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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/09
 LAST UPDATED 2/12/09 HB _____

SPONSOR Neville

SHORT TITLE Public Procurement Selection Committees SB 103/aSCORC

ANALYST Archuleta

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AG)
 General Services Department (GSD)
 Regulation Services Department (RLD)
 Department of Transportation (DOT)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment removes detailed proposal scoring and rank ordering requirements for state public works projects from the selection committee evaluation process.

Synopsis of Original Bill

Senate Bill 103 amends Section 13-1-119.1 NMSA 1978 requiring a selection committee consisting of a minimum of four members for design and build projects and for certain professional services. The bill establishes the criteria for how evaluation scores will be handled prior to the selection of firms by establishing a score averaging method to guide the selection committee in awarding contracts.

Section 13-1-120 sets out the selection process for competitive sealed qualifications-based proposals submitted by architects, engineers, landscape architects, and surveyors. The selection

process involves a selection committee, and the proposed amendment provides for a score averaging method to be utilized by selection committees in selecting proposals.

Section 31-1-121 provides the criteria for the composition of the selection committee for architect, engineer, landscape architect, construction manager, and surveyor proposals. The proposed amendments create a four member minimum requirement for the committee, and in general, allow more people to serve on the committee.

Section 13-1-122 NMSA 1978 is amended to allow the secretary of transportation or the secretary of transportation's designee or a designee of the local public body to negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering, construction management or surveying services at a compensation determined in writing to be fair and reasonable.

FISCAL IMPLICATIONS

According to the responding agencies, there would be minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

GSD/Property Control Division has noted the following concerns with this change in procurement of design and design-build services:

- Direct Point Scoring alone is not considered a “best practice” in a joint study by the Associated General Contractors of America and the National Association of State Facilities Administrators titled Best Practices for Use of Best Value Selections, 2006. A structured scoring framework that is identified in the Request for Proposals (RFP) and clearly explained to the selection committee is preferred
- Disregarding the high and low point scores could result in only two selection committee members making a selection, which negates the purpose of convening a committee to perform this task. The goal is really to reach consensus among committee members as to the most qualified proposal for the specified scope of work.
- Adding points (or “scores”) of individual committee members together to evaluate a firm presumes uniformity in the use of the point scale among scorers. Adding points from different members assumes that a single point given by one member is equivalent to a point given by another committee member. This is clearly not the case in most instances – one member may be a “hard grader” while another and “easy grader.” You also open the door for an unscrupulous member to manipulate the system by using the extremes of the point system to cause his or her point to count more than other members.
- Averaging member's scores does not correct the above problem. An average result is skewed by abuse of the scoring range. A best practice recommendation is to not average scores among selection committee members.

- Codifying in statute a flawed selection system (adding and averaging “points”) that does not meet current industry best practices would be a mistake, especially when there are many other ways for selection committees to reach consensus on the most-qualified firm.
- It is difficult in practice for PCD to convene even a committee of four for A/E selection given the work loads of both public sector and private participants. Increasing the number of members may be difficult at best, and could in fact make arriving at consensus among the members more problematic.

GSD/Procurement Services notes the following:

- Directing a specific scoring methodology could lead to unpredictable and unacceptable results.
- To insure the process is being followed, individual member scoring spreadsheets will have to be retained and made available as part of the procurement file. This is inconsistent with our typical approach that provides for a single report and score sheet which reflects the agreed upon consensus of the committee. This approach allows individual members the flexibility to consider information brought forth by other members and adjust their scorings “on the fly” as they deem most appropriate during committee scoring sessions.
- The likelihood of protests may increase as individual members scorings are released and can be challenged in a protest or court of law. This, in turn, may result in hesitation of individuals to serve on a selection committee or hesitation in being totally honest and forthcoming in their scoring – especially a member perceives that their efforts may be “disregarded” in the final analysis.
- Some members may feel compelled need to bias their scoring to avoid having their results disregarded.
- Evaluation criteria are frequently weighted to reflect the relative importance of certain areas of the RFP. The proposed methodology could reduce the effectiveness of the weighting thus deviating from the intended effectiveness of the scoring approach.

PERFORMANCE IMPLICATIONS

According to GSD, SB103 would tie A/E selection committee member’s hands to a methodology that does not promote consensus building, and is not considered a best practice in the industry.

ADMINISTRATIVE IMPLICATIONS

According to the responding agencies, there would be minimal administrative cost for statewide update, distribution and documentation of statutory changes.

TECHNICAL ISSUES

Senate Bill 103 does not apply to the DOT road construction or reconstruction. However, this bill would apply to vertical construction projects such as the redevelopment of the General Office Transportation Oriented project and railroad related projects modifying the selection committee process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DOT will continue to follow current statute.

Qualifications based selection for design-build projects and construction professionals will remain unchanged.

According to GSD, selection committee members will have continued flexibility in assessing and scoring companies as well as the protection of the committee itself to allow them to perform their work without fearing personal reprisals from dissatisfied offerors who can assess and try to “second guess” individual preliminary (pre-group discussion) scoring numbers.

DA/svb:mt