

SENATE BILL REPORT

HB 1690

As of February 19, 2010

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; 2/05/10, 97-0.

Committee Activity: Government Operations & Elections: 3/24/09, 2/18/10.

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 authorized under 39.10 RCW. 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 under RCW 28B.20.140, however, permits it to establish other alternative contracting procedures by rule.

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 is viewed by minority contractors as a civil rights issue. There used to be a 'good ol' boys' system in how contracts were set. It was very difficult for small construction owners, small business owners, and minority contractors, in particular, to break into that system. The CPARB system is setup to review these contracting processes. The purpose of the bill is to make sure the CPARB process remains in tact and that one state agency does not have an exception to that process.

OTHER: We agree with the basic policy of the bill specifying that RCW 39.10 is the source of alternative procurement methods within the state except in situations where it is specifically authorized in a different section. The concern with this bill is that it fundamentally misconstrues CPARB's delegated authority. CPARB is currently an advisory committee, it does not have regulatory authority. Under this bill, however, CPARB is used to review and make approvals of alternative methods. The University of Washington is an active participant of CPARB and is concerned that the bill changes the dynamics of the board beyond the original legislative intent. The Mechanical and Electrical contracting associations would like an amendment to this bill, which addresses the concerns raised by the Associated General Contractors and the University of Washington.

Persons Testifying: PRO: Representative Hasegawa, prime sponsor.

OTHER: Van Collins, Associated General Contractors; Margaret Shepherd, UW; James Curry, Architects and Engineers Legislative Council; Larry Stevens, Mechanical Contractors Association, National Electrical Contractors Association.