

LFC Requester:	
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date January 31, 2024
Bill No: HB 190s

Sponsor: Joy Garratt and Patricia A. Lundstrom **Agency Name and Code Number:** General Services Department (35000)
Short Title: New Sections of Procurement Code: Allow Public Partners to **Person Writing:** Dorothy Mendonca
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	Undetermined but possibly substantial		Agency operating budgets

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Relating to Procurement; Enacting Sections of the Procurement Code; Allowing Public Partners to Contract with Private partners for the Performance of Public Projects; Requiring the Board of Finance Division of the Department of Finance and Administration to Promulgate Rules For, Review and Approve Public-Private partnership Agreements.

Synopsis: This HB190s proposes to add new sections to the procurement code re: criteria for solicitation of public-private partnership agreements for public projects, criteria for receiving and acting on unsolicited public-private partnership proposals and creation of a new Division within the Department of Finance to oversee acceptance or rejection of “unsolicited proposals”. The new sections also set forth a new form of procurement based on “competitive sealed qualifications-based proposals and subsequent negotiation” which is different than current competitive procurement under the Procurement Code.

FISCAL IMPLICATIONS

No known Fiscal Implications for GSD/SPD

SIGNIFICANT ISSUES

The bill adds a “new” category to the procurement process for public-private partnership agreements which includes allowance of unsolicited bids submitted by private entities directly to an agency or local public body. It is not clear as to how these public-private agreements would be initially determined (professional or general services) per GSD/SPD’s current procurement process (§13-1-111) as well as for how long a contract can be put in place (§13-1-150). Under current procurement practices General Service agreements are handled by SPD and not the agency.

HB190s also suggests another competitive means of procurement based on “sealed qualifications” and “subsequent negotiation” which appears to bypass the competitive sealed proposal process §13-1-111 through §13-1-124 which is initiated by the public body, not the vendor or private entity. This “new” means of procurement also appears to confuse competitive procurements with sole source procurements in that it requires posting to allow for public challenge. This proposed language could have unintentional implications in the use of term “proposal” in the Procurement Code as well as create a potential to violate the Governmental Conduct Act §10-16-13 regarding prohibited bidding.

PERFORMANCE IMPLICATIONS

Unknown

ADMINISTRATIVE IMPLICATIONS

Unknown

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Unknown

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

State agencies and local public bodies would continue to procure desired services through competitive proposals or competitive bidding without an ability to preview unsolicited proposals from private entities.

AMENDMENTS

HB190s suggests another competitive means of procurement based on "sealed qualifications" and "subsequent negotiation" which appears to bypass the competitive sealed proposal process § 13-1-111 through § 13-1-124 which is initiated by the public body, not the vendor or private entity. This 'new' means of procurement also appears to confuse competitive procurements with sole source procurements in that it requires posting to allow for public challenge. This proposed language could have unintentional implications in the use of term 'proposal' in the Procurement Code as well as create a potential to violate the Governmental Conduct Act § 10-16- 13 regarding prohibited bidding.

"Prohibited bidding. No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section."

In the RFP process, the Procurement Code prohibits making proposals publicly available (13-1-116). The Procurement Code provides specific public notice requirements under 13-1-104 and 13-1-114. It is not clear whether the notice requirements in HB 190 supplant or supplement those statutory notice requirements, or how a private partner would become aware of a public partner's need without a public procurement posting. The Procurement Code provides mechanisms for conducting design-build projects (13-1-119.1) and state public works contracts (13-1-121). It is not clear how HB 190 requirements may affect or conflict with existing procurement requirements. There is a potential for projects under HB 190, if they could be considered "public works," to conflict with the requirements under NMSA 1978 Chapter 13, Article 4 Public Works Contracts. A term exception for design-build state public works projects is provided under 13-1-(B)(6). The addition of the 25-year term could potentially conflict with that exclusion.