

HOUSE BILL REPORT

SHB 1788

As Passed Legislature

Title: An act relating to job order contracting for public works.

Brief Description: Regulating job order contracting for public works.

Sponsors: By House Committee on State Government (originally sponsored by Representatives Miloscia, Armstrong and Haigh).

Brief History:

Committee Activity:

State Government: 2/25/03, 3/4/03 [DPS].

Floor Activity:

Passed House: 3/14/03, 94-0.

Senate Amended.

Passed Senate: 4/16/03, 47-0.

House Refused to Concur. Asks Senate to Recede.

Senate Amended.

Passed Senate: 4/26/03, 46-0.

House Concurred.

Passed House: 4/26/03, 98-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Allows public bodies authorized to use alternative public works contracting procedures and any school district to award contracts using the job order contract process.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

Minority Report: Do not pass. Signed by 1 member: Representative Shabro, Assistant Ranking Minority Member.

Staff: Marsha Reilly (786-7135).

Background:

Differing procedures are established for state agencies and various local governments to award contracts for public works projects.

Several different state agencies and local governments have been authorized to use alternative public works contracting procedures to award contracts on certain public works contracts of a very large dollar value. One alternative procedure is the design-build procedure. Another alternative procedure is the general contractor/construction manager procedure. Authority to use these alternative procedures terminates July 1, 2007.

Agencies authorized to use alternative public works contracting procedures include the Department of General Administration; the University of Washington; Washington State University; cities with a population in excess of 75,000 (and any public authority chartered by such city under RCW 35.21.730 through 35.21.755); counties with a population of greater than 450,000; public utility districts with revenues in excess of \$23 million per year; port districts with revenues in excess of \$15 million per year; and school districts proposing projects that are considered and approved by the school district project review board.

Summary of Substitute Bill:

Public bodies authorized to use the alternative public works contracting procedures may award contracts using a new procedure called a *job order contract* for public works. Under a job order contract, a contractor agrees to perform an indefinite quantity of public works jobs as defined under individual work orders over a fixed period of time. The authority to use job order contracts terminates on July 1, 2007.

Process to award a job order contract

A public entity must determine that the job order contract process will eliminate time-consuming and costly aspects of traditional public works contracting before using this process. Once this determination is made, a request for proposals is published describing a number of details, including a description of the scope of job order contracts, identification of the specific unit price book that will be used to determine accepted industry standards for materials, labor, equipment, overhead, and bonds, and the minimum contracted amount committed to the selected job order contractor. The public body establishes a committee that evaluates proposals and selects the most qualified finalists. The most qualified finalists submit final proposals, including sealed bids based upon the identified unit price book.

The public body awards the contract to the firm submitting the highest scored final proposal using evaluation factors and the relative weight of factors published in the public request for proposals. A protest period of 10 days is allowed following the announcement of the apparent successful proposal to allow a protester to file a detailed statement of grounds for the protest. The public body promptly determines the merits of the protest and provides a written determination. A job order contract may not be executed until at least two business days following the decision on the protest.

The job order contractor is required to submit a plan that would equitably spread subcontracting opportunities to certified women and minority businesses. The public body will not issue any work orders until the job order contractor's plan has been approved.

Restrictions on job order contracts

A job order contract may not be executed for an initial contract term of more than two years, but may be renewed or extended for an additional year. All job order contracts must be executed before July 1, 2007, but a job order contract existing at that date may be extended or renewed after that date.

A public entity may not have more than two job order contracts in effect at any one time. The maximum total dollar amount that is awarded under a job order contract may not exceed \$3 million in the first year, \$5 million over the first two years, or \$8 million over the three-year period if the contract is renewed or extended.

A work order for a single project may not exceed \$200,000, and a public body may not issue more than two work orders equal to or greater than \$150,000 in a 12-month period.

No more than 20 percent of the dollar value of the work order may consist of items that are not included in the unit price book. At least 80 percent of the job order contract must be subcontracted to entities other than the job order contractor.

A new permanent, enclosed building space that is constructed under this process may not exceed 2000 square feet.

Special provisions are made to measure damages to a contractor if the public entity fails to order a minimum amount of work indicated in its request for proposals. No other remedies are allowed. The damages are equal to the minimum amount of work that is indicated in the request for proposals, less the amount of work actually done, multiplied by an appropriate percentage for overhead and profit contained in the general conditions for Washington State facility construction.

Individual work orders are treated as separate contracts. Therefore, requirements for performance bonds, retainage requirements, and interest paid on public contracts apply to

each work order rather than the job order contract.

The requirement that contractors list their subcontractors within one hour after bid submittal does not apply to requests for proposals for job order contracts or for individual work orders.

Job order contractors are required to pay prevailing wages for all work that otherwise would be subject to those requirements. Contractors must pay the prevailing wage in effect at the onset of each work order, rather than the rate in effect at the time a job order contract is issued.

School district demonstration projects

Changes are made to the alternative public works statute to increase the number of school district demonstration projects from 10 to 16 and to increase the value of these projects from over \$5 million to over \$10 million. Two additional projects may be authorized at a value of between five and \$10 million.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Job order contracting has been used by the federal government for small to medium-sized projects for many years. Eighty percent of the contracts must be done by subcontractors to avoid any monopoly. A coalition has been working on this for the past several years. This provides a manageable way for school districts to reduce costs, particularly for projects such as roof repairs and heat and ventilation projects. It allows public entities to avoid costly and time consuming contracting processes for recurring work. Time saved allows contractors to get to work faster. It has the potential to build strong partnerships with school districts and public entities. The earthquake damage at Fort Lewis was fixed quickly by quality workers.

Testimony Against: Alternative public works procedures needs to have an oversight committee to track what really is happening with these types of projects. There are currently problems with the general contractor/contract manager process with owners not complying with the laws.

Testified: (In support) Representative Miloscia, prime sponsor; Robert Collard, Lake Washington School District No. 414; Dick Lutz, Centennial Contractors; John Lynch, General Administration; Doug Holen, University of Washington; and Charlie Brown,

King County School Coalition.

(Opposed) Larry Stevens, Mechanical Contractors Association and Electrical Contractors Association.