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FISCAL IMPACT REPORT

SPONSOR Komadina DATE TYPED 3/4/05 HB _____

SHORT TITLE Government Construction Management Contracts SB 265

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		

Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Administration & Finance (DFA)
 General Services Department (GSD)
 Public Education Department (PED)
 Public School Facilities Authority (PSFA)
 Regulations & Licensing (RLD)

Synopsis of Bill

Senate Bill 265 Senate Bill (SB) 265 amends the state procurement code to authorize the State and local public bodies to enter into construction management services contracts with a "construction manage (CM) at risk" on public works contracts. A construction manager at risk means a person who:

- Acts as an agent for the state agency or local public body for construction management of a public works project;
- Cooperatively develops the project with the public entity and an architect;
- Guarantees to the public entity a maximum price for the project and appropriate time schedules;
- Provides performance bond or other surety satisfactory to the public entity to ensure all guarantees are met; and
- Obtains bids from qualified subcontractors for services and materials.

Under current law, construction contractors are selected through a low-dollar bid process, or through competitive sealed proposals.

Significant Issues

Under current New Mexico law, a construction manager is not "at risk" and therefore not responsible to the state agency or local public body for claims for project delays, cost overruns and contractor performance. A construction manager provides construction management services from conception to completion of the construction project, applies appropriate management techniques to project planning, design and construction in order to control time and cost and assure quality for the project owner. The construction manager does not provide professional design or engineering services, or act in the capacity of a contractor.

This bill gives more control of a construction project to a construction manager at risk than is allowed in current statute for construction manager. The bill allows all facets of a construction project to be influenced by a single construction manager at risk, including representing the governmental entity, assisting in design development, guaranteeing maximum price and time schedules, and choosing to buy materials or services provided by the construction manager at risk instead of by competitive bid. This potentially could allow one individual to influence the design, price and time schedules associated with the construction project. Guaranteeing a not-to-exceed maximize price and time schedules may not serve the intended purpose of making the construction manager at risk accountable if the same person is providing such an extensive array of services. Providing services normally provided by a licensed contractor without the requirement of a competitive bidding process could adversely affect both cost and quality.

DFA indicates this bill is a rewrite of SB 20, introduced during the 2004 legislative session. This 2005 legislative session bill has added provisions in an attempt to correct some of the problems in the earlier bill which only required the construction manager at risk to guarantee a maximum price for the project. There were no provisions to guarantee the project would be finished on time or that performance criteria would be met.

SB 265 specifies that the construction manager at risk must also guarantee time schedules and provide a performance bond or other surety satisfactory to the state agency or local public body. The GSD has expressed concerns that even with the changes made over the previous bill, there are still not adequate controls to assure quality control.

This bill is intended, in part, to help local public bodies where contract management resources are limited. Shifting more risk to a construction manager at risk may protect a local public body from price over-runs and construction delays. However, it may also increase the cost of the construction project without proper quality assurance oversight.

GSD states there are problems inherent in awarding construction contracts based on low-bid. There could be problems when a construction manager is involved in both design and providing construction services and materials, especially when competitive bids for the services and material are not required. The bill does provide for a performance bond, which may not adequately address quality control issues to ensure the CM at risk meets acceptable standards when providing the services and materials instead of bidding with qualified subcontractors.

Construction management is considered a professional service in the procurement code. There have been unfortunate examples in recent years of large construction projects that lacked quality control, some of which used the services of a construction manager.

FISCAL IMPLICATIONS

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 will take advantage of ignorance. Conversely, when the services are performed well, the inexperienced owner’s interests are protected and efficiencies achieved.

It has been RLD’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.

The PSFA believes 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 will be reduced by 10 – 18 percent.

ADMINISTRATIVE IMPLICATIONS

The GSD rule pertaining to construction management services will have to be changed to accommodate construction managers at risk.

Because of potential overlap of duties and liability with 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

TECHNICAL ISSUES

There are other sections of the procurement code that should be conformed e.g. 13-1-111 NMSA 1978 Competitive Sealed Proposals; Conditions for Use.

OTHER SUBSTANTIVE ISSUES

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. Inasmuch 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 CM 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 have in some cases resulted in higher construction costs than traditional methods.

DW/lg