

HOUSE BILL REPORT

ESHB 2112

As Passed House:

March 17, 2003

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

Brief Description: Reviewing the use of the general contractor/construction manager procedures authorized in chapter 39.10 RCW.

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

Brief History:

Committee Activity:

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

Capital Budget: 3/7/03, 3/10/03 [DPS(SG)].

Floor Activity:

Passed House: 3/17/03, 72-26.

Brief Summary of Engrossed Substitute Bill

- Requires the Joint Legislative Audit and Review Committee (JLARC) to study the use of general contractor/construction manager (GC/CM) procedures in public works projects.
- Creates an oversight committee to examine the practices of the GC/CM procedures for public works projects.
- Lowers the population threshold for counties to use the design-build and GC/CM procedures from counties over 450,000 to counties over 200,000.
- Increases the number of projects the school district project review board may approve from 10 projects to 20 projects, of which no more than two may be valued between \$5 million and \$10 million.
- Creates a public hospital district (PHD) project review board.
- Allows PHDs 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 PHDs 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 10 demonstration projects valued between \$5 million and \$10 million.

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).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on State Government be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Dunshee, Chair; Hunt, Vice Chair; Alexander, Ranking Minority Member; Priest, Assistant Ranking Minority Member; Armstrong, Benson, Blake, Bush, Chase, Flannigan, Hankins, Hinkle, Kirby, Lantz, Mastin, McIntire, Morrell, Murray, Newhouse, O'Brien, Orcutt, Schoesler, Simpson, Veloria and Woods.

Staff: Marziah Kiehn-Sanford (786-7349).

Background:

Contracts for public works projects are usually awarded based on the traditional design-bid-build method. Under the design-bid-build method, the government body retains an architectural firm to design the facility, puts the construction portion of the project out for competitive bid, and awards the contract to the lowest responsible bidder.

However, 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:

- the Department of General Administration;

- the 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 government body must include a number of details in the request for proposals, such as a detailed description of the project, the reasons for using the design-build or GC/CM procedure, a description of the qualifications required of the bidder firm, a description of the process the government entity will use to evaluate the proposals, and the form of the contract.

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 for 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.

In addition to the government bodies listed above, school districts may use the GC/CM procedure for the construction of school capital projects valued over \$5 million if the project is approved by the School District Project Review Board. The School District Project Review Board may authorize up to 10 projects, of which at least two must be valued between \$5 million and \$10 million.

The alternative public works contracting procedures were authorized by the Legislature in 1994, and will expire in 2007.

Summary of Engrossed Substitute Bill:

The Joint Legislative Audit and Review Committee (JLARC) must study public works projects built under the GC/CM procedure. The study must include:

- an analysis of the costs and benefits of using GC/CM as opposed to other public

- works contracting procedures;
- an examination of the jurisdictions that used the GC/CM procedure; and
- an examination of the number, size, and cost of projects built using the GC/CM procedure.

The JLARC must submit a preliminary report by December 31, 2003, and a final report by December 31, 2004.

An independent Oversight Committee is established to examine the practices and use of GC/CM procedures for public works projects. The Oversight Committee must consider any findings and recommendations of the JLARC, and must consider its own recommendations for changes to the procedures. The committee is comprised of:

- four legislators, two from each caucus of each house;
- a representative of the contracting industry;
- a representative of the subcontracting industry;
- a representative of the design industry;
- a representative of labor organizations;
- a representative from a public body currently authorized to use alternative public works contracting procedures;
- a representative from a school district that has used the GC/CM procedure to build a public works project; and
- a representative from the Office of Financial Management.

The Oversight Committee shall report its findings and recommendations to the appropriate standing committees of the legislature by December 10 of each year.

The minimum population requirement for counties to be eligible to use the alternative public works contracting procedures is lowered from 450,000 people to 200,000 people. This change increases the number of counties eligible to use design-build and GC/CM from three counties to eight.

The number of projects the School District Project Review Board may approve is increased from 10 projects to 20 projects. No more than two projects, instead of at least two projects, may be valued between \$5 million and \$10 million.

