

HOUSE BILL REPORT

ESHB 1830

As Amended by the Senate

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

Brief Description: Regarding alternative public works contracting procedures.

Sponsors: By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Hunt, Jarrett, Morrell, McDonald, Pettigrew, Hasegawa, Eickmeyer, Clibborn, Simpson and Ericks).

Brief History:

Committee Activity:

State Government Operations & Accountability: 3/1/05, 3/2/05 [DPS];

Capital Budget: 3/4/05 [DPS (SGOA)].

Floor Activity:

Passed House: 3/14/05, 97-0.

Senate Amended.

Passed Senate: 4/23/05, 45-1.

Brief Summary of Engrossed Substitute Bill

- Establishes the Capital Projects Advisory Review Board to evaluate the use of the traditional and alternative public works contracting procedures.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Schindler and Sump.

Minority Report: Do not pass. Signed by 1 member: Representative Miloscia.

Staff: Marsha Reilly (786-7135).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on State Government, Operations & Accountability be substituted therefor and the substitute bill do pass. Signed by 26 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Jarrett, Ranking Minority Member;

Hankins, Assistant Ranking Minority Member; Blake, Chase, DeBolt, Eickmeyer, Ericks, Ericksen, Green, Hasegawa, Holmquist, Kretz, Kristiansen, McCune, Moeller, Morrell, Newhouse, O'Brien, Roach, Schual-Berke, Serben, Springer, Strow and Upthegrove.

Staff: Marsha Reilly (786-7135).

Background:

Most public works projects are completed using the design-bid-build procedure, in which the architectural design phase of a project is separate 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.

Alternative forms of public works were first used on a very limited basis and then adopted in statute in 1994 for certain pilot projects. These alternative procedures included a design-build process and a general contractor/construction manager (GC/CM) process and may be used on projects costing in excess of \$10 million.

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.

The GC/CM method employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The government agency contracts with an architectural and engineering firm to design the facility and, early in the project, also contracts with a GC/CM firm to assist in the design of the facility, manage the construction of the facility, act as the general contractor, and guarantee that the facility will be built within budget. When the plans and specifications for a project phase are complete, the GC/CM firm subcontracts with construction firms to construct that phase. Initial selection of GC/CM finalists is based on the qualifications and experience of the firm.

Under the 1994 legislation, a temporary independent oversight committee was created to review the utilization of design-build and GC/CM. The committee was composed of representatives from state and local agencies, the construction and design industries, labor organizations, and four members of the Legislature, one from each caucus. The committee report, issued on January 21, 1997, recommended that the authorization to use the alternative methods on a pilot basis be extended to June 30, 2001, and that certain modifications be made to the alternative contracting procedures to increase the efficiency and effectiveness of the methods. Those recommendations were adopted in 1997 and, also that year, the board was eliminated. In 2001, the authorization to use alternative public works procedures again was extended to June 30, 2007.

The 2003-05 Capital Budget directed the Joint Legislative Audit and Review Committee (JLARC) to study the use of GC/CM contracting procedures in major public works projects. The study consists of a review of past and current projects constructed using GC/CM contracting procedures to determine the feasibility of assessing the public benefits and costs. The final report will be presented in June 2005.

Summary of Engrossed Substitute Bill:

An independent oversight committee is established to monitor and evaluate the use of traditional and alternative public works contracting procedures and evaluate potential future use of other alternative contracting procedures. The committee will also provide a forum in which best practices and concerns about alternative public works contracting can be discussed.

Committee membership includes the following members appointed by the governor: one representative from construction general contracting; one representative from the design industries; two representatives from construction specialty subcontracting; one representative from a construction trades labor organization; one representative from a city; one representative from a county; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of general administration; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington State. All appointed members must be actively engaged in or authorized to use alternative public works contracting procedures.

A member of the Public Hospital District Project Review Board and a member of the School District Project Review Board also will be included on the review board as non-voting members.

Legislative members include two members of the House of Representatives, one from each major caucus appointed by the Speaker of the House of Representatives, and two members from the Senate, one from each major caucus appointed by the President of the Senate. Legislative members shall be non-voting.

The review board will convene as soon as practical after July 1, 2005, and will meet as often as necessary. The OFM shall employ a director for the review board, who shall serve as a non-voting member, and shall provide staff to support the committee.

The review board, in consultation with the OFM, will develop standardized statewide performance indicators and benchmarks for all major public works projects. At a minimum, the measures should allow basic comparisons of project performance by type, scope, cost, schedule, quality, and contracting procedure. Additionally, the review board must:

establish criteria to determine effective and feasible use of alternative contracting procedures; develop qualification standards for general contractors bidding on alternative public works projects; develop and recommend to the Legislature policies regarding alternative public works contracting procedures; encourage mentoring opportunities and the development of model

documents or guidelines; and assess the use of alternative dispute resolution processes in public works projects.

Public bodies using alternative contracting procedures are required to provide information requested by the committee in a timely manner.

If funding for the act is not provided by June 30, 2005, the act is null and void.

