HOUSE BILL REPORT
HB 1916

As Reported by House Committee On:
State Government & Tribal Affairs
Capital Budget

Title: An act relating to the state universities' public works contracting procedures.

Brief Description: Regarding the University of Washington's and Washington State University's public works contracting procedures.

Sponsors: Representatives Hunt, Armstrong, Sells, Wallace, Haigh, Appleton and Ormsby; by request of University of Washington.

Brief History:
Committee Activity:
State Government & Tribal Affairs: 2/10/09, 2/20/09 [DP];
Capital Budget: 2/24/09, 3/2/09 [DPS].

Brief Summary of Substitute Bill

- Grants the University of Washington and Washington State University specific statutory authority to enter into public works contracts following procedures as established by their respective boards of regents whenever the revenue source for the projects does not include state-appropriated funds. The authority expires June 30, 2011.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Marsha Reilly (786-7135)

Background:

Competitive Bid Requirements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

By law, the University of Washington (UW) and Washington State University (WSU) must competitively bid public works projects that are estimated to cost in excess of $35,000 if the work involves one trade or craft area, or $55,000 if multiple trades or craft areas are involved. Projects estimated under these dollar amounts may be contracted without a competitive bid or may be performed by employees. Generally, the procedures for competitive bid require that complete plans and specifications be drawn, the project be advertised, and sealed bids be submitted and opened in public.

One method of competitive bidding that may be used for projects estimated at $200,000 or less is the small works roster process. Under that procedure, a single roster of potential contractors may be created or different rosters for contractors of different specialties or categories of anticipated work. Distinctions may be made between contractors based on geographic areas. The agency or local government may solicit bids from all appropriate contractors on the roster, but at a minimum five bids must be solicited. The contract, if awarded, is awarded to the lowest responsible bidder. An effort must be made to equitably distribute the opportunity among contractors on the appropriate roster if bids are solicited from less than all contractors on the roster.

Contracting Methodologies.
The traditional contracting method of awarding a public works contract to the lowest responsible bidder is typically referred to as the design-bid-build (DBB) contracting method. Under the DBB procedure, the architectural design phase of a project is separate from the construction process. After the detailed design and construction documents are completed by an architectural firm, the construction phase of the project is put out for competitive bid. A construction contract is awarded to the lowest responsible bidder.

The design-build (DB) method 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 DB 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. Public owners must be approved to use the DB method by the Capital Projects Advisory Review Board (CPARB). The method may only be used for projects in which the design and construction activities, technologies, or schedule used are highly specialized, the project design is repetitive in nature, or regular interaction with and feedback from facilities users and operators during design is not critical to an effective design. With few exceptions, the DB process is limited to projects costing in excess of $10 million.

The general contractor-construction manager (GCCM) method is one in which the public entity employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The public entity first contracts with an architectural and engineering firm to design the facility and, early in the project, also contracts with a GCCM 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. Public owners must also be approved to use the GCCM method by the CPARB. General contractor-construction manager projects are limited to projects that involve complex scheduling, phasing, or coordination; involve construction at occupied facilities; encompass a complex or

technical work environment; or require specialized work on a building that has historic significance. The GCCM method may be used for projects of any cost.

The UW is certified by the CPARB to use both the DB and the GCCM methods, and WSU is certified to use the GCCM method.

Summary of Bill:

The boards of regents (Boards) for the UW and WSU are granted specific authority for public works projects whenever the revenue source for the projects does not include state-appropriated funds.

The authority granted allows the universities to award public works projects using a small works roster process for projects with an estimated cost of up to $1 million, and using the DBB, DB, or GCCM construction methods for projects with an estimated cost in excess of $1 million. Contracts must be awarded after public notice and following requirements and procedures established by the Boards to the person or persons able to perform on the most advantageous terms.

Requirements and procedures established by the Boards may include, but are not limited to, the following:

- setting the dollar amount for self performance of work by the general contractor;
- setting the schedule for establishing the maximum allowable construction cost; and
- establishing the process for selection of subcontractors.

