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FISCAL IMPACT REPORT

SPONSOR Snyder DATE TYPED 2/22/2005 HB _____

SHORT TITLE Public Works Contractor and Bid Requirements SB 806

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	Minimal				General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Labor (DOL)

Energy, Minerals and Naturals Resources Department (EMNRD)

NM Department of Corrections (NMDOC)

NM Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

Senate Bill 806 amends 13-1-105 NMSA 1978, 13-4-13.1 NMSA 1978 and 13-4-36 NMSA 1978 and creates new registration requirements for contractors and subcontractors in connection with public works contracts. The amendment to 13-1-105 NMSA 1978 would prohibit Departments from considering bids for awards if the bid was submitted by a contractor that is not registered with the labor and industrial division of the labor department as required by 13-4-13.1. Additionally, the bill would require the Department to give all prospective bidders clear notification of the registration requirement in the issued or released bidding documents.

The amendment to 13-4-13.1 NMSA 1978 requires that in order to submit a bid valued at \$50,000 or more and respond to a request for proposal, or submit a subcontract for more than \$50,000 for a public works project covered under the Public Works Minimum Wage Act, a contractor must be registered with the Department of Labor. The amendment to 13-4-36 NMSA 1978 adds a condition for allowing an agency to substitute an unregistered subcontractor listed

under the bid for a subcontractor registered with the Department of Labor.

Significant Issues

The bill, according to NMDOT, affects the Department of Transportation because, in order to ensure that only registered subcontractors work on its projects, the Department would be required to identify a contractor's subcontractors and determine whether or not these subcontractors are registered.

The NMDOT is concerned that unregistered subcontractors may slip through the process because the contractor no longer has to provide proof of its subcontractors' registration to a public agency. Also, the award of public projects may take longer if a registered contractor is the apparent low bidder and must go through the subcontractor substitution process to have its bid considered.

FISCAL IMPLICATIONS

DOL indicates that if the intent of the bill is for the Labor and Industrial Division to review all Public Works contracts, one (1) additional FTE will be required in the Public Works Bureau.

Another concern of the NMDOT is that if the substitution process is not expedited, the award of a public works contract could be extended beyond the time that the bid price is guaranteed by the contractor. This, in turn, could lead to a higher price for the same project.

ADMINISTRATIVE IMPLICATIONS

NMDOT points out a public agency wanting to ensure that only registered subcontractors work on its projects can no longer rely on proof of registration provided by the contractor and, instead, will have to keep a current subcontractor registration list.

TECHNICAL ISSUES

The amendment to 13-4-13.1 NMSA 1978 lists "in order to respond to requests for proposals or to be considered for award of any portion of a public works contract" the contractor must be registered with the Department of Labor (DOL). Generally, requests for proposals are developed for professional services agreements. The Public Works Minimum Wage Act generally does not cover professionals such as engineers, architects, and surveyors.

Additionally, EMNRD notes that there appears to be a conflict on which subcontractors need to be registered with the Department of Labor. In the initial part of the amended language, it appears that only subcontractors with >\$50,000 of work are required to be listed with the DOL but later it states that "each contractor, whether prime contractor or subcontractor, is required to register..." It is not clear if this language means that those contractors between the threshold (\$5,000) and \$50,000 also need to be listed with DOL.

BD/lg