

HOUSE BILL REPORT

HB 2239

As Reported By House Committee On:
Capital Budget

Title: An act relating to innovative prison construction.

Brief Description: Providing procedures for innovative prison construction.

Sponsors: Representatives Wang, Ogden, Sehlin, Silver, Jones, King, Karahalios, Eide and Springer; by request of Department of Corrections and Department of General Administration.

Brief History:

Reported by House Committee on:
Capital Budget, February 2, 1994, DPS.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Wang, Chair; Ogden, Vice Chair; Sehlin, Ranking Minority Member; McMorris, Assistant Ranking Minority Member; Brough; Eide; R. Fisher; Jacobsen; Jones; Moak; Romero; Silver; Sommers and B. Thomas.

Minority Report: Do not pass. Signed by 1 member: Representative Heavey.

Staff: Karl Herzog (786-7271).

Background: During the 1991 Legislative Session, the Department of Corrections (DOC) and the Department of General Administration (GA) were authorized to use an alternative form of public works contracting, known as the "General Contractor/Construction Manager" (GC/CM) method, to construct new prison facilities to accommodate the rapidly growing inmate population. Authority to use the GC/CM process was limited to projects over \$10 million that had were authorized during the 1991-93 biennium, and to contracts signed before July 1, 1996.

GC/CM differs from the traditional public works contracting process used by state and local governments in two major respects. First, the GC/CM process melds the architectural design and construction phases of a project into one,

allowing design and construction to occur simultaneously. Under GC/CM, an agency enters into two contracts - one with an architectural firm to design the facility, and one with a GC/CM firm to assist in developing and evaluating the facility design and to manage the construction. Most of the actual construction work under GC/CM is broken into parts and competitively bid to subcontractors using the public bid process. Second, the GC/CM firm is required to guarantee that the project will be constructed within a maximum allowable construction cost (MACC). If the total cost at completion of the project is greater than the guaranteed MACC, the additional cost is the responsibility of the GC/CM.

The GC/CM firm must be selected through a competitive process that includes prequalification of potential bidders based on their demonstrated professional, technical, and financial abilities, and final selection based on the lowest bid for GC/CM services. Each bid package for subcontractor work must meet or exceed specific goals for minority and women business enterprise participation. The GC/CM is prohibited from performing subcontract work. Subcontractors who bid work over \$100,000 are required to post a bid bond. The GC/CM may also require performance and payment bonds on subcontract work over \$100,000. GA is required to establish an independent oversight advisory committee to review GC/CM selection and contracting procedures.

Summary of Substitute Bill: The authority for the GA and DOC to use the GC/CM process for prison construction projects is extended to July 1, 1997. In addition to the current authority to use GC/CM for projects valued over \$10 million, DOC and GA are also authorized to use GC/CM for two demonstration projects that aggregate small capital projects at a single site to total at least \$3 million.

The responsibilities of the existing Independent Oversight Advisory Committee are expanded. In addition to its previous responsibilities, the committee must also review contracting documents and the two demonstration projects.

Instead of specifying minority and women business enterprise participation goals for each subcontract bid package, GA must specify minority and women enterprise requirements for large subcontract bid packages exceeding 10 percent of the project cost.

The threshold for subcontractor posting of bid, payment, and performance bonds is raised to \$200,000 from \$100,000.

Substitute Bill Compared to Original Bill: The substitute bill restricts the use of GC/CM to projects authorized on or

before July 1, 1997, while the original bill prescribed no time restriction. The substitute bill raises the project value threshold from \$3 million to \$10 million and adds the two demonstration projects. The substitute bill retains and adds responsibilities to the oversight advisory committee (the committee was eliminated in the original bill). The substitute bill requires minority and women business enterprise participation rates to be specified for each large bid package, rather than for the project as a whole in the original bill. The substitute bill raises the threshold for subcontractor posting of bid, payment, and performance bonds to \$200,000 from \$100,000 in the original bill.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The GC/CM process accelerates construction within a guaranteed price. All construction work is competitively bid to the low responsive bidder. The GC/CM process encourages a "team" approach to solving potential problems ahead of time, and facilitates critical evaluation of project designs before construction. The GA and the DOC successfully implemented two prison projects using GC/CM, resulting in savings to the state. The GC/CM method is used in the private sector, and should continue to be made available to the state with the proper controls.

Testimony Against: The report of the oversight advisory committee reviewing the two initial GC/CM projects should be finalized before the authority to use GC/CM is extended. The traditional lump-sum method of awarding contracts to the low responsive bidder has been demonstrated as the most efficient way to award public works contracts. The complexity and risk involved in the GC/CM process makes it difficult for small in-state firms to compete for projects. Minority and women business enterprise participation should continue to be required for each subcontractor bid package rather than for the project as a whole. The value threshold for the two demonstration projects should be \$5 million rather than \$3 million.

Witnesses: Margaret Von Heeder and John Adsit, Department of Corrections (pro); Grant Fredericks, Department of General Administration (pro); Duke Schaub and Dan Absher, Associated General Contractors; Bill Anderson and Allan Darr, State Building Trades Council; Frank Densmore, American Institute of Architects; Dick Ducharme, Utility Contractors Association; and Cliff Webster, Architects and Engineers Legislative Council. (**NOTE:** The substitute bill addresses many of the concerns of those who spoke against

the original bill.)