The Boards may not enter into contracts in excess of the amount provided for a specific project and, if the Boards choose to exercise this authority, the statutory bidding or procurement requirements regarding the small works roster process and the alternative public works contracting methods do not apply. However, the statutory requirements regulating a contractor's bond, prevailing wages, and liens for labor, materials, and taxes do apply.

The UW and WSU may require prequalification of potential bidders. Persons interested in bidding must submit a questionnaire that requires information about their financial ability and experience as well as the financial ability and experience of any proposed subcontractors. The questionnaire must be sworn to before a notary public, or other authorized person, and submitted at the time required. Based on the information provided, the UW and WSU may disqualify any person from bidding.

To be qualified to bid, the potential bidder must have:

- adequate financial resources or the ability to secure those resources;
- the necessary experience, organization, and technical qualifications to perform the work;
- the ability to comply with the required performance schedule;
- a satisfactory record of performance, integrity, judgment, and skills; and
- otherwise been qualified and eligible to receive an award under applicable laws and rules.

The UW and WSU may limit the number of entities submitting proposals or bids to a number that ensures competition without creating marketing costs for those otherwise qualified to bid. The list of bidders shall be selected on a project-by-project basis following the prequalification process.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill will allow the UW to help itself during these difficult economic times. It allows more flexibility for construction. The UW has used all of these contracting procedures responsibly. It is the intent to provide outreach to minority and women-owned businesses. This will make the UW more competitive and able to adjust to market conditions. It will stretch the dollars and resources farther. One-third of the UW's construction is privately funded. The UW will not use state funds for operations and maintenance of buildings constructed with private funds.

(Opposed) Services and activities fees are still public funds so construction projects funded by these fees are still within the public arena. This approach is giving the UW a blank check. There needs to be transparency. The bill eliminates protections put in place. The prequalification and limitations on the number of bidders may result in favorites. It raises the small works dollar limit from $200,000 to $1 million. This is too aggressive. It would be better to allow the CPARB to adjust methods and to review procedures. The CPARB was set up to evaluate processes for purposes of re-authorizing alternative public works. The dollar thresholds determined to be appropriate for GCCM and DB was $10 million. There are inherent risks in setting dollar amounts under $10 million. To balance the risks, the project size must be big enough to cover the up-front costs, otherwise no one will bid on the project. While some contractors may like bidding on smaller projects, the smaller ones won't have a chance to compete.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Randy Hodgins and Olivia Yang, University of Washington.

(Opposed) Van Collins, Associated General Contractors; Stan Bowman, American Institute of Architects Washington Council; and Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Blake, Grant-Herriot, Jacks, Maxwell, Orwall, Smith and White.

Minority Report: Do not pass. Signed by 4 members: Representatives Pearson, Assistant Ranking Minority Member; Anderson, Hope and McCune.

Staff: Steve Masse (786-7115)

Summary of Recommendation of Committee On Capital Budget Compared to Recommendation of Committee On State Government & Tribal Affairs:

The substitute bill passed out of the committee on Capital Budget added an expiration date of June 30, 2011, and requires a report back to the Legislature.

Appropriation: None.

Fiscal Note: Available on original bill.

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

Staff Summary of Public Testimony:

(In support) The University of Washington and Washington State University were asked by the Governor and legislative members for ways to stretch their capabilities of performing capital projects. This would allow the universities to use methods that may make projects less expensive and allow them to get more work done. It provides flexibility to use many different methods that may suit different types of projects more efficiently.

(Opposed) Revenues that are not appropriated are public funds and subject to the same public works laws. These laws ensure that public funds are used correctly. This would allow the University of Washington to use any method they can think of. The procedures the University of Washington suggests using would promote favoritism and allow choosing of contractors. This goes around the contracting procedure. This would encourage other public agencies to change the laws as well.

Persons Testifying: (In support) Representative Hunt, prime sponsor; Randy Hodgins and Olivia Yang, University of Washington; and Larry Ganders, Washington State University.

(Opposed) Van Collins, Associated General Contractors; Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association; and Stan Bowman, American Institute of Architects Washington Council.

Persons Signed In To Testify But Not Testifying: None.