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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 3/1/23

**SPONSOR** Maestas

**BILL**  
**NUMBER** Senate Bill 390

**SHORT TITLE** Procurement Code Bid “Best Value”

**ANALYST** Fischer

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but substantial	Indeterminate but substantial	Indeterminate but substantial		Recurring	Operating fund of state agencies and local public bodies
		\$732.6	\$732.6	\$1,465.2	Recurring	Operating budget for State Purchasing at GSD

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

General Services Department (GSD)  
 Attorney General (NMAG)  
 Department of Information Technology (DoIT)  
 State Ethics Commission  
 Early Childhood Education and Care Department (ECECD)  
 Human Services Department (HSD)  
 Department of Health (DOH)  
 Children, Youth and Families Department (CYFD)  
 Department of Transportation (NMDOT)

## SUMMARY

### Synopsis of Senate Bill 390

Senate Bill 390 amends the Procurement Code to allow responses to invitations to bid (ITB) to be considered on a determination of best value rather than the lowest bid as currently required. The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

While it is impossible to estimate how many agencies might pay more for ITB procurements that

resulted from a “best value” decision rubric versus simply on the lowest price, the potential impact could be substantially more spending across state and local governments.

The State Purchasing Division of the General Services Department reported that the additional time and staff needed to review all ITBs for best value would require the agency to fund 10 positions at a recurring cost of \$732.6 thousand annually.

## SIGNIFICANT ISSUES

The Procurement Code contains two primary methods by which agencies and all other public entities governed by the code might seek competitive propositions from vendors—via requests for proposals (RFP) or via invitations to bid (ITB).

The ITB process is the fastest, generally easiest competitive procurement method and is used to acquire commodity-type products where price, and not quality, is the main differentiator between vendor offerings. The RFP is a more complex and time-consuming procurement method. The RFP process is used when there are varying products or services that could meet government needs and a detailed evaluation of a vendor’s product or services is necessary to determine which will provide the best value. Because of their simplified nature, the State Purchasing Division noted that ITBs take approximately 60 days from start to finish, while the RFP process takes up to 180 days.

DoIT, the Ethics Commission, HSD, and DOH all noted that the provisions of SB390 could impart a potentially problematic level of subjectivity in awarding procurements. DoIT noted despite the definition of best value in SB390, “best value” is a largely subjective determination depending on the weight each scorer applies to the criteria that impact value. GSD would likely need to promulgate rules to establish objective measures and weights of the value factors. Otherwise, scoring would not be reliably consistent, which could lead to an increase in challenges to procurement awards. The Ethics Commission also noted that an agency conducting a procurement through a request for proposals must state the relative weight to be given to the factors in evaluating proposals in the request, which gives a measure of predictability to proposal-based procurements and ensures that the agency does not introduce additional evaluation factors mid-procurement to tip the scales in favor of an offer that is otherwise less advantageous. Such specifications would necessarily not be stated up front in a best value ITB procurement as provided for in SB390.

CYFD and ECECD both noted SB390 could improve the quality of vendors and purchases by giving agencies and other government entities greater flexibility in purchasing based on more than low cost.

Finally, NMDOT noted that the provisions of SB390 may conflict with federal procurement statutes:

NMDOT’s construction and maintenance operations projects are often funded with federal funding. Under the applicable federal rules, “[f]ederal-aid contracts *shall be awarded only on the basis of the lowest responsive bid* submitted by a bidder meeting the criteria of responsibility as may have been established by the State DOT.” 23 CFR §635.114(a), *emphasis added and internal citations omitted*. Based on the mandatory federal requirement to award on the basis of lowest responsive bid, NMDOT would not be able to implement a best value procurement method for federal-aid funded projects.

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