

# HOUSE BILL ANALYSIS

## HB 2535

**Title:** AN ACT Relating to payment of retained percentages on public improvement contracts using the general contractor/construction manager method.

**Brief Description:** Facilitating payment to subcontractors on design-build projects.

**Sponsors:** Miloscia, Schmidt, D.

### BRIEF SUMMARY

- Alters retainage requirements for public works projects awarded using the general contractor/contract manager procedure by allowing a public body to accept subcontractor work completed during the first half of the overall project completion time and by releasing the portion of the retained payments associated with the subcontractor work 45 days after providing notice of the acceptance.

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### HOUSE STATE GOVERNMENT COMMITTEE

**Staff:** Steve Lundin (786-7127)

#### BACKGROUND:

1. Procedures for awarding public works contacts.

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

Legislation was enacted in 1994 authorizing several different state agencies and local governments to use different contracting procedures to award contracts on certain public works contracts, generally of very large dollar values. These alternative procedures are called the alternative public works contracting procedures. Authority to use these alternative procedures terminates on July 1, 2001. A temporary independent oversight committee is created to review these alternative bidding procedures and recommend changes in contracting laws to the Legislature.

One of these alternative procedures is the **general contractor/construction manager** (GCCM) procedure. The GCCM procedure is a multi-step competitive process to award a contract for a single firm to provide services during the design phase, as well as acting as both the construction manager & general contractor during the construction phase, for a specific facility of a relatively high cost. The contractor guarantees the project budget under this procedure.

This procedure involves: (a) Soliciting for proposals; (b) using of an evaluation committee to review proposals; (c) selecting three to five finalists to submit final proposals; (d) scoring the final proposals by measuring quality and technical merits on a unit price basis; (e) selecting a finalist on the basis of responsiveness and lowest price from among the finalists who are able to produce plans and specifications meeting project requirements; and (f) directly negotiating a contract with the selected firm over the maximum allowable construction costs. Negotiations may be terminated with the selected firm if an agreement is not reached and opened with the next highest scored firm until an agreement is reached or the process terminated.

The Department of General Administration, University of Washington, Washington State University; every county with a population of greater than 450,000 (King, Pierce, and Snohomish counties), every city with a population in excess of 150,000 (Seattle, Tacoma, and Spokane), port districts with a population in excess of 500,000 (Port of Seattle, and Port of Tacoma), and a public facilities district constructing a baseball stadium may use the general contractor/construction manager process on any project with an estimated cost of \$10 million or more. In addition, these entities may also use the GCCM procedure on several demonstration projects of between \$3 million and \$10 million in estimated cost.

## 2. Retainage requirements.

Most public works contracts are subject to **retainage** requirements, where the public entity retains up to 5% of the contract amount from the general contractor for 45 days after completion of the project. The retained funds are used as a trust fund for the payment of laborers, subcontractors, material men, and excise taxes that are imposed on the project.

### **SUMMARY:**

Retainage requirements are altered for contracts that are awarded using the GCCM alternative public works procedure.

The public body may accept subcontractor work that is competed during the first half of the time specified in the contract between the public entity and the general contractor for the general contractor to complete the project. The public body may release the portion of the overall retained funds, that are associated with the subcontractor work, 45 days after providing notice of its acceptance of the subcontractor's work.

Claims against the retained funds after this 45-day period are not valid.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.