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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/12

SPONSOR Asbill LAST UPDATED _____ HB _____

SHORT TITLE Public Procurement Best and Final Offers SB 214

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Public Education Department (PED)

No Response From

General Services Department (GSD)

SUMMARY

Synopsis of Bill

Senate Bill 214 adds a new section of the Procurement Code to require:

- competitive sealed proposals (RFP's) be unconditionally accepted for consideration of award, except as otherwise authorized in the Procurement Code;
- a RFP be evaluated based on requirements and evaluation criteria set forth, any further objective criteria affecting bid price to be defined by rule;
- a RFP submitted by a prime contractor not registered as required pursuant to the Public Works Minimum Wage Act (Act), Section 13-4-13.1 NMSA 1978, shall not be considered for award;
- a RFP submitted by a registered prime contractor that includes a subcontractor not registered pursuant to the Act, be considered for award only following substitution with a registered subcontractor; and
- the highest ranked offeror for a RFP may negotiate for a lower price if the lowest price of all proposals was not more than 10 percent higher than budgeted funds.

FISCAL IMPLICATIONS

The bill appears to allow best and final offer negotiations to keep a RFP process viable even if the original bids are up to 10 percent higher than budgeted fund amounts. The highest ranked offeror can negotiate a lower bid in order to still be considered for the project.

The AGO notes that other bidders in the process may argue that they should also be allowed an opportunity to negotiate a lower best and final offer in order to allow competition within the bidding process. The language of the bill seems to allow only the highest ranked offer to negotiate a lower best and final offer which may place other bidders at a disadvantage.

SIGNIFICANT ISSUES

The bill provides clarification as to when and how a best and final offer can be negotiated under a RFP process.

The bill clarifies that when best and final negotiations are to be used, a traditional competitive sealed proposal process must be followed. The bill further clarifies that contractors and subcontractors must be registered with the Department of Workforce Solution to be eligible to bid. Once bids are submitted, negotiations for best and final offers can be held with the highest ranked offeror for a lower price unless the bid is more than 10 percent higher than budgeted funds. If the bid is over 10 percent of budgeted funds, the offeror cannot negotiate a lower best and final.

TECHNICAL ISSUES

It is unclear as to the reason for duplicative references to requirements for contractors and subcontractors of public works contracts, as found in Sections 13-4-13.1 and 13-4-36 NMSA.

SUBSTANTIVE ISSUES

Under the Procurement Code, most procurements are achieved using a competitive sealed *invitation-to-bid* (IFB) process. When a state agency or a local public body is procuring professional services or a design and build project delivery system, then procurement is typically achieved using a competitive sealed *request-for-proposal* (RFP) process.

PED notes that although similar, some procurement requirements which are applicable to IFBs, as stated in statute and administrative rule, are not expressly applicable to RFP's.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Under current state law, *responsible offerors found to be reasonably likely to be selected for award* may continue to be given an opportunity for discussion and revision of their proposals for the purpose of obtaining best and final offers.

AHO/svb