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FISCAL IMPACT REPORT

SPONSOR Campos ORIGINAL DATE 03/08/15
LAST UPDATED _____ HB _____

SHORT TITLE Procurement Nondisclosure Requirements SB 626

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
Department of Finance and Administration (DFA)
Administrative Office of the Courts (AOC)
Office of the Attorney General (AGO)
Office of the State Auditor (OSA)

SUMMARY

Synopsis of Bill

Senate Bill 626 amends Section 13-1-116 NMSA 1978 (within the Procurement Code) to prevent disclosure of proprietary or financial documentation contained in a proposal.

FISCAL IMPLICATIONS

GSD reports staff time should be minimal to create and implement new procedures to make certain that the intended protected information is not disclosed.

SIGNIFICANT ISSUES

SB 626 amends the Procurement Code, which currently reads, "...the contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process." In addition to deleting the underlined portion above, the bill also adds a new provision barring the disclosure of "proprietary or financial documentation" throughout the procurement process.

GSD provided the following background:

The proposed non-disclosure protections will prevent proprietary or financial information from being shared simply by providing a bid. It is equally important to keep confidential the contents of proposals during negotiations. Competitors would be provided an unfair advantage if they are able to unfairly obtain proprietary information submitted through the procurement process. This bill will tighten the protections for sensitive information throughout the procurement process to ensure that this information is not disclosed and that businesses are able to protect their proprietary information without risk. Ultimately this encourages businesses to be more comfortable providing bid related information knowing that their sensitive information is not being disclosed to their competition.

However, with respect to protests and auditing processes, AOC noted the following:

An important goal of the Procurement Code "...is that protests are to be made and resolved quickly and in furtherance of protecting the public fisc and of assuring the fairness of the procurement process." *James Hamilton Constr. Co. v. State ex rel. State Highway & Transp. Dep't*, 2003-NMCA-067, 133 N.M. 627, 68 P.3d 173; cert. quashed, 82 P.3d 534 (2003). Financial information is essential to assessing various costs and expenses that underlie the proposal, and is an important component considered by the evaluation committee. Prohibiting disclosure of this information likely restricts the basis for protest of an award, as well as outside auditing of contract performance.

PERFORMANCE IMPLICATIONS

GSD notes the legislation will not significantly impact the procurement process or its duration.

OSA noted transparency is important when examining alleged Procurement Code violations.

TECHNICAL ISSUES

The term "proprietary or financial documentation" may be subject to different interpretations because it often describes the level of confidentiality given to certain information by the owner.

OTHER SUBSTANTIVE ISSUES

AOC notes it keeps all information contained in a proposal confidential until the award. After the award, offerors must insure that confidential or proprietary information is readily separable from the proposal to facilitate public inspection of the non-confidential portion of the proposal.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Contents of competing proposals shall continue to not be disclosed during negotiations.

AHO/je