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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
53rd Legislature, 1st Session, 2017

Bill Number	<u>SB271</u>	Sponsor	<u>Ingle</u>
Tracking Number	<u>.205890.2SA</u>	Committee Referrals	<u>SJC/SFC</u>
Short Title	<u>Educational Facility Restrictions & Rules</u>		
Analyst	<u>Rogne</u>	Original Date	<u>2/6/17</u>
		Last Updated	<u>2/17/17</u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 271 (SB271) amends portions of the Procurement Code to expand the use of Construction Manager at Risk (CMAR) contracts to all state facilities, in lieu of the current limitation to educational facilities. The CMAR construction methodology has been used by the Public School Facilities Authority (PSFA) for many years. SB271 allows the governing authority for public buildings to use CMAR as an alternative to the competitive sealed bid method of procurement. SB271 removes all indications that the CMAR Act is limited to educational facilities.

FISCAL IMPACT

SB271 does not contain an appropriation.

SUBSTANTIVE ISSUES

SB271 provides the option for governing authorities for public buildings to use CMAR construction methodology, previously limited to educational facilities, as opposed to the competitive sealed bid method of procurement if they so choose. A section by section break down is below.

Section 1 of SB271 amends the Procurement Code by striking “educational facility” from Subsection G of Section 13-1-102 NMSA 1978, leaving the Construction Manager at Risk Act exempt from using the competitive sealed bid method of procurement.

SB271 makes several technical changes in section 2 amending Section 13-1-111 NMSA 1978, including removing a provision requiring a “three-step selection procedure” for competitive sealed bid proposals and striking references to “educational facility.”

Section 3 changes the name of Section 13-1-124.1 NMSA 1978 through 13-1-124.5 NMSA 1978 to the CMAR Act by striking “educational facility.”

Subsection A of Section 4 strikes “educational facility” in Section 13-1-124.2 NMSA 1978, thus allowing for the provisions of the CMAR Act to be used for contracts for the construction of state facilities if the governing authority chooses to use the services of a CMAR. Subsection B stipulates that the CMAR Act is to be implemented pursuant to rules promulgated by the secretary of the General Services Department (GSD) (pursuant to Section 13-1-86 NMSA 1978) in consultation with PSFA and other agencies deemed appropriate by the secretary.

Section 5 removes educational facility from definitions in the CMAR Act, Section 13-1-124.3 NMSA 1978. Subsection C adds the governing body of a local public body as well as the general services department as definitions for “governing authority.” Subsection D makes technical changes by changing the language of governing body to governing authority and striking references to educational facilities.

SB271 makes technical changes in Sections 6, changing the language of governing body to governing authority and striking references to educational facility in the CMAR Act, Section 13-1-124.4.

Section 7 removes educational facility from the definition of “contract” and “contractor” in Section 13-4-1.1 NMSA 1978.

ADMINISTRATIVE IMPLICATIONS

PSFA developed standard CMAR documents available for use by eligible entities in 2008 and has periodically updated them. At this time, the level of PSFA staffing needed to provide consultation to GSD for promulgation of rules is indeterminate.

The Construction Industries Division of the Regulation and Licensing Department noted that although their department is responsible for the inspection of public buildings, SB271 does not implicate their division as it deals strictly with expanding the CMAR construction methodology for use in public buildings.

OTHER SIGNIFICANT ISSUES

PSFA noted pursuant to Section 13-1-124.4 NMSA 1978 the construction at-risk delivery method requires that the owner set the Maximum Allowable Construction Cost (MACC) in the Request for Proposals (RFP). As opposed to RFP for construction procurement, the CMAR contractor must deliver the project within the fixed MACC, which can only be changed by the owner and by changing the scope of the project. Project price risk is therefore shifted to the contractor. The CMAR proposal is only for management services; qualifications are the primary concern for the project owner.

In addition, PSFA noted the process to promulgate rules for implementation currently does not specify consultation with delegates from higher education and school districts that may be familiar and experienced with the CMAR process.

SOURCES OF INFORMATION

- LESC Files
- Public School Facilities Authority
- Construction Industries Division of the Regulation and Licensing Department