

SENATE BILL REPORT

HB 1690

As of March 25, 2009

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

Brief Description: Authorizing alternative public works contracting procedures.

Sponsors: Representatives Hasegawa, Hunt, Hudgins, Anderson and Kenney.

Brief History: Passed House: 3/05/09, 97-0.

Committee Activity: Government Operations & Elections: 3/24/09.

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Staff: Edward Redmond (786-7471)

Background: State law provides that public entities, in general, must initiate a competitive bidding process for public works projects and award the contract to the lowest responsive bidder. Public entities have specific statutes that define the process for competitive bidding and set the specific dollar amount requiring a public bid.

The design-bid-build (DBB) is the conventional method for awarding a public works contract to the lowest responsible bidder. 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 then awarded to the lowest responsible bidder.

There are also three alternative procedures authorized by law: Design-Build, General Contractor/Construction Manager, and Job Order Contracting.

The Capital Projects Advisory Review Board (CPARB) was established to evaluate public capital projects construction processes and to advise the Legislature on policies related to alternative public works delivery methods. CPARB must specifically develop and recommend to the Legislature (1) criteria that may be used to determine effective and feasible use of alternative contracting procedures; (2) qualification standards for general contractors bidding on alternative public works projects; and (3) policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods, and recommendations on expansion,

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continuation, elimination, or modification of alternative public works contracting methods. CPARB must also evaluate the future use of other alternative contracting procedures, including competitive negotiation contracts.

Several statutes address public works contracting for the University of Washington (UW). These include statutes that apply to all state colleges and universities generally, those that apply to the UW specifically, and those addressing public works and alternative public works contracting procedures.

The UW's specific statutory authority, unless otherwise provided, permits it to enter into any contracts the Board of Regents (Board) deems essential to its purposes. The Board is also authorized to enter into contracts with one or more contractors for the erection and construction of university buildings or improvements. Such contracts must be awarded after public notice and under such regulations as established by the Board or as otherwise provided by law.

Public works statutes applicable to state colleges and universities require the completion of plans and specifications, release of contract for public bid, and award of the contract to the lowest responsible bidder if the project meets or exceeds \$55,000 (or \$35,000 if the work involves a single trade or craft area).

An Attorney General Opinion (AGO) was requested in November 2008 to determine if the UW had the authority to adopt a rule to allow the use of an alternative contracting procedure not currently authorized by law. The informal AGO concluded that the Legislature's apparent intent was to require the UW to follow the requirements relating to alternative public works contracting procedures when employing one of the three alternative contracting methods. The UW's specific public works contracting authority, however, permits it to establish other alternative contracting procedures by rule. There have been subsequent conflicting AGOs as to whether the UW has this right.

Summary of Bill: The stated intent of the legislation is to clarify that, unless otherwise specifically provided for in law, public entities that want to use an alternative public works contracting procedure may use only those procedures specified under the statutes for alternative public works or those approved for use as a demonstration project by CPARB.

The UW Board must comply with the requirements of chapter 39.10 RCW when using any alternative contracting procedures. Furthermore, it must seek evaluation and approval of CPARB prior to adopting an alternative procedure that is not specifically authorized by law.

CPARB must evaluate and approve alternative contracting procedures as demonstration projects. Evaluations of alternative procedures not authorized specifically by law, including a recommendation on the use of a new procedure by other public entities, must be submitted to the appropriate committees of the Legislature. The term "alternative public works contracting procedure" is expanded to include new contracting procedures submitted to CPARB for approval to use as a demonstration project.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This issue was flagged by House and Senate staff with concern that the UW's adopted rule was not legal. There were many informal AGOs on this issue. This bill makes it clear that every state agency must follow the code with regard to alternative public works contracting procedures. The legislature established CPARB as a subsequent step in a long process to get competent and technical advice. The UW sits as a member of CPARB and has a voice in this issue. The purpose of this bill is to clarify the grey area and make sure everybody is playing by the same rules.

OTHER: We did promulgate an administrative rule, about a year ago, related to the potential renovation of Husky Stadium and based it on a statute that was originally written in 1909. The informal opinion that was written in November was from the Solicitor General's Attorney General Office, the most senior members of the Attorney General Office. We were neutral in the House, but after further review of the bill, we have questions regarding its implementation. The bill may cause unintended consequences. This bill may not just impact the UW, but may also affect other public bodies such as port districts, hospital districts, and school districts that operate fair and open public works contracting procedures.

Persons Testifying: PRO: Representative Hasegawa, prime sponsor; Rick Slunaker, Associated General Contractors; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association.

OTHER: Randy Hodgins, Olivia Yang, UW.