current law allows using the design/build strategy on public works projects over \$10 million estimated construction cost, and for projects with a combination of \$400,000 or less estimated construction cost that is only for site improvements or for a pre-engineered building. Those smaller site adapt/site improvement projects must be procured by a competitive sealed bids process rather than a request for proposal process.

When a design/build system is utilized, the owner contracts with a “team” which includes a design entity and a construction firm selected through a two-phase request for proposals after a determination that it is appropriate and in the best interest of the state or local public body and meets specific requirements.

Advantages of Design Build Project Delivery System

PSFA notes that the advantages to the owner of this type of project delivery system include a single point of contact and responsibility for the entire project. The design/build team also assumes all of the risk for project completion. This significantly reduces the role of the owner in the process. The owner still has a role in the process in that almost all of the standard contract forms require the owner to have prepared an “owners program” which sets out the scope of work and requirements that the owner is looking for.

Another advantage to the owner is there is no “privity of contract” between the designer and the contractor. This means that the designer and contractor cannot sue each other for design errors or omissions. And, because the owner has contracted for a higher level of service, the contractor is often held to warrant the performance of a finished project. Because of the higher standard, the design /build contractor cannot escape liability merely by proving that construction was in accordance to project plans and specifications.

Disadvantages of Design Build Project Delivery System

PSFA notes the disadvantage to the owner of this type of project delivery system is that the owner cannot rely upon the architect to oversee the contractor’s work because the architect is not the owner’s agent. The architect is the contractor’s partner. The design/build team is usually given a cost to work within. The motivation to meet the owner’s specifications with the least cost materials is high because the savings translate to profit for the design/build team. This facet unfortunately can result in lower overall product quality, higher long term maintenance cost and shorter building lifecycle relative to traditional design-bid-build process. This effect can be mitigated somewhat with more detailed “owners program” and specifications but this requires a very knowledgeable owner. Absent this knowledge the entity may have to spend additional funds to acquire the services of a construction manager to oversee the performance of the design build team.

PERFORMANCE IMPLICATIONS

Design/build is a complex project delivery system that requires a knowledgeable user agency or consultant that can adequately define the project requirements and manage the implementation.

FISCAL IMPLICATIONS

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 897 and HB 860 both allow design-build on projects between \$5 million and \$10 million. SB 897 also requires payment of a stipend to the finalist and other short listed offerors equal to one percent of the project cost.

OTHER SUBSTANTIVE ISSUES

GSD provides that the estimated construction cost is generally about 80 percent of the total project cost. The remaining 20 percent is for expenses such as design fees, contingency, consultants (e.g. environmental, engineering, survey contracts), administration, art-in-public places, gross receipts taxes on contracts.

PSFA provides that in New Mexico, this authorization does not apply to road and highway construction or reconstruction projects. The cost components that may be included to meet the cost threshold are: construction costs, architectural/engineering fees, gross receipts tax, utility connections, site development costs, built-in equipment and furnishings and up to ten percent (10%) project contingency.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Requests to use the design/build project delivery system would only be allowed for the large public works projects with an estimated construction cost of over \$10 million.

GG/lg:rs