

HOUSE BILL REPORT

HB 2578

As Reported by House Committee On: Government Operations & Elections

Title: An act relating to exempting from public inspection certain public works proposals and documents.

Brief Description: Exempting from public inspection certain public works proposals and documents.

Sponsors: Representatives Dunshee, DeBolt and MacEwen.

Brief History:

Committee Activity:

Government Operations & Elections: 1/31/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Exempts from disclosure proposals and related evaluation documents pertaining to competitive solicitations for alternative public works contracts.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Young, Assistant Ranking Minority Member; Carlyle, Christian, Kretz, Manweller, Orwall, Robinson and Van De Wege.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Ranking Minority Member.

Staff: Marsha Reilly (786-7135).

Background:

Public works contracts of a large dollar amount that meet certain criteria and have been approved by the Capital Projects Advisory Review Board (CPARB) may be awarded through alternative contracting procedures in which the selection of a contractor is based on factors

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other than low bid. Design-build is an alternative contracting method that melds design and construction activities into a single contract. General Contractor/Construction Manager (GCCM) is an alternative contracting method that utilizes the services of a project management firm which bears significant responsibility and risk in the contracting process. 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.

Generally, all proceedings, records, contracts, and other public records relating to alternative public works transactions are public records and available for public inspection and copying. However, trade secrets or other proprietary information submitted by a bidder, offeror, or contractor are not subject to the Public Records Act if the bidder, offeror, or contractor specifically state in writing the reasons why protection is necessary and identifies the data or materials to be protected.

Summary of Substitute Bill:

For alternative public works contracting methods, proposals submitted in response to a competitive solicitation and related evaluation documents are exempt from disclosure until the public body announces that a contract agreement has been executed or the selection process is terminated.

Substitute Bill Compared to Original Bill:

Design-build proposals are exempt from disclosure until the highest scoring finalist has been selected, rather than when a contract agreement has been executed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state spends \$2 billion each year on maintenance and operation of our buildings and for those buildings that are leased. The state needs to build better buildings. The state has not traditionally focused on maintenance, even though it is about 70 percent of the cost. Proposals need to be thoroughly reviewed and time is needed to review performance. Private information and business secrets are included in proposals and this information needs to be held for about 30 days to avoid mischief regarding a public records request.

In any competitive bid process, the stakes are very high and the rules need to be clear. There is also the ability to legitimately protest bids. The bill before you covers the design-build process, in particular the timeframe between submissions, evaluation of submissions, and when should the documents become open. Because it relates to the design-build process, the Associated General Contractors request an amendment to be compatible with the design-build language in statute. If the Legislature waits to make the information available at the time the contract is made, the opportunity for protest is over.

(Opposed) This is a process of negotiation. While negotiations are ongoing, there is wide variance. There is no ability for other competitors to see what is happening, and they are the ones who police the process. There are currently protections for proprietary information in statute, and disclosure of proposals should occur very early because it is not based on low bid. If the work is open, there is an opportunity to get an improved outcome and, perhaps, a less expensive outcome