

HOUSE BILL REPORT

ESSB 5060

As Passed House - Amended:

April 4, 2001

Title: An act relating to alternative public works contracting procedures.

Brief Description: Revising alternative public works contracting procedures.

Sponsors: By Senate Committee on State & Local Government (originally sponsored by Senators Winsley and Patterson).

Brief History:

Committee Activity:

State Government: 3/23/01, 3/28/01 [DPA].

Floor Activity:

Passed House - Amended: 4/4/01, 92-0.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Extends authority to use alternative public works procedures for six years until July 1, 2007.
- Eliminates the independent oversight committee.
- Increases the minimum dollar value of a contract that may be awarded using one of the alternative procedures, other than a demonstration school project, from \$10 million to \$12 million.
- Expands jurisdictions authorized to use the alternative public works procedures to include additional cities and port districts and allows certain public utility districts to use these procedures.
- Allows a city, authorized to use the alternative public works procedure, to authorize specific projects for a public authority that the city chartered to award contracts using alternative public works procedures.
- Provides details for the owner and general contractor/construction manager to determine subcontractor bidder eligibility.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives McMorris, Republican Co-Chair; Romero, Democratic Co-Chair; Miloscia, Democratic Vice Chair; Schindler, Republican Vice Chair; Haigh, Lambert and McDermott.

Staff: Steve Lundin (786-7127).

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 relatively high cost. One alternative procedure is the design-build procedure. Another alternative procedure is the general contractor/construction manager (GCCM) procedure. In most instances, each contract awarded under either of these procedures must be valued over \$10 million. Authority to use these alternative public works contracting procedures terminates on July 1, 2001.

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 and general contractor during the construction phase, for a public facility with a relatively high cost. The contractor guarantees the project budget under this procedure.

The design-build procedure is a multi-step competitive process to award a contract for a single firm to design and construct a public facility or portion of a public facility with a relatively high cost.

The Department of General Administration, University of Washington, Washington State University, every county with a population greater than 450,000 (King, Pierce, and Snohomish), every city with a population greater than 150,000 (Seattle, Tacoma, and Spokane), and any port district with a population greater than 500,000 (Port of Seattle, and Port of Tacoma) may use the alternative public works contracting procedures.

A temporary independent oversight committee was created to review the use of these alternative public works procedures and make recommendations to the Legislature on governmental contracting procedures.

In addition, school districts may award contracts for four demonstration projects using the GCCM procedure if the projects are approved by a school district project review board appointed by the independent oversight committee. Two of the demonstration projects

must be valued over \$10 million and two must be valued between \$5 million and \$10 million.

Summary of Amended Bill:

Authority to use the alternative public works contracting procedures is extended for six years until July 1, 2007.

The temporary independent oversight committee is eliminated.

The minimum dollar value of a contract that may be awarded using one of these alternative procedures, other than one of the demonstration school projects, is increased from \$10 million to \$12 million.

Authority to use the alternative public works contracting procedures is expanded by: (1) reducing the minimum population of a city eligible to use these procedures from 150,000 to 70,000, adding Vancouver, Bellevue, Everett, Federal Way, and Kent; (2) allowing a port district with total revenues greater than \$15 million per year to use these procedures, which adds the ports of Longview, Vancouver, Everett, and Bellingham; and (3) allowing a public utility district (PUD) with revenues from energy sales greater than \$23 million per year to use these procedures, which using 1996 figures adds Benton County PUD, Chelan County PUD, Clallam County PUD, Clark County PUD, Cowlitz County PUD, Douglas County PUD, Franklin County PUD, Grant County PUD, Grays Harbor County PUD, Lewis County PUD, Mason County PUD No. 3, and Snohomish County PUD.

Any city, authorized to use the alternative public works procedures, may approve specific projects for a public authority that the city chartered to award contracts using the alternative public works procedures.

Existing alternative public works contracting procedures are allowed to sunset and are replaced with new sections providing for these procedures without express provisions relating to certified minority and women-owned contractors.

Criteria are provided for a GCCM to determine the eligibility of subcontractors performing work on the project, including financial resources, history of successful completion of contracts of a similar scope, management, supervision and personnel experience on similar projects, current and projected workloads, ability to accurately estimate the subcontractor bid package scope of work, ability to meet subcontractor bid package shop drawing and other coordination procedures, eligibility to receive an award under applicable laws and regulations, and ability to meet subcontract bid package scheduling requirements. Notice of a determination of eligibility must be published in a legal newspaper of general circulation published in or near the city where the work will be done. Evaluation criteria and weighting will be supplied to subcontractors requesting

eligibility. Results and scoring by the owner and general contractor/construction manager must be supplied to subcontractors requesting eligibility.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Amended Bill: The bill takes effect July 1, 2001.

Testimony For: This extends the alternative public works contracting procedures for another 6 years. We would hate to go back to the old days if this authority lapses. These procedures are only used for large, complex projects. Most contracts would continue being awarded under the traditional design, bid, build procedure. This provides options and choices, more efficiency, and lower costs. Projects can be phased and construction started sooner. Under the GCCM process, we can spend time working with the contractor before the project starts. This works when a facility must remain open and operating while it is being remodeled or expanded. This allows greater safety for users of the facility when work is progressing. The alternative public works contracting procedures require contracts to be awarded competitively in an open process. A disgruntled contractor may appeal a decision made under these contracting procedures. Contracts are not let to someone's brother under these procedures. This helps us do a better job. The new entities allowed to use this process are sophisticated. This has provisions that protect subcontractors by requiring the general contractor to publicly bid subcontract work. No other public bidding procedure protects subcontractors from bid shopping like this does.

Testimony Against: We oppose this bill and the extension to additional governments. This is adverse to many contractors. A handful of politically connected contractors gain from this. This takes us back to the bad old days when the public could award contracts to anyone. This is a totally discredited method. We only oppose the expansion of the authority to additional governments. We oppose extension of the subcommittee. This could result in fraud and favoritism. Competitive bidding is best.

Testified: (In support) Senator Winsley, prime sponsor; John Lynch, General Administration; Doug Holen, University of Washington; Barb Gibson, Port of Vancouver; Scott Taylor, Washington Public Ports Association; Duke Schaub, General Contractors Association of Washington; Tom Peterson, Hoffman Construction; Larry Stevens, MCA/NECA; Terry Teale, Council of Presidents; George Pierce, Western Washington University; Sharon Wylie, Clark County; Chuck Mosher, Mayor, city of Bellevue; Mylor Treneer, Bellevue Convention Center Authority; Rodney Eng, city of Seattle; and Derek Matheson, city of Federal Way.

(Opposed) Jeff Thomas, Contractors Bonding and Insurance Company; Dave Ducharme,

Utility Contractors Association of Washington; and Martin Burgess, Contractor.