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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/12

SPONSOR Larrañaga LAST UPDATED _____ HB 196

SHORT TITLE Exempt Some Online Services From Procurement SB _____

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)
 General Services Department (GSD)
 Department of Information Technology (DoIT)
 Human Services Department (HSD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 196 (HB 196) amends the State’s Procurement Code:

- amends Section 13-1-98 and provides an exemption for the purchase of online materials and support services and increases from \$5,000 to \$10,000 the exemption for subscriptions and fees where prepayments are required;
- amends Section 13-1-119.1 and removes the \$10,000,000 cap on the use of “design-build” project delivery systems, if authorized by state purchasing;
- amends Section 13-1-125 and increases from \$20,000 to \$60,000 small purchases and increases from \$50,000 to \$60,000 professional services procured by a “central purchasing office”, and increases from \$10,000 to \$20,000 the dollar limits for a direct purchase order by an agency based on best available price;
- amends Section 13-1-154.1 and increases from \$200,000 to \$500,000 the dollar limits on the use of a single solicitation to procure architectural or engineering design services for multiple projects constructed over a four-year period, and increases from \$200,000 to \$2,000,000 the maximum any firm providing architectural or engineering design services for multiple projects can earn in a four-year period.

FISCAL IMPLICATIONS

The bill increases the dollar limits from \$200,000 to \$500,000 for the procurement of multiple architectural or engineering design services for multiple projects under a single solicitation.

The bill increases the cap from \$200,000 to \$2,000,000 for the total amount of all contracts that can be issued to an architectural or engineering design firm in a four year period.

Traditional project delivery systems (design-bid-build) may provide the best opportunity in today's struggling marketplace to capitalize on competition and obtain the best pricing. However, project disputes, change orders, and other inefficiencies sometimes encountered in those traditional project delivery systems, makes design-build an attractive option for *some* projects.

SIGNIFICANT ISSUES

This bill is based on recommendations proposed by the Governor's Task Force on Procurement Reform, Executive Order 2011-031, to review and update the current statutory and regulatory Procurement Code and to increase transparency and efficiency in the procurement process.

Agencies will be able to procure electronic material as is currently allowed for print and subscriptions, dues, and conference fees without having to declare a sole source or obtain quotes.

The bill subjects small purchases of services, construction, or items of tangible personal property, and professional services, to the same thresholds and under similar requirements.

Agencies will be able to process one solicitation under a design-build project delivery system as opposed to two under a design-bid-build or other methods.

NMDOT will be allowed to use design-build on projects that are not only funded by grant programs of the federal American Recovery and Reinvestment Act of 2009, but by other state and federal funding mechanisms.

The bill will allow contractors, architects and engineers to perform multiple services under multiple contracts with an agency as long as the total of all contracts do not exceed \$2,000,000.

PERFORMANCE IMPLICATIONS

Currently, Section 13-1-119.1 allows for design-build projects "[e]xcept for road and highway construction or reconstruction projects," prohibiting the use of a design-build project delivery system for road and highway construction or reconstruction projects costing more than \$10,000,000.

ADMINISTRATIVE IMPLICATIONS

Agencies report the bill supports administrative efficiencies with provisions that may streamline the procurement process.

OTHER SUBSTANTIVE ISSUES

Proponents claim that using a design-build project delivery system for highway projects:

- saves time due to 1) early contractor involvement that enables construction engineering considerations to be incorporated into the design phase;
- reduced construction engineering and inspection (CEI) costs to the contracting agency when quality control and risks are transferred to the design-builder;
- fewer change orders resulting from earlier identification and elimination of design errors that might otherwise show up during the construction phase; and
- shortened project timeline that reduces the level of motorist inconvenience due to reduced lane closures.

Critics claim that design-build:

- reduces competition for construction services by excluding smaller firms unable to lead the larger projects;
- provides an opportunity for favoritism to enter into the contract award process by including non-price factors in the basis for selection;
- undermines the inherent checks and balances between design and construction teams in the traditional delivery systems, with the design team no longer independent of the construction contractor; and
- may increase project costs due to the elimination of any low bid contractor selection criteria.

ALTERNATIVES

It may be in the best interest of the state to have a portfolio of alternative approaches for project delivery to suit different situations and project types.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Procurement Reform Task Force will mostly likely continue efforts to identify solutions to improve the procurement process for users of and offerors for the State's business.

QUESTIONS

In considering alternative project delivery approaches, proponents of more traditional approaches question whether adequate checks and balances are provided to ensure product quality, integrity in the procurement process, and fairness to firms that compete for these contracts. If the revisions to the Procurement Code are adopted, what guarantees are in place to protect State interests from corruption?

AHO/svb