

FINAL BILL REPORT

SHB 1466

C 222 L 13
Synopsis as Enacted

Brief Description: Revising alternative public works contracting procedures.

Sponsors: House Committee on Capital Budget (originally sponsored by Representatives Haigh, Warnick, Dunshee, Fey, Kristiansen and Reykdal).

House Committee on Capital Budget
Senate Committee on Governmental Operations
Senate Committee on Ways & Means

Background:

Capital Projects Advisory Review Board.

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. The CPARB also provides a forum in which best practices and concerns about alternative public works contracting may be discussed.

The CPARB consists of 23 members. Of those, 14 are appointed by the Governor. The CPARB also includes four legislators, two from the House of Representatives, appointed by the Speaker of the House, and two from the Senate, appointed by the President of the Senate, one from each major caucus. Three of the members are selected by public owners, including the Association of Washington Cities, the Washington State Association of Counties, the Washington Public Ports Association, Washington Public Hospital Districts, and the Washington State School Director's Association.

Alternative Contracting Procedures.

Alternative forms of public works were first used on a very limited basis and then adopted through enacted legislation in 1994 for certain pilot projects. These alternative procedures included a Design Build process and a General Contractor/Construction Manager (GC/CM) process that may be used on projects costing in excess of \$10 million. Certain public agencies that have proper experience and that will have many projects may be certified by the CPARB to use alternative procedures for up to three years. The CPARB may renew their certifications for an additional three years. Other public agencies without experience may be certified for a designated project for three years.

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.

With some restrictions, a limited number of public entities are authorized to use alternative public works contracting procedures. These public entities include:

- the Department of General Administration;
- the University of Washington;
- the Washington State University;
- cities with a population greater than 70,000 and any public authority chartered by these cities;
- counties with a population greater than 450,000;
- public hospital districts with total revenues greater than \$15 million;
- port districts with total revenues greater than \$15 million per year;
- public utility districts with revenues from energy sales greater than \$23 million per year;
- school districts for the GC/CM projects; and
- the state ferry system.

The authorization to use alternative public works procedures expires June 30, 2013.

Design Build.

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. It may be used on projects valued over \$10 million where:

- the construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology;
- the project design is repetitive in nature and is an incidental part of the installation or construction; or
- regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

The contract is awarded following a public request of 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.

General Contractor/Construction Manager.

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 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.

Job Order Contracting.

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 \$3 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.

Summary:

The use of alternative public works contracting procedures is extended to June 30, 2021.

Capital Projects Advisory Review Board.

The representative from the Association of Washington Cities is appointed by the Governor rather than being self-appointed.

Design Build.

Changes to using the Design Build process include modifying the criteria necessary to be eligible to use the process where only one criteria needs to be met. Criteria include:

- personnel from the public body or their consultants must be knowledgeable;
- the construction must be highly specialized;
- there is opportunity for innovation between the contractor and consultant; and
- the project can be done in a shorter construction schedule.

The Capital Projects Advisory Review Board must report to the Legislature on the use of life cycle cost analysis when selecting a design build contractor

Changes to evaluating Design Build proposers include adding:

- the option of using experience in the utilization of disadvantaged businesses and small businesses;
- operating costs and price related factors, rather than the proposal price; and
- outreach plans to disadvantaged businesses and small businesses.

Eligible project types are modified to include portable facilities used for K-12 school facilities. Prefabricated buildings are limited to no more than 10 per site.

General Contractor/Construction Manager.

The certification for certain public agencies with experience may be renewed for multiple three-year periods. Other public agencies without experience may be certified for three years. The \$10 million dollar requirement is removed. Preconstruction services are added to the scope of services that may be provided by the GC/CM to the public body. The evaluation factors for selecting a GC/CM may include outreach plans to disadvantaged businesses and small businesses.

The protest procedures are modified to include notification of all of the firms qualified for the next phase of selection, and to all subcontractors that submitted bids. If requested, the GC/CM must provide the scoring results to all subcontractors that submitted bids in that phase of the process.

Job Order Contracting.

Job Order Contracting requirements are modified and may only be used by public bodies of Washington. The maximum contract amount per year is increased from \$4 million to \$6 million for counties with a population over one million people.

Votes on Final Passage:

House	95	0	
Senate	47	0	(Senate amended)
House	81	16	(House concurred)

Effective: June 30, 2013
Contingent (Section 24)