

# HOUSE BILL REPORT

## ESHB 2056

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### As Passed Legislature

**Title:** An act relating to the fairness of public works bidding.

**Brief Description:** Modifying public works bidding provisions.

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

**Brief History:**

**Committee Activity:**

State Government: 3/4/03 [DPS].

**Floor Activity:**

Passed House: 3/17/03, 97-1.

Senate Amended.

Passed Senate: 4/11/03, 48-0.

House Refused to Concur. Asks Senate to Recede.

Conference Requested.

Passed Senate: 4/26/03, 45-0.

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

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Prohibits a municipality that receives a written protest from a public works bidder from awarding the contract without at least two full business days' notice.
- Prohibits a low bidder who claims error and fails to enter into a contract from bidding on the same project again if a second or subsequent call for bids is made.
- Prohibits a public works general contractor/construction manager (GC/CM) who receives a written protest from a subcontractor bidder from awarding the subcontract bid package without at least two full business days' notice of the intent.
- Creates a public hospital district (PHD) project review board.

- Allows PHD's with total revenues over \$15 million a year to use the design-build procedure, or to use the GC/CM procedure as long as the project is approved by the PHD project review board.
- Allows PHD's with total revenues less than \$15 million a year to use the GC/CM procedure as long as the project is approved by the PHD project review board.
- Allows the PHD project review board to authorize an unlimited number of projects over \$10 million, and up to ten demonstration projects valued between \$5 million and \$10 million.

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## HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Hunt, McDermott, Nixon, Tom and Wallace.

**Staff:** Katie Blinn (786-7114).

### **Background:**

#### Design-Bid-Build:

Public works projects include construction, building, renovation, remodeling, alteration, repair or improvement of real property. Contracts of a medium estimated cost are awarded based on the traditional design-bid-build process, in which the public entity retains an architectural firm to design the facility, puts the construction phase of the project out for competitive bid, and awards the contract to the lowest responsible bidder. Under the traditional bid-build process, the public entity must publicize a request for bids in the official newspaper or a newspaper of general circulation at least 13 days prior to the date bids are due. The notice must state the nature of the work to be done, and the date that sealed bids must be filed with the public entity. Each bid must be accompanied by a deposit of at least 5 percent of the amount of the bid. The public entity must award the contract to the lowest responsible bidder.

#### Design-Build and General Contractor-Construction Manager:

Several state and local government bodies are authorized to use alternative public works contracting procedures for projects valued over \$10 million. One procedure is the design-build procedure and the other is the general contractor/construction manager (GC/CM) procedure. The following government entities are eligible to use either procedure:

- Department of General Administration;

- University of Washington;
- Washington State University;
- cities with over 70,000 people and public authorities chartered by those cities;
- counties with over 450,000 people;
- public utility districts with revenues from energy sales over \$23 million per year; and
- port districts with total revenues over \$15 million per year.

The design-build procedure is a multi-step competitive process to award a contract to a single firm that agrees to both design and build a public facility that meets specific criteria. The contract is awarded following a public request of proposals for design-build services. Following extensive evaluation of the proposals, the contract is awarded to the firm that submits the best and final proposal with the lowest price.

Under the GC/CM procedure, a contract is awarded to a single firm for a guaranteed construction cost after competitive selection. The contract is to provide services during the design phase, and to act as both the construction manager and the general contractor during the construction phase. Use of the GC/CM procedure requires that the project meet specified criteria, such as the success of the project necessitates involvement of the GC/CM during the design stage. Following an extensive evaluation process, the government entity must award the contract to the firm that submits the final proposal scoring the highest based on outlined evaluation factors. The maximum construction cost guaranteed by the GC/CM is negotiated between the parties after the scope of the project is adequately determined.

The alternative public works contracting procedures expire July 1, 2007.

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### **Summary of Engrossed Substitute Bill:**

If a municipality receives a written protest from a bidder within two full business days of the bid opening, the municipality may not award the public works contract to anyone other than the protesting bidder without first providing at least two full business days' notice of the municipality's intent to award the contract. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project again if a second or subsequent call for bids for the project is made.

If a GC/CM building a public works project receives a written protest from a subcontractor bidder within two full business days of the bid opening, the GC/CM may not award the subcontract bid package to anyone other than the protesting bidder without first providing at least two full business days' notice of the GC/CM's intent to award the subcontract bid package.

Public hospital districts (PHD's) are added to the list of government entities eligible to use the alternative public works contracting procedures. PHD's with total revenues over

\$15 million a year may use the design-build procedure, or may use the GC/CM procedure as long as the project is approved by the PHD project review board. PHD's with total revenues less than \$15 million a year may use the GC/CM procedure as long as the project is approved by the PHD project review board. The PHD project review board may authorize an unlimited number of projects over \$10 million, and up to ten demonstration projects valued between \$5 million and \$10 million.

The PHD project review board is created to select and approve qualified projects based upon an evaluation of the information submitted by the hospital district. The members of the review board include representatives from:

- the department of health;
- the office of financial management;
- the construction industry;
- organized labor;
- the design industry;
- a jurisdiction already authorized to use the alternative public works contracting procedures; and
- large and small public hospital districts.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This is a good bill that prevents public entities from rushing to award a contract, precluding a protesting bidder from having his concerns addressed. The same protections should be extended to subcontractors who protest the bidding process on a GC/CM project. The proposed amendment would require general contractors in the GC/CM process to abide by the same rule.

**Testimony Against:** None.

**Testified:** Representative Haigh, prime sponsor; Duke Schaub, Associated General Contractors; and Dave Ducharme, Utility Contractors Association of Washington; and Larry Stevens, Mechanical Contractors Association and Electrical Contractors Association.