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FISCAL IMPACT REPORT

SPONSOR: Miera DATE TYPED: 03/13/03 HB 573/aHGUAC/aHBIC

SHORT TITLE: Competitive Proposal Contracting SB _____

ANALYST: Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to: Senate Bill 736

SOURCES OF INFORMATION

General Services Department (GSD)
 Department of Corrections (DOC)
 Department of Health (DOH)
 Energy, Minerals, and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of HBIC Amendments

The House Business and Industry Committee amendments to HB 573 adjusted the membership of the competitive sealed proposals advisory committee:

- The number of representatives from the NM Building and Construction Trades Council was reduced from three to one;
- A representative was added for the American Subcontractors Association of New Mexico and a representative was added for the higher education community.

Synopsis of HGUAC Amendments

The House Government and Urban Affairs Committee amendments to HB 573 made technical corrections to the names of the advisory committees and:

- Make the use of competitive, sealed proposals for contracts optional instead of mandatory for construction and facility maintenance, service and repair contracts.
- Eliminate the requirement that rulemaking include rules for apprenticeship training and family health care.

Synopsis of Original Bill

HB 573 would require construction contracts to be awarded through a quality-based proposal process rather than lowest bid. An advisory board would be appointed by the governor representing various construction trade associations, state and local government entities, and would be chaired by a public member not associated with the construction industry. The commission would help the Purchasing Division develop rules to implement the change to a quality-based construction process, including how the new process would impact apprenticeship training and employee family health care. It specifies that schools and municipalities are included in the definition of local public body in the Procurement Code.

Significant Issues

The competitive process to award construction contracts is now based solely on price. This bill would mandate use of a process based on evaluation of other factors in addition to price like as used now for professional and non-professional services. The advisory committee would provide the perspective of various industry groups as well as cities, counties and schools in developing rules and implementation plans.

The change to the local public bodies definition clarifies that schools and school boards are included, as are municipalities. This conforms the statute to a 1995 court decision (described in the 13-1-67 compiler's notes). Municipalities with a home rule charter that have adopted their own procurement ordinances are exempt from the Code under Section 13-1-98 NMSA 1978, but no other exemptions have been identified by the Purchasing Division.

A number of agencies expressed confusion about the the relationship between employee family health care and placing construction contracts under this section of the Procurement Code. Is it appropriately included here? Concern was also expressed that this bill may preclude the use of competitive sealed bids for construction, facility maintenance, service and repairs.

PERFORMANCE IMPLICATIONS

There would be implications for all governmental entities authorized to conduct public works projects. Conversion of the lowest bid strategy into a quality-based approach could impact how design firms are directed to prepare construction documents and how construction projects are monitored between contract award and final completion.

ADMINISTRATIVE IMPLICATIONS

Administering construction projects might change for agencies covered by the Procurement Code.

CONFLICT/RELATIONSHIP

The use of a request for proposals for construction projects would conflict with other sections of the Procurement Code and the Public Works section of Chapter 13 NMSA 1978.

HB 573 and SB 736 amend Section 13-1-111 in different ways.

SUBSTANTIVE ISSUES

“Apprenticeship training” as used in HB 573 is addressed in detail in the “Public Works Apprenticeship and Training Act,” NMSA 1978, Sections 13-4D-1 through 13-4D-8.

Section 13-1-111 is but one of seven sections in the Procurement Code relating to request for proposals and each supports the others. Numerous sections of Chapter 13 (“Public Purchases and Property” - a part of which includes the Procurement Code), the Subcontractors Fair Practices Act, Resident Contractor Preference, Performance Bonds, and Bids Bonds relate to construction and the use of competitive sealed bids. All would be impacted and all would need to be addressed if construction projects were allowed to be solicited by competitive sealed request for proposals.

ALTERNATIVES

A memorial to examine feasibility of concept and develop implementation guidance would provide interested parties with the opportunity to understand the proposal and make thoughtful recommendations.

The bill mandates use of the RFP process for construction. Using the RFP process could be permissive on a case-by-case basis after a determination is made that the lowest-bid process is not advantageous.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL? Procurement of construction projects would be limited to using the competitive sealed bidding process, which awards construction contracts based on lowest dollar bid.

GGG/prr:sb:yr