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## FISCAL IMPACT REPORT

**SPONSOR** SCORC **ORIGINAL DATE** 3/6/2007 **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** School Construction Manager At Risk Contracts **SB** 415/SCORCS  
**ANALYST** Aguilar

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY07          | FY08 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 303

### SOURCES OF INFORMATION

LFC Files

### SUMMARY

#### Synopsis of Bill

The Senate Corporations and Transportation Committee substitute for Senate Bill 415 provides for construction manager at risk contracts in the construction of educational facilities, enacts the Construction Manager at Risk Act and establishes procedures for selecting a construction manager at risk.

SB 415/SCORC declares an emergency.

### SIGNIFICANT ISSUES

Provisions contained in the bill allow the Public School Facilities Authority, local school districts, and state educational institutions to use the "construction manager at risk" method of procuring design and construction services for their facilities.

Construction manager at risk is defined by the bill as a construction method for an educational facility where a construction manager provides a range of pre-construction services and construction management, including cost estimation and consultation regarding the design of the building project, preparation and coordination of bid packages, scheduling, cost control, value engineering and, while acting as the general contractor during construction, detailing the trade contractor scope of work, holding the trade contracts and other subcontracts, pre-qualifying and

evaluating trade contractors and subcontractors and providing management and construction services, all at a guaranteed maximum price for which the construction manager at risk is financially responsible.

At present, construction managers are only allowed to serve “not-at-risk” and therefore not responsible to the owner for claims for project delays and extended overhead from nonperformance of one or multiple prime contractors. Under this scenario, the governing body enters into contracts with sub-contractors directly and assumes all risk, including any price escalation that may occur. The construction manager **not-at-risk** has had mixed results in New Mexico and have in some cases resulted in higher construction costs than traditional methods. It appears that an educational facility construction manager at risk may reduce the risks assumed by public owners through the guaranteed maximum price and delivery schedule. Also, having an educational facilities manager at risk involved during the design process will also add “constructability” to the project and reduce expensive change orders.

The bill exempts construction manager at risk contracts from the competitive sealed bid provision of the Procurement Code, but provides that the competitive sealed proposals "may also be used" for a "three Step Procedure" if certain requirements are met. SB 415 provides for the procedures of a "multiphase selection". The governing body is required to form a selection committee with a minimum of three members with at least one member being an architect or engineer. It is the selection committee's responsibility to establish an evaluation process including identifying the procedure as a two- or three- step process. A description of the process is:

- The “two-step” procedure, which may be used when the total amount of money available for a project is less than \$500 thousand, requires a request for qualifications and an interview. If the selection committee (formed by the governing body) uses a “two-step procedure”, it must publish a request for qualifications, rank the qualifying persons, and interview up to three of the highest ranking offerors. The committee must consider experience, the management plan, and other qualifications.
- A “three-step” procedure requires a request for qualifications, a request for proposals, and an interview. The request for proposals is only sent to those persons deemed qualified by the selection committee. The selection committee evaluates the proposals and conducts interviews with up to three of the highest ranked offerors. After interviews are completed, the selection committee makes its recommendation to the governing body.

The bill provides for the governing body to negotiate a satisfactory contract with the offeror considered to be the most qualified at a price determined to be fair and reasonable and provides for negotiations to continue with subsequent qualified offerors in the event negotiations fail.

The bill provides for the selection committee to make the names of all offerors and offerors selected for interviews available for public inspection after the contract is awarded.

The bill also provides for that bid security be required for construction contracts when the estimated price is greater than \$25,000.