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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/16
SPONSOR Smith **LAST UPDATED** _____ **HB** _____

SHORT TITLE Design & Build Procurement For Some Projects **SB** 215

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown*	Unknown*	Unknown*	Recurring	State Road Fund and Federal Funds

(Parenthesis () Indicate Expenditure Decreases)

*see discussion in fiscal implications.

SB 215 is a companion to HB 206.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Transportation (NMDOT)

Response Not Received From

General Services Department (GSD)

SUMMARY

Synopsis of Bill

House Bill 206 amends the Procurement Code, Section 13-1-119.2 NMSA 1978, to allow the use of design and build project delivery for road and highway projects which use federal-aid highway funds.

FISCAL IMPLICATIONS

NMDOT states that HB 206 will have no fiscal impact on the agency as granting design-build authority is unlikely to significantly alter project bid amounts.

While GSD did not submit an analysis for this bill, the agency stated in a previous design-build authorization bill:

The use of the design-build method (where substantial cost and performance risk is transferred to the contractor) versus traditional “design-bid-build” delivery methods currently employed, may result in the cost of such delivery methods increasing commensurate with the amount of risk transferred to the contractor. At the same time, however, the risk to the owner (such as costs for unforeseen circumstances and change orders) decrease. Additionally, the cost to the owner of oversight of the project decreases as the number of FTE assigned to such projects decline and much of the work of such FTEs is shifted to the contractor.

SIGNIFICANT ISSUES

According to the Design-Build Institution of America, the design-build form of project delivery is a system of contracting whereby one entity performs both architectural/engineering and construction under one contract. In general, this delivery method is common for large projects and often leads to faster project completion times as the method allows for design and construction activities to occur concurrently.

The National Conference of State Legislatures (NCSL) stated in a 2010 report that 38 states have statutes enabling design-build delivery for transportation projects (see attachment 1).

Currently, NMDOT does not have the authority under the Procurement Code, 13-1-119.1 NMSA 1978, to use the design-build method. However, NMDOT has used design-build contracts in the past on large projects including the recent construction of the Paseo Del Norte flyover as well as the I-25/I-40 interchange, the “Big I”, and the Coors/I-40 interchange. In these cases, NMDOT was granted specific legislative authorization to use the design-build method. Enactment of HB 206 would allow NMDOT to employ the design-build at its discretion.

ADMINISTRATIVE IMPLICATIONS

GSD stated in analysis of similar legislation: “these types of procurement vehicles are very common for large projects and use by NMDOT of the proposed project delivery methods would likely improve reliability of on-time schedule and budget performance for projects in which these methodologies are employed.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 215 is a companion to HB 206.

OTHER SUBSTANTIVE ISSUES

Federal Highway Administration lists the proclaimed advantages of design-build project delivery as follows:

Time savings through:

- Early contractor involvement that enables construction engineering considerations to be incorporated into the design phase and enhances the constructability of the engineered project plans;
- Fast-tracking of the design and construct portions of the project, with overlapping (concurrency) of design and construction phases for different segments of the project; and

- Elimination of a separate construction contractor bid phase following completion of the design phase.

Cost savings from:

- Communication efficiencies and integration between design, construction engineering, and construction team members throughout project schedule;
- Reduced construction engineering and inspection (CEI) costs to the contracting agency when these quality control activities and risks are transferred to the design-builder;
- Fewer change and extra work orders resulting from more complete field data and earlier identification and elimination of design errors or omissions that might otherwise show up during the construction phase;
- Reduced potential for claims and litigation after project completion as issues are resolved by the members of the design-build team; and
- Shortened project timeline that reduces the level of staff commitment by the design-build team and motorist inconvenience due to reduced lane closures.

Improved quality through:

- Greater focus on quality control and quality assurance through continuous involvement by design team throughout project development; and
- Project innovations uniquely fashioned by project needs and contractor capabilities.

FHWA lists the proclaimed disadvantages of design-build project delivery as follows:

- Reduces competition for construction services by excluding smaller firms unable to lead the larger projects most amenable to the design-build approach;
- Favors large national engineering and construction firms in competing for larger design-build contracts that are too big for smaller local or regional firms to pursue;
- 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;
- Strikes at the foundation of the traditional quality assurance/quality control roles through the combination of engineering and construction; and
- Increases project costs due to the elimination of the low bid contractor selection criteria.

<https://www.fhwa.dot.gov/reports/designbuild/designbuild2.htm>

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMDOT will continue to use the standard project delivery system, design-bid-build for its public works road and highway construction and reconstruction projects, and will seek legislative approval for use of the design-build method for projects on a case by case basis.

CJ/jle/jo