EFFECT OF SENATE AMENDMENT(S):

The name of the board is changed to the Capital Projects Advisory Review Board and the Board is staffed by the Department of General Administration. The Board's oversight function is removed. The provision requiring the OFM to employ a director of the board is removed. The amended bill provides that the two local government representatives be appointed on a rotational basis by the Association of Washington Cities, Washington State Association of Counties, and Washington Public Ports Association. The amended bill requires the review board to include competitive negotiation contracting as part of their evaluation of other potential alternative public works procedures. Certain qualified cities to are authorized to use alternative public works procedures for one demonstration project. The data collection requirements are eliminated. The amendment also authorizes alternative public works procedures for an additional city in a county that is a member of the Puget Sound Regional Council, has reported revenues exceeding \$60 million, and has a population between 25,000 and 40,000 for one demonstration project.

Appropriation: None.

Fiscal Note: Requested on March 3, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void if not funded in the budget.

Testimony For: (State Government Operations & Accountability) The City of Bremerton supports this bill. Stated benefits include a single source of responsibility, a central point of contact, and changes can be made early in the process. Bremerton has a population of 40,000 and does not qualify for alternative public works contracting except for projects with a public facilities district. The City of Bremerton is economically depressed and efforts have been made to revitalize the city. Just over three years ago, Bremerton was able to utilize a public/private partnership using alternative public works procedures for a conference center project. The city would not have been able to build this project without using alternative public works because of the complexity of the project. The city needs these tools to develop future projects. The cities of Puyallup and Renton support the bill. These cities, also, do not meet the population criteria. Today, the array of complex infrastructure projects undertaken successfully indicates that the population limits are no longer applicable. This would allow cities flexibility. The JLARC study should not be the reason to hold on this bill. Problems as well as success stories will be reported. Puyallup has a major downtown revitalization project planned and using alternative procedures would allow for more effective use of funds. Jurisdictions with a good track record should be able to use these procedures. Within the Association of Washington Cities, discussion occurs annually about the expansion of

alternative public works procedures. If it is to be expanded, the criteria need to be in place regarding size and complexity of projects. Cities that would be included have a good history of completing capital facilities projects.

Testimony For: There should not be an expansion of the general contractor/construction manager (GC/CM) contractor's procedure, but re-establishing the oversight committee is a good idea. The oversight committee was a work in progress when it was disbanded. The report issued in January 2007, indicated that alternative methods were continuing on a pilot basis with certain modifications to increase the efficiency and effectiveness of the methods. There needs to be an oversight body in place before expanding authorization for using a method that no one knows for sure is working. The Joint Legislative Audit and Review Committee (JLARC) study needs to be completed before there is any additional expansion of GC/CM. The committee allows awarding agencies feedback and can set up guidelines that are universally applied across the state. An oversight committee will provide a forum to discuss applicability of using alternative methods and to monitor how the process is working. It will provide guidelines on which construction methods are most appropriate for a project. There is currently no oversight over public works at a state level. The original legislation was limited to a few entities with complex projects because it is an expensive process. School districts later made a case to use it. Taxpayers are not getting their dollars worth in the cost per square foot. Discussion of problems and solutions can be reached through an oversight committee. Smaller cities undertake sophisticated projects. Not all projects are appropriate for alternative procedures. The oversight committee needs to have a process to look at criteria that would allow small cities to use alternative public works methods. It is a good idea to bring back the oversight committee as it brings stakeholders together, and it is important to be able to share best practices. The Department of General Administration has had success using the GC/CM process.

Testimony Against: (State Government Operations & Accountability) The Carpenters Union is opposed to the bill. In looking for a more effective way to use taxpayers money, alternative public works should not be expanded until the JLARC study is ready. The Mechanical and Electrical Contractors oppose the bill at this time. The Alternative Public Works Oversight Committee worked well for a number of years. Over the past few years, problems with procedures have cost taxpayers more money. It would be a good thing to reform the oversight committee. Taxpayers are not getting the return on their dollars in the cost per square foot. This needs more serious study. The Contractors Bonding and Insurance Company opposes the bill. The Legislature has heard testimony on the pros and cons of using alternative public works. It is inappropriate to expand these procedures while waiting for the JLARC study. While we support the use of GC/CM for sophisticated projects, there have been problems on projects that are not as complicated. Using these procedures causes a reduction in competition and it is unclear how much money is saved under design-build. Use of alternative procedures was intended to be for exceptions that speak to sophistication and complexity.

Testimony Against: (Capital Budget) None.

Persons Testifying: (State Government Operations & Accountability) (In support) Representative Hunt, prime sponsor; Roger Lubovich, City of Bremerton; Doug Levy, Cities of Puyallup and Renton; and Ashley Probart, Association of Washington Cities.

(Opposed) Mel Sorenson, Contractors Bonding and Insurance Company; Ed Triezenberg, Pacific Northwest Regional Council of Carpenters; Larry Stevens, Mechanical Contractors Association of Western Washington and National Electrical Contractors Association; and Michael Transue, Associated General Contractors.

Persons Testifying: (Capital Budget) Ed Triezanberg, Carpenters Union; John Lynch, General Administration; Doug Levy, Cities of Puyallup and Renton; David Johnson, Washington State Building and Construction Trades Council; and Larry Stevens, Mechanical and Electrical Contractors.

Persons Signed In To Testify But Not Testifying: (State Government Operations & Accountability) None.

Persons Signed In To Testify But Not Testifying: (Capital Budget) None.