

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the New Mexico Legislature. 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 New Mexico Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

ORIGINAL DATE 2/10/22

SPONSOR SJC LAST UPDATED _____ HB _____

SHORT TITLE Construction Manager General Contractor Act SB 84/SJCS

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (DOT)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for Senate Bill 84 (SB84) enacts a new section of the Procurement Code to be titled the Construction Manager General Contractor Act. The bill would allow the secretary of the Department of Transportation to use an alternative, qualifications-based construction manager general contractor (CMGC) delivery method. SB84 defines construction manager general contractor as: “a project delivery method in which a contract for construction manager general contractor services is procured separately from a contract for project design services and a contract for independent cost estimate services.”

SB84 requires the secretary of transportation to adopt procedures for selecting, procuring, and contracting a project using the CMGC method. The procedures shall define the scope of the project and require the CMGC to:

- Provide a range of preconstruction services and participate in project design, cost control, scheduling, and value engineering efforts;
- Provide construction work at a guaranteed maximum price.

SB84 establishes a two-phase process during which, in the first phase, a selected CMGC works with the project designers on cost control and value engineering. The second phase begins prior

to design completion, the CMGC submits a guaranteed maximum price for construction of the project and negotiation begins between the CMGC and DOT. If negotiations are successful, DOT will enter a contract for construction services with the CMGC. Should negotiations fail, SB84 allows the department to competitively bid the construction phase of the project.

SB84 adds the Construction Manager General Contractor Act to the list of exemptions from the competitive sealed bid requirements in Section 13-1-102 NMSA 1978.

SB84 strikes language limiting use of the design and build procurement method to projects with a cost of over \$50 million.

SB84 is effective July 1, 2022.

FISCAL IMPLICATIONS

The CMGC project delivery method has the potential to reduce costs to the department by creating efficiencies in project design and construction and insulate DOT from cost overages by holding the CMGC liable for project costs exceeding the guaranteed maximum price. However, there is no data available to estimate potential cost savings to the department therefore the estimated additional operating budget impact is unknown.

DOT reported the additional cost to create new procedures to implement SB84 would be minimal and absorbed in the current budget. This bill is scored as having no fiscal impact.

SIGNIFICANT ISSUES

The Federal Highway Administration (FHWA) adopted regulations governing use of CMGC in 2016. FHWA defines CMGC as:

The Construction Manager / General Contractor (CMGC) project delivery method allows an owner to engage a construction manager during the design process to provide constructability input. The Construction Manager is generally selected on the basis of qualifications, past experience or a best-value basis. During the design phase, the construction manager provides input regarding scheduling, pricing, phasing and other input that helps the owner design a more constructible project. At approximately an average of 60 percent to 90 percent design completion, the owner and the construction manager negotiate a 'guaranteed maximum price' for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. The CMGC delivery method is also called the Construction Manager at-Risk (CMR) method by state law in some states.

CMGC contracting requires the general contractor to provide a guaranteed maximum price for construction work with any cost overruns to be paid by the CMGC.