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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/2007
 LAST UPDATED 3/13/2007 HB 455/aHLC

SPONSOR Miera

SHORT TITLE School Construction Project Bid Requirements SB _____

ANALYST Aguilar

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		** Indeterminate				

(Parenthesis () Indicate Expenditure Decreases)

**** See Fiscal Implications**

Conflicts with HB-303 and HB-415

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Education Department (PED)
- Public School Facilities Authority (PSFA)
- Attorney General's Office (AGO)
- Labor Department (LD)
- General services Department (GSD)
- Construction Industries Division (CID)

SUMMARY

Synopsis of HLC Amendment

The amendment proposed by the House Labor and Human Resources Committee replaces "Family Healthcare" references with "Medical Benefit Plans" and replaces "Drug and Background" references with "Substance Abuse". The amendment adds a minimum threshold amount of \$125,000 for projects that are subject to the provisions of the bill and inserts additional qualifying language that states, *and whose proposal is not solely for professional services*. The amendment also adds a provision that prohibits the presence of employees on the job site who fail a substance abuse test until they have passed a subsequent substance abuse test.

FISCAL IMPLICATIONS

Concerns are raised regarding the financial impact on overall project costs the provisions of this

bill are expected to have. Contractors who were previously not required to provide insurance for employees will now be required to do so which is estimated to significantly increase operating costs. Overall project cost impacts are expected to be significant yet are difficult to estimate, however it can reasonably be expected that a number of smaller contractors will be unable to provide the mandated insurance coverage and would be excluded from participating in the impacted projects. At present, PSFA is noting difficulties in finding qualified subcontractors in small remote communities and this is expected to be exacerbated by the provisions contained in the bill.

SIGNIFICANT ISSUES

The Public School Facilities Authority reports that provisions contained in this bill may be difficult to implement due to technical issues with the bill and have unintended consequences on other pending legislation which amends similar sections of statute such as the Construction Manager At-Risk for Educational Facilities (HB303 and SB415). It must be noted that public school projects procured through a traditional bid process are not bound by these requirements and may limit the use of the competitive qualifications-based proposal method. The PSFA notes the following concerns and recommendations:

- All references to “bidder” should be changed to “offerer”. Technically there are no bidders under a competitive qualifications-based proposal as the selection is made through a request for proposal process instead of a bid.
- The bill does not provide a listing threshold for subcontractors that will be performing work or labor or render services to the contractor. The language further appears to only apply to first-tier subcontractors under contract to the contractor and not subcontractors or sub-subcontractors.
- The intent of this legislation is to have the various classes of laborers and mechanics involved in the construction project to be paid in accordance with the Public Works Minimum Wage Act, have access to medical benefits and to submit to substance abuse tests. The use of the word “employees” will make this applicable to other administrative and office staff of the company.
- Under a Construction Manager At-Risk (CMAR) process, the selection of subcontractors will not occur until after the plans have been fully developed and the CMAR will not be able to provide proof in their proposal that all subcontractors will be bound by the provisions in the bill. Without a listing threshold or a definition of subcontractor it is unclear how the provisions of this bill will be enforced or administered..

According to PSFA, replacing “provides family health care” with “makes medical benefit plans available” makes coverage optional rather than required. This eliminates the possibility of double medical coverage in cases where benefits are already provided from another source in the family. Also noted is the fact that this bill still makes additional requirements of contractors which could result in fewer bids and potentially higher winning bids.

Synopsis of Original Bill

House Bill 455 provides that bidders submitting qualifications-based proposals for school district

public works construction projects will be required to provide proof, when they submit their proposal, that they pay wages to their employees in accordance with the Public Works Minimum Wage Act; that they provide “family health care” to their employees; that they require their employees to submit to drug and background tests as a condition of employment; and that each of their subcontractors complies with those same requirements.

HB 455 declares an emergency.

FISCAL IMPLICATIONS

Contractors would be required to pay for family health care, drug testing, and background checks for their workers and ensure the same for subcontractors on the project potentially increasing overall construction costs for projects.

SIGNIFICANT ISSUES

SPD also notes that if the intent of HB 455 is to ensure health insurance is provided and drug and background checks are conducted for employees of contractors and subcontractors whose employees conduct the building trade’s portion of school public works projects, then the reference to “qualifications-based” proposals does not apply. If the intent is to ensure that employees of professional service providers involved in building public schools (architect, engineer, landscape architect, construction managers and surveyors) have health insurance and are tested for drugs and background, then the reference to the Public Works Minimum Wage Act is inappropriate unless accompanied by a wholesale revision of Chapter 13, Article 4 which would be required to cover professional service contractors in public works projects.

ADMINISTRATIVE IMPLICATIONS

School districts will have to ensure bidders meet requirements prior to awarding projects. Conducting this review may increase the workload of school district administration. The bill does not indicate what a contractor or the school district would do with the results of the drug and background checks.

TECHNICAL ISSUES

This bill does not define “family health care” or expressly allow an employer to provide health care *insurance coverage* in lieu of actually providing health care.

- The Legislature may wish to consider whether the intent of this bill in part is to allow an employer to share the costs of providing health care with its employees.

The Public School Facilities authority also notes a potential change be considered:

- Requirements should also apply to any subcontractor that may be substituted in accordance with the Subcontractor’s Fair Practices Act to provide the same proof before entering into a contract.