Public hospital districts (PHDs) are added to the list of government bodies eligible to use the alternative public works contracting procedures. PHDs with total revenues over \$15 million a year may use the design-build procedure. All PHDs may use the GC/CM procedure as long as the project is approved by the PHD Project Review Board. The PHD Project Review Board is created to approve qualified projects based upon an evaluation of information submitted by the hospital districts. 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 alternative public works contracting procedures; and
- large and small PHDs.

The PHD project review board may authorize an unlimited number of projects over \$10 million, and up to 10 demonstration projects valued between \$5 million and \$10 million.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (State Government) The Associated General Contractors of Washington (AGC) support the JLARC study, the return of the Oversight Committee, and the broader eligibility requirements for counties. However AGC has concerns about PHDs using the design-build procedures without first obtaining approval from the PHD Project Review Board, and recommends that all PHD projects go through the PHD Project Review Board. The Department of General Administration supports the bill, including both the JLARC study and the Oversight Committee. The prior Oversight Committee provided a forum for contractors, subcontractors, and public owners to exchange information and address concerns.

(With concerns) Contractors Bonding & Insurance Co. (CBIC) supports the JLARC study but opposes re-creation of the Oversight Committee because it tends to loosen the eligibility requirements to too many jurisdictions that should maintain the design-bid-build contracting method. The Utility Contractors Association of Washington believes that design-build and GC/CM should remain the exception rather than the rule. The Oversight Committee was inundated with requests from contractors and jurisdictions to expand the number and types of jurisdictions eligible to use design-build and GC/CM. Legislative turnover is too high to make legislators' participation in the Oversight Committee worthwhile. Public entities should not procure construction services in the same manner that the private sector procures. The design-bid-build method was developed 80 years ago to provide transparency and to enable the public to watch government. Mechanical and electrical contractors support the return of the Oversight Committee but are opposed to the expansion of GC/CM to new jurisdictions. There are problems with medium and small contractors being excluded from the contracting opportunities. Raising the minimum threshold higher than \$10 million will free up many

projects for medium and small contractors to bid on under the design-bid-build method. There is disagreement among many sectors of the sub-contracting industry regarding whether expansion of GC/CM to new jurisdictions is appropriate. Eligibility should not be expanded until the JLARC and the Oversight Committee have had an opportunity to examine the current problems.

Testimony For: (Capital Budget) The process is a work in progress but the King County School Coalition desires the ability to expand authority for more "general contractors/construction manager" (GC/CM) projects for schools. A review board for the public hospitals is critical to make sure that the right questions are asked and that GC/CM is used on appropriate projects. The JLARC study is important to make sure that there is no undue proliferation of the use of the alternative public works contracting methods.

(Concerns) GC/CM is a good alternative procurement method but is best done for very large projects. The best size of project for GC/CM is one that is over \$15 million. Lower limits mean that smaller contractors will have some work taken away from them since they are unable to compete for the larger projects. Every session the Legislature is asked to expand the use of GC/CM or Design Build. The JLARC study will help to determine whether these alternatives are being used appropriately. To maintain an open, competitive bidding climate, Design-Bid-Build is still the best policy. There is a need for the oversight committee to address concerns with process, but not as a vehicle for proliferation of the use.

Testimony Against: (State Government) None.

Testimony Against: (Capital Budget) The GC/CM procedure was originally meant for larger, more complicated projects. The oversight committee has been used in the past to avoid Design-Bid-Build. This results in reduced competition. The need is for open and fair contracting, not erosion of it. Do not include an oversight committee. It adds no value.

Testified: (State Government) Representative Haigh, prime sponsor; Duke Schaub, Associated General Contractors; and John Lynch, Department of General Administration.

(With concerns) Mel Sorensen, Contractors Bonding and Insurance, Co.; Dan Sexton, Washington State Association of Plumbers and Pipefitters; Larry Stevens, Mechanical Contractors Association and Electrical Contractors Association; and Dave Ducharme, Utility Contractors Association of Washington.

Testified: (In support) Charlie Brown, King County School Coalition; Duke Schaub, Association of General Contractors of Washington; and Mel Sorenson, Contractors Bonding & Insurance Company.

(Concerns) Larry Stevens, National Electrical Contractors Association; and David Ducharme, Utility Contractors Association.

(Opposed) Mel Sorenson, Contractors Bonding & Insurance Company.