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FISCAL IMPACT REPORT

SPONSOR Garcia Richard **ORIGINAL DATE** 1/30/15
LAST UPDATED 3/17/15 **HB** 130/a/HGEIC/aSCORC

SHORT TITLE State Procurement Committee and Reviews **SB** _____

ANALYST A. Sánchez/Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		TBD	TBD		Recurring	General Fund/Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 100 and SB 69.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (DOT)
 General Services Department (GSD)
 Department of Finance and Administration (DFA)
 Department of Health (DOH)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to House Bill 130 strikes HGEIC amendments 1, 3 and 6, and returns the state purchasing agent as a voting member and chair of the procurement standards and specifications committee (procurement committee), decreases the committee to 13 members, and eliminates the requirement of reviews of RFPs by random sampling. It also limits the definition of a small business to mean one that has an average annual volume that does not exceed \$1.5 million for the three preceding fiscal years (striking the alternative definition of no more than 150 employees). It directs the procurement committee to conduct a monthly review of not more than 10 percent of the total number of RFPs issued during the previous 30 days, which RFPs are to be selected pursuant to a procedure to be developed by the committee.

Synopsis of HGEIC Amendment

House Government, Election and Indian Affairs Committee amendment to HB130 changes the makeup of the procurement standards and specifications committee making the state purchasing agent a non-voting ex-officio member; increases the committee to 14 members adding representation from the Environment Department. The amendment also changes the review of requests for proposals (RFP) to a random sampling of published RFPs.

Synopsis of Original Bill

House Bill 130 proposes to amend the Procurement Code definition of a small business to exclude a subsidiary or division of another business that has either an average annual volume that does not exceed \$1.5 million for the three preceding fiscal years or has an average number of employees that does not exceed 150 for the preceding three fiscal years. The bill expands the “state procurement standards and specification committee” (Committee) from 11 to 13 members, adding two more private sector representatives, and requires the committee to meet monthly and review requests for proposals (RFP) and notify the relevant agency of its concerns and recommendations on how to remedy those concerns. The annual purchasing agent report to the GSD secretary will include concerns noted in the RFP reviews.

Changes to the Procurement Code in HB 130 would take effect July 1, 2015.

FISCAL IMPLICATIONS

DFA notes in its response to the HGEIAC amendment that the change from all RFPs to a random sample of published RFPs would appear to address the concern of the original because of the extremely large number of RFPs that would have to be reviewed. It also points out that the change in the definition of “small business” includes companies with few employees and work volume exceeding \$1.5 million since the connector is “or” and not “and”.

GSD expressed concern regarding the amount of time its State Purchasing Division (SPD) would need to devote to monthly meetings and a review of a random sample of RFPs after publication. Currently, however, the Committee is staffed by SPD, but only meets as necessary. The additional duties and responsibilities, including requiring monthly meetings and review of a random sample of RFPs, in the bill would require additional time for all SPD buyers to respond to concerns raised by committee members. Taking buyers away from state agency procurements to review a random sample of RFP will impact the ability of state government to perform its duties relative to RFPs. The exact budgetary impact is difficult to determine.

Requiring staff from six state agencies to meet monthly to review RFP will remove them from daily operations in their departments and could require overtime to address agency-related procurement issues, or may require increasing staff to review RFPs for other state agencies and local governments before those are posted for response.

The AGO states in its response that if it has to act as legal advisor to the Committee, it will require an appropriation to provide the necessary staff. It does not provide an estimate of the needed appropriation.

The NMCD states that the bill even as amended would likely result in additional staff or

requiring overtime from existing staff.

SIGNIFICANT ISSUES

According to NMDOT, it has an annual schedule for engineering services RFPs that must be followed pursuant to certain Federal Highway Administration (FHWA) mandates. HB130 does not clearly state whether the Committee's review of state agencies' RFPs is a prerequisite and must occur prior to agencies soliciting for services. If the Committee's review is required prior to agencies' solicitations for services, a significant issue could arise for NMDOT in that NMDOT might not be able to maintain the annual RFP schedule set by FHWA. If NMDOT cannot maintain this annual schedule, NMDOT might risk losing its federal reimbursements from FHWA for engineering services.

DFA and GSD point out that the change in the definition of "small business" could allow businesses with quite large volumes to still be considered small if they remained under the number of employees set forth in the bill. DFA provides the example of some IT companies might have a low number of employees but a large volume of work well exceeding the \$1.5 million in the first prong of the definition. Since the word "or" is used, either one or the other prongs of the definition need only be met to make the business a "small business." GSD has great concern that the change in the definition of small business may unlevel the playing field and work to the disadvantage of businesses with smaller dollar volume.

GSD believes that the changes proposed in this bill create a "bureaucratic hold-up in the RFP process by requiring all RFPs to go before this expanded specification committee". It also states that the authority of the State Purchasing Agent or the central purchasing agents is usurped when either can no longer determine whether procurement should be deemed an RFP and gives the authority to the Committee. Additionally, it slows down the procurement process by requiring RFPs to be reviewed by the Committee.

ADMINISTRATIVE IMPLICATIONS

NMDOT states that if the Committee's review of state agencies' RFPs is required prior to the agencies' solicitations for engineering or other services, performance issues may arise for NMDOT in that NMDOT may be unable to meet its existing commitments to FHWA. In addition to receiving FHWA reimbursements, NMDOT also receives federal reimbursements from the Federal Transit Administration, the Federal Aviation Administration and the National Traffic Safety Administration for other types of professional services that NMDOT procures. All of the aforementioned federal agencies require that NMDOT enter into contracts and thereafter promptly seek reimbursement prior to the end of the federal fiscal year.

NMCD states that the changes in HB130 could improve its RFP process, especially if the Committee makes valuable recommendations to NMCD's RFPs.

DFA identifies the requirement of the Committee to review RFPs a potential delay in their issuance and the procurement of services and/or goods by agencies (and possibly local public bodies), which could give rise to more emergency procurements. DOH agrees that reviewing all RFPs may be onerous for the Committee.

Before doing business with established vendors, agencies or GSD/SPD will have to determine if

companies meet the definition of a small business as stated in this bill. The same or similar process will have to be followed by local public bodies. Procurement officers at all levels will have to be appropriately trained and GSD will have to ensure consistent application by all state agencies.

RELATIONSHIP

HB 130 relates to HB 100 (Procurement of Some Professional Services) and SB 69 (Residential Business Set-Aside Act)

TECHNICAL ISSUES

According to DFA and GSD, the Committee membership includes persons from local public bodies; however whether requests for proposals from LPBs as well as State executive agencies would be reviewed by the Committee is unclear.

GSD points out that the changing of State Purchasing Agent from chair of the State Specifications and Standards Committee to an ex-officio non-voting member, of the committee, directly contravenes the authority granted specifically in NMSA 13-1-95 D.(2) specifically to the State Purchasing Agent.

OTHER SUBSTANTIVE ISSUES

According to GSD, the proposed legislation slows down procurements and appears to create an unfair playing field for businesses classified as “small business.” Specifically the proposed bill (and current amendments) requirement to randomly sample RFPs already issued is particularly troubling. This requirement (in current form) not only adds an unknown element of schedule risk with possible unknown delays to awarding of necessary contracts for operation of state government, but also undermines the inherent statutory authority of the State Purchasing agent to oversee his or her own process. Finally, this approach may add skepticism to a marketplace struggling already to deal with normal market uncertainty, by adding another element of risk to bidders already engaged in preparing proposals by this added layer of unknown/undefined authority to “second-guess” issued procurements already under the purview of the State Purchasing Agent with proposal preparation already underway by offerors. Worth noting here, is the marketplace ability to challenge awarded procurements rooted in the statutorily provided protest procedures or (prior to receipt of proposals) the ability to participate in pre-proposal conferences or lodge pre-award protests. Also worth noting is the State Purchasing Agent mandate (NMAC 1.4.1.3) to ensure fair and equal treatment of all persons involved in public procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. The bill as crafted might be perceived as undermining that authority and, accordingly (unwittingly) result in degradation of public confidence of procurement process integrity AND result in higher offered prices if the uncertainty proves too much to absorb by competing offerors.

ALTERNATIVES

GSD suggests the following amendments to the bill:

- Delete the new duties of the specifications committee, and leave authority with the SPA and central purchasing offices to approve RFPs.

- Change the “or” to “and” on the definition of a small business so that companies with few employees but larger dollar volume do not meet the definition of a small business.

POSSIBLE QUESTIONS

How will issues discovered in a random sampling of published RFPs be resolved?

Will the RFPs if still open have to be removed and republished?

Will RFPs awarded have to be rescinded and reissued?

ABS/bb