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## FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 2/6/04 HB 543

SHORT TITLE Construction Manager Qualifications & Purpose SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

Duplicates SB 454  
 Conflicts with SB 20  
 Relates to SB178

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

General Services Department (GSD)  
 Board of Architects (BA)  
 Public Education Department (PED)  
 Regulation & Licensing (RLD)  
 Department of Transportation (DOT)

### SUMMARY

#### Synopsis of Bill

House Bill 543 amends Section 13-1-40.1 NMSA 1978 as follows:

- changes the Procurement Code definition of construction manager (CM) to require a general commercial contractor who provides construction management to a state agency or a local public body pursuant to a professional services contract;
- authorizes the state agency or local public body to require a CM to have subcontracts with subcontractors, and when this occurs the contract between the state or local public body and the contract manager may specify a guaranteed maximum price for the project;

- permits the contract between the state or local public body and the CM to allow the CM to perform work with its own work force;
- identifies certain qualifications required of a CM and sets out the purposes for which a CM is hired.

### Significant Issues

GSD has provided the following:

- A CM may be required to subcontract or directly oversee prime contractors. When subcontracting, the government entity may specify a maximum price and may allow the CM to use its own work force. A CM will be required to have demonstrated ability and experience with similar projects, including letters of recommendation, financial resources, qualifications equal to in-house staff, and demonstrated ability to perform using its own work force if required. The purpose is to deliver public works projects on time, at best cost, and highest quality.
- The CM will not be required to act as agent for the government entity and the government entity will not be required to assume all the risks and responsibilities for the project when using a professional services contract with a CM.
- Under current law, construction contractors are selected through a low-dollar bid process, or through competitive sealed proposals. A CM will act much as general contractor without performance bond requirements or the risks and responsibilities assumed by a general contractor. By allowing the CM to subcontract or perform work with his own workforce, this bill creates a new project delivery method for public works projects similar to CM at risk.
- This bill limits the pool of CM service providers allowed to work on public works projects, since CMs often have professional licenses other than general contractor, such as Professional Engineer (PE), or Certified Project Management Professional (PMP).
- This bill provides options, but does not require compliance. This bill removes language that designates the CM as an “agent of the state or local public body” and that the agency assumes all risks and responsibilities for the project when using a CM. There is no mention of who assumes “all the risks and responsibilities”, and it is not clear how required change orders will be handled.
- There are problems inherent in awarding construction contracts based on low-bid. There are also potential problems in having a CM who is essentially acting as a general contractor who provides construction services and materials through subcontractors or his own workforce without requiring competitive bids for the services and materials. The bill does not address quality control issues to ensure the CM meets acceptable standards when providing the services and materials instead of bidding with qualified subcontractors.

- GSD believes this bill should specify that the CM is an independent fiduciary of the owner and oversight entity. The CM is only answerable to the Property Control Division or its equivalent at the local government or school district level and is not answerable to any other contractor or agency. The CM should be accountable for assuring compliance with project timelines and other requirements.

### **FISCAL IMPLICATIONS**

The provisions of this bill are intended to save both time and money on construction projects. However, there is some concern that this may not occur.

### **ADMINISTRATIVE IMPLICATIONS**

The provisions of this bill are intended to streamline administration of construction. However, there is some concern that this may not occur.

### **CONFLICT, DUPLICATION, RELATIONSHIP**

Duplicates SB 454

Conflicts with SB 20 which allows agencies to contract with construction managers at risk

Relates to SB178, Contractor & Subcontractor Registration

### **TECHNICAL ISSUES**

The Board of Architects (BA) notes it is possible that an architect, in the act of carrying out construction administration, could take on the duties of construction management. This should be allowed under the proviso listed under 13-1-100.1 of the bill. The BA believes the bill should clarify that it is allowable for an architect or engineer to contract for a state or local public works project and have construction management contained within that contract.

**DW/yr**