

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 03/05/15
LAST UPDATED 03/09/15 **HB** _____
SHORT TITLE Ed Facility & Construction Manager At Risk **SB** 661/aSPAC
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (AGO)
 General Services Division (GSD)
 Department of Transportation (DOT)
 Public Schools Facility Authority (PSFA)
 NM Municipal League (NMML)

SUMMARY

Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment to Senate Bill 661 deletes language related to “Certain Pricing Criteria” in the title of the bill and also on page 4, lines 9-2. It inserts a new section B on page 4 that reads:

B. The Construction Manager At Risk Act shall be implemented pursuant to rules promulgated by the secretary in consultation with the public school facilities authority and other agencies deemed appropriate by the secretary...”

The SPAC amendments are consistent with those recommended by agency analysis to improve the bill by retaining the CMAR method that has worked successfully with educational facility projects.

GSD analysis of the amended bill states:

The amended legislation will ensure uniformity and standardization of the rules being promulgated. The primary beneficiaries of the adopted amendment are the small businesses and construction industry contractors that will bid on CMAR projects. Having a standardized rule will allow the state to speak with "one voice to industry" and help vendors prepare proposals in an efficient manner.

Synopsis of Original Bill

Senate Bill 661 would remove the educational facility restrictions from the Educational Facility Construction Manager At Risk (CMAR) act, thereby allowing all state agencies and local governing bodies to use the CMAR process.

CMAR is a delivery method by which a contract for construction services requires a construction manager to assume the risk for project construction at a contracted, guaranteed maximum price. This procurement method may be initiated before separately contracted design services are completed.

This bill also adds stipulated requirements and definitions for competitive range determination requiring the GSD Secretary to promulgate the rules. It adds procedural procurement requirements. This bill also cleans up some technical issues.

A major change aside from making the CMAR more widely available is the amendment to 13-1-124.2 NMSA 1978: Applicability--Pricing Evaluation Criteria—Rules. This language would now read as follows:

4.B. A governing authority's or state agency's request for competitive sealed proposals shall indicate that:

1. A proposal's price shall be assigned a weight of at least fifty percent but no more than seventy percent for purposes of evaluating all competitive sealed proposals; and
2. When a proposal's price exceeds by more than seven percent the average price of all competitive sealed proposals received pursuant to the request, the price shall be deemed to be outside of the competitive range and the proposal shall be eliminated from consideration.

FISCAL IMPLICATIONS

SB 661 carries no appropriation and has the following fiscal impact, according to GSD analysis:

CMAR is beneficial to the state because the entities with the best knowledge of construction costs are involved at the beginning of the project and can provide the state with important advice as major design decisions are being made that will affect construction costs in the long run.

CMAR shifts risk from the State to the Contractor which may cause the initial cost for use of this delivery method to be generally higher than other traditional methods employed such as design-bid-build. Cost savings, however, would result as project delivery times improve, costly change orders are reduced and overall project management

is streamlined.

SIGNIFICANT ISSUES

GSD analysis states that use of this project delivery method should positively impact performance where employed, increasing reliability on contract schedule and price due to the guaranteed maximum cost feature. This benefit is generally achieved or realized via more up-front involvement by the CMAR contractor in the design phase.

However, analysis from the PSFA, the agency perhaps most experienced with CMAR, states that, with regard to the weighting of proposal price, the effect is to reduce the qualifications requirement:

Currently the proposal price is given a weight of 15 points (15%) out of 100 points, Qualifications 50 points (50%) and the interview 35 points (35%). By giving the price a weighting of 50% (50 points) to 70% (70 points) it could significantly reduce the qualifications requirement of the CMAR process and make it more of a low bid process.

13-1-124.4 NMSA Construction at Risk Delivery Method requires that the owner sets the Maximum Allowable Construction Cost (MACC) in the RFP.

As opposed to RFP for Construction procurement, the CMAR contractor must deliver the project within the fixed MACC which can only change by the owner and by changing the scope of the project. Project price risk is therefore shifted to the contractor.

Since the CMAR proposal is only for management services, qualifications are the primary concern for the project owner.

By increasing the weighting of the proposal price, diminishing the qualifications weighting, and then restricting the bid price to no more than 7% of the average, it can be argued that SB 661 essentially recreates the low bidder RFP process. Agencies and local governments can still use the low bidder RFP process if they so choose, but that process differs significantly from the CMAR process.

CMAR selection processes differ in different localities. In Nevada, for example, the short list of proposers (2-5 firms) is created entirely based on qualifications, including such factors as litigation history. The final selection process includes not only the fee arrangement but past performance, key personnel, project implementation plan, safety program and interview. See:

http://www.spwb.state.nv.us/Current%20CMAR%20Documents_011508/1-cmar-request-for-qualifications.pdf

PERFORMANCE IMPLICATIONS

GSD analysis states that:

Project managers will benefit from having the addition of a construction expert on the project team at the onset of design, and a single point of contact throughout the construction until a building is delivered.

Efficiencies in project management can be achieved because the CMAR serves as the owner’s representative during construction, freeing the project manager to take on more of an oversight role and spend less time performing detailed reviews and arbitrating disputes.

DOT states that:

SB 661 provides statutory authority for NMDOT to consider use of an alternate project delivery system for its transportation projects without having to first seek specific legislative authorization. Absent specific legislative authorization, NMDOT relies on use of the competitive, low bid procurement method for its transportation projects. SB 661 allows NMDOT to consider use of an alternate project delivery system which would take into account qualifications-based criteria, along with pricing criteria, for award of the contract.

ADMINISTRATIVE IMPLICATIONS

RFP solicitation and resultant contract templates along with existing procurement processes will have to be developed by GSD and tailored to meet the stipulated requirements of CMAR. Criteria for use of CMAR should be developed as part of the GSD Secretary’s rule promulgation requirement.

TECHNICAL ISSUES

DOT analysis points out that SB 661 eliminates the definition of “educational facility” at page 5, lines 21-24, and does not add a definition of “state facilities.” “Facility” is not defined in the Procurement Code. As a result, the amended statute applies to all agencies with “authority to sell, lease or otherwise dispose of a facility” as each agency may define “facility.”

OTHER SUBSTANTIVE ISSUES

NMML analysis states that “This expansion would grant to local public bodies another method to use in the construction of facilities.”

PSFA analysis points out that the rules for implementation currently do not include delegates from higher education and school districts that are familiar and experienced with the CMAR process.

AMENDMENTS

Weighting of proposal price on p. 4, lines 9-19: PSFA recommends this section be removed. This section dilutes the purpose of the CMAR process.

Rules for implementation, p. 4, lines 20: PSFA recommends the addition “with the advice of the public school facilities authority and higher education” after the word “services” and before the word “shall.”