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FISCAL IMPACT REPORT

SPONSOR <u>Gallegos/Campos</u>	LAST UPDATED <u>1/30/2024</u>
	ORIGINAL DATE <u>1/22/2024</u>
SHORT TITLE <u>Procurement for Certain Services and Contracts</u>	BILL NUMBER <u>Senate Bill 61/aSHPAC</u>
	ANALYST <u>Fischer</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but possibly substantial	Indeterminate but possibly substantial		Recurring	General Fund

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

Sources of Information

LFC Files

Agency Analysis Received From
 Attorney General (NMAG)
 Office of the State Auditor (OSA)
 General Services Department (GSD)
 State Ethics Commission (SEC)

SUMMARY

Synopsis of SHPAC Amendment to Senate Bill 61

The Senate Health and Public Affairs Committee amendment to Senate Bill 61 further subjects the upper limits on the statewide price agreements for architectural or engineering services contracts to be annually adjusted by a factor determined by the change in the U.S. Department of Labor’s average producer price index by industry for architectural, engineering, and related services or producer price index by commodity for final demand construction from the previous year.

Synopsis of Original Bill

Senate Bill 61 (SB61) amends the Procurement Code to increase the limit for the use of statewide price agreements for architectural or engineering services contracts with a single contractor from \$7.5 million to \$15 million and the limit for a single contract from \$650 thousand to \$2 million. For construction contracts, the bill increases the limit from \$12.5 million to \$30 million for a single contractor and from \$4 million to \$10 million for a single contract.

The effective date of this bill is July 1, 2024.

FISCAL IMPLICATIONS

SB61 would allow public entities to forgo individual procurements for large projects, which could lead to the state paying higher prices. A 2019 LFC program evaluation noted extensive use of statewide price agreements reduces savings on contracts because they do not require public entities to shop around for better prices. That program evaluation noted utilization of these price lists allowed agencies to enter into high-dollar consultancy contracts without putting that opportunity out to bid, that contractors under these price agreements were sometimes paid excessive hourly rates, and that some agencies contract with former employees, paying significantly higher rates than when the person was a state employee performing similar work. While it is impossible to estimate how many agencies might pay more for procurements from price lists, the potential impact could be substantially more spending across state and local government.

SIGNIFICANT ISSUES

The Procurement Code states that state agencies and local public bodies are required to report the aggregate amount of contracts for each contractor and the corresponding amounts to be spent under each multiple-source contract under these architectural, engineering and construction statewide price agreements. These reports are required annually to the Legislative Finance Committee (LFC) annually and to the State Purchasing Division (SPD) of the General Services Department quarterly. However, to date, no state agency has reported on the use of these price agreements to LFC and the General Services Department noted that SPD does not currently have a mechanism to track spending on statewide price agreements being used at the local public body level. Without required reporting and tracking, the limits on these architectural, engineering and construction statewide price agreements are nearly unenforceable.

Public entities can purchase some products and services through agreements negotiated by the State Purchasing Division of the General Services Department. In some cases, these agreements may be tied to prices set by agreements with the federal General Services Administration or the National Association of State Procurement Officials. In recent years, the amount state agencies have purchased through these agreements has increased significantly. Purchasing from price lists can be convenient for state agencies, allowing them to avoid a potentially time-consuming request for the proposal process. Additionally, the Department of Transportation notes these agreements can help agencies address increases in the cost of construction services over time. However, as the size of the procurement increases, allowing agencies to contract without going through a project-based procurement cycle has the potential to increase costs.

The Office of the State Auditor noted that, on the one hand, raising thresholds for when agencies and local public bodies must issue a new request for proposal (RFP) may encourage responses to the initial RFP as the relationship between contractor and government entity is more profitable. Raising thresholds may also be less disruptive to projects that reach thresholds for competitive procurement mid-project. On the other hand, raising thresholds by which state agencies can select multiple contractors under a single RFP can raise the amount of work for a single contractor to a more material level to the government causing additional scrutiny in the audit process and raising the risk that a single contractor will be selected over other respondents.

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