

SENATE BILL REPORT

SB 5760

As Reported by Senate Committee On:
Ways & Means, February 23, 2009

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: Senators Fraser, Brandland, Zarelli, Shin, Kilmer and Kohl-Welles; by request of University of Washington and Washington State University.

Brief History:

Committee Activity: Ways & Means: 2/17/09, 2/23/09 [DPS, w/oRec].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5760 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Fairley, Hobbs, Keiser, Kline, McDermott, Murray, Oemig, Parlette, Regala and Rockefeller.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Honeyford.

Staff: Brian Sims (786-7431)

Background: Competitive Bid Requirements. 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. Generally, 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, roster of potential contractors may be created for different specialties or categories of anticipated work. The agency or

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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.

The UW may also contract for public works under regulations issued by the Board of Regents (see RCW 28B.20.140).

Summary of Bill (Recommended Substitute): 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 must be selected on a project-by-project basis following the prequalification process.

UW and WSU are required to report on major construction projects procured with this new authority, just as they do with projects funded with appropriated accounts.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Substitute): The substitute requires UW and WSU to report on major construction projects procured with this new authority, just as they do with projects funded with appropriated accounts.

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 on Original Bill: PRO: The bill will provide greater flexibility in procuring capital facilities at lower cost. Tight times require new approaches. Many of the projects funded with nonappropriated money involve projects of the University Hospital or research facilities where the university is competing with private sector organizations that can move more quickly than the traditional public works process. This bill will allow us to compete more successfully.

CON: The public works process should apply to all projects regardless of fund source. Nonappropriated revenues are still public revenues. The bill removes public accountability. The bill goes around the Capital Projects Advisory Review Board process for proposing legislation. The bill eliminates the transparency provided in the traditional public works process. The bill would create two different processes on the same college campuses.

Persons Testifying: PRO: Randy Hodgins, Olivia Yang, UW; Larry Ganders, WSU.

CON: Stan Bowman, American Institute of Architecture, Washington Council; Van Collins, Associated General Contractors.