

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No: SB 363**

**49th Legislature, 1st Session, 2009**

**Short Title: Subcontractor Bonding Requirement Exceptions**

**Sponsor(s): Senator Vernon D. Asbill and Others**

**Analyst: Peter B. van Moorsel**

**Date: February 4, 2009**

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**FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**Bill Summary:**

SB 363 amends the *Procurement Code* to provide an exception to the subcontractor bonding requirement on a public works building project:

- that is a design and build project delivery system selected by competitive sealed bids;
- in which the prime contractor is a construction manager at risk<sup>1</sup> selected pursuant to the *Educational Facility Construction Manager at Risk Act*; or
- in which the prime contractor was selected by competitive qualifications-based proposals.

**Fiscal Impact:**

SB 363 does not contain an appropriation.

**Fiscal Issues:**

The Public School Facilities Authority (PSFA) reports that it is difficult to estimate the fiscal impact of SB 363 or the direct and indirect costs of the subcontractor requirement currently in law, citing difficulty in estimating:

- the number of subcontractors unable to bid public works projects due to their inability to obtain bonding; and
- the impact a reduced number of bidders may have on the cost competitiveness of public works bids.

However, PSFA also estimates that SB 363 would apply to approximately half of the construction projects in FY 09 and FY 10.

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<sup>1</sup> A construction manager at risk is a person who provides the preconstruction services and construction management required for the construction of an educational facility at a guaranteed maximum price for which the construction manager at risk is financially responsible.

## **Issues:**

According to PSFA:

- since bonding of subcontractors became a requirement in law, limited competition appears to have contributed to increases in average square footage construction costs, especially in rural areas;
- respondents to a 2008 survey of greater than 28,000 contractors and subcontractors in New Mexico, identified subcontractor bonding as one of the most significant barriers to bidding public works;
- the provisions of SB 363 may increase the pool of available subcontractors and may bring down the cost of construction of public works projects; and
- the general contractor would still reserve the option to require a bond from a subcontractor.

## **Background:**

The statutory requirement for subcontractor bonding enacted by the 2005 Legislature originally required subcontractor bonding for public works projects of \$50,000 or more.

In 2007 the minimum contract amount for subcontractor bonding was raised to \$125,000.

PSFA states that the bonding of contractors and subcontractors is intended to protect payment of all workers, subcontractors, and material suppliers by providing a remedy for recovery of monies due for wages, performing work, or providing materials on a state or local construction project. The owner and taxpayers are also protected as a mechanism to guarantee delivery of the contracted work should the awarded contractor fail to perform.

## **Related Bills:**

None as of February 4, 2009.