

SENATE BILL REPORT

ESHB 2607

**AS REPORTED BY COMMITTEE ON GOVERNMENT OPERATIONS,
FEBRUARY 25, 1994**

Brief Description: Establishing alternative procurement procedures for certain state agencies and municipalities.

SPONSORS: House Committee on Capital Budget (originally sponsored by Representatives Wang, Ogden and Sehlin)

HOUSE COMMITTEE ON CAPITAL BUDGET

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: Do pass.

Signed by Senators Haugen, Chairman; Drew, Vice Chairman; McCaslin, Oke and Winsley.

Staff: Rod McAulay (786-7754)

Hearing Dates: February 24, 1994; February 25, 1994

BACKGROUND:

The public works process used by most state and local agencies for constructing buildings separates the architectural design phase of a project from the construction phase. Under this process, an architectural firm is retained to design the facility and prepare construction documents. After the detailed design and construction documents are complete, the construction phase of the project is put out for competitive bid. A construction contract is then awarded to the lowest responsible bidder.

Procurement of architectural and engineering services differs from the competitive low-bid process in that agencies are not required to select firms based on the lowest bid, but may base their selection on the qualifications and past performance of the firm.

Alternative forms of public works contracting have been used by state agencies and local governments on a limited basis. For example, three new state agency office buildings were recently constructed in Thurston County using the "design-build" process. In design-build, agencies enter into a single contract for both design and construction services from one contractor, and design is performed simultaneously with construction on earlier stages of the project.

The "general contractor/construction manager" (GC/CM) method, another alternative form of public works contracting, was recently used to construct new prison facilities in Airway Heights and Purdy. The GC/CM process melds the 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 by subcontractors.

Agencies may negotiate an adjustment to the bid price with the lowest responsible bidder on a public works project in order to bring the bid within budget if the low bid exceeds available funds by 5 percent or less on projects under \$1 million, the greater of \$50,000 or 2.5 percent on projects between \$1 million and \$5 million, or the greater of \$125,000 or 1 percent for projects over \$5 million.

SUMMARY:

Alternative public works contracting procedures are authorized for use on a limited basis by specified state and local agencies.

The Department of General Administration, the University of Washington, Washington State University, cities with populations greater than 150,000 and counties with populations greater than 450,000 are authorized to use the design-build contracting procedure on the following projects valued over \$10 million: projects where construction activities are highly specialized and design-build is critical in developing the construction methodology, projects where the design is repetitive in nature and an incidental part of construction, and projects where the program elements of the design are simple and do not involve complex functional inter-relationships. The Department of General Administration may use design-build for only one project where the program elements of the design are simple and do not involve complex functional inter-relationships.

The Department of General Administration, the University of Washington, Washington State University, cities with populations greater than 150,000, counties with populations greater than 450,000, and port districts with populations greater than 500,000 are authorized to use the GC/CM contracting procedure on the following projects valued over \$10 million: projects which involve complex scheduling requirements, projects which involve construction at existing facilities which must continue to operate during construction, and projects where involvement of the GC/CM is critical to the success of the project.

A design-build or GC/CM contracting procedure may be used by a special agency, authority or other district established by a county for construction of a baseball stadium.

Decisions to use the alternative procurement procedures must be made following a specified public notification, review and comment process. Decisions to use the alternative procedures

are subject to appeal in superior court within 30 days of the decision.

Design-build and GC/CM contracts must be awarded using a competitive process following the public solicitation of proposals. Each agency must establish a committee to evaluate and score proposals based on specified factors. After initial qualification for design-build projects, the agency must select between three and five finalists to submit best and final proposals and must negotiate a design-build contract with the highest-scoring firm. Agencies must provide honorarium payments to finalists who are not awarded a design-build contract. For GC/CM contracts, agencies must select the most qualified finalists to submit bids for GC/CM services and must negotiate a GC/CM contract with the low bidder. Firms awarded a design-build or GC/CM contract must post a performance and payment bond for the contracted amount.

All subcontract work on GC/CM projects must be competitively bid with public bid openings. Subcontractors who bid work over \$200,000 on a GC/CM project must post a bid bond. Subcontractors awarded contracts over \$200,000 on a GC/CM project must provide a performance and payment bond for their contract amount. The GC/CM may require subcontractors awarded work under \$200,000 to provide a performance and payment bond.

Agencies may negotiate an adjustment to the lowest bid or proposal price for design-build or GC/CM projects authorized in this legislation if all bids or proposal prices exceed available funds, the apparent low responsible bid or proposal does not exceed the available funds by more than \$125,000 or 2 percent for projects valued over \$10 million, whichever is greater, and the negotiated adjustment will bring the bid or proposal within the amount of available funds.

Agencies must utilize specified project planning, management and administration procedures when using alternative public works contracting methods. Contract documents must include project contingencies not less than 5 percent of the anticipated contract value and alternative dispute resolution procedures. Contracts may include incentive payments to contractors for early completion of the project, cost savings or other goals.

All proceedings, records and contracts relating to the use of the alternative public works contracting procedures must be available for public inspection except for trade secrets or proprietary information submitted by a bidder.

An independent oversight advisory committee is established to review utilization of the authorized alternative public works contracting procedures and to evaluate potential future utilization of other alternative contracting procedures such as contractor prequalification. Committee membership includes four members of the Legislature, one from each major caucus of the House of Representatives and Senate; and representatives from agencies authorized to use the alternative procedures, the construction and design industries, and organized labor,

appointed by the Governor. The committee must report its findings to the Legislature by December 10, 1996.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

More "businesslike" and efficient techniques for major projects. GC/CM was used very successfully by the Department of Corrections at Airway Heights and Purdy. Will continue the tradition of clean contracting in Washington State. The bill has many safeguards to prevent abuses. Permits builder to be involved in design and reduce need for change orders.

TESTIMONY AGAINST:

Increases opportunity for favoritism. Established system works well. Will result in higher costs. Evaluation standards are too subjective. Need to clarify that bonds do not cover design defects.

TESTIFIED: Fred King, GA (pro); Cliff Webster, Architects & Engineers Legislative Council (pro); Gerry Johnson, public owners; Jan Keiser, METRO/King County; Duke Schaub, Kurt Hildebrand, Margot Easton, AGC (pro); Doug Bohlke, CBIC (Pro); Larry Stevens, USA Subcontractors (pro)