

SENATE BILL REPORT

SB 5397

As Reported by Senate Committee On:
Government Operations & Elections, February 12, 2009

Title: An act relating to alternative public works.

Brief Description: Regarding alternative public works contracting procedures.

Sponsors: Senators Rockefeller and Shin; by request of Capital Projects Advisory Review Board.

Brief History:

Committee Activity: Government Operations & Elections: 2/10/09, 2/12/09 [DP, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; McDermott, Pridemore and Swecker.

Minority Report: Do not pass.

Signed by Senator Benton.

Staff: Aaron Gutierrez (786-7448)

Background: Alternative methods for constructing public works were first used on a very limited basis and then adopted in statute in 1994 for certain pilot projects. These alternative procedures include a design-build process, a general contractor/construction manager (GC/CM) process, and a job order contracting process. Originally, the use of these alternative methods were limited to a handful of public entities.

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.

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

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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 the GC/CM finalists is based on the qualifications and experience of the firm.

In 2003 job order contracting was authorized as an alternative public works contracting procedure. Under a job order contract, a contractor agrees to perform an indefinite quantity of public works jobs, defined by individual work orders, over a fixed period of time. A public entity may not have more than two job order contracts in effect at any one time. The maximum total dollar amount that is awarded under a job order contract may not exceed \$2 million in the first year, \$5 million over the first two years, or \$8 million over a three-year period if the contract is renewed or extended. The authority to use job order contracting is limited to the Department of General Administration (GA), the University of Washington (UW), Washington State University (WSU), certain cities and counties, port districts, certain public utility districts, school districts, and the state ferry system.

In 2005 the Capital Projects Advisory Review Board (CPARB) was established to monitor and evaluate the use of traditional and alternative public works contracting procedures and to evaluate potential future use of other alternative contracting procedures. In 2007 the CPARB presented recommendations for the expanded use of these procedures and processes that the Legislature enacted into law. A project review committee (review committee) was created to certify public bodies to use either design-build, the GC/CM, or both procedures, or to approve projects on a project-by-project basis. The use of the procedures is generally limited to projects with a total project cost of \$10 million or more. However, the GC/CM process may be used on projects with a total project cost of less than \$10 million with the approval of the committee.

Summary of Bill: The CPARB must develop guidelines to be used by the review committee for the review and approval of design-build demonstration projects that procure operation and maintenance services.

The review committee may approve up to ten projects using design-build procedures that have total project costs between \$2 million and \$10 million. These projects are subject to the same criteria as those with a project cost over \$10 million. The review committee must report to the CPARB on recommendations for continued use of the design-build procedure for projects estimated under \$10 million.

The review committee may approve a maximum of two design-build demonstration projects that include procurement of operations and maintenance costs for more than three years. Where possible, the committee must approve projects among multiple public bodies.

Public bodies seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years, and those seeking certification for the GC/CM process must demonstrate successful management of at least one GC/CM project within the previous five years.

In awarding GC/CM contracts, public bodies must establish a time and place for the opening of sealed bids. Bids must be publically opened and read, and all previous scoring must be available to the public. Public bodies must provide appropriate honorarium payments to finalists that submit responsive design-build proposals, rather than those submitting "best and final" proposals.

GA, UW, and WSU may issue job order contract work orders for the state regional universities and The Evergreen State College.

The statute regarding negotiated adjustments to lowest design-build bids is repealed.

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: CPARB was established for the purpose of presenting bills like this to the Legislature. Educational Service Districts may be added in the future, but the decision of CPARB was to increase the usage of alternative public works procedures incrementally. Opening bids in public promotes transparency.

OTHER: Educational Service Districts should also be given the ability to utilize job order contracting.

Persons Testifying: PRO: Mike Purdy, University of Washington; Bob Maruska, CPARB.

OTHER: Tim Merlino, Marnie Allen, Educational Service District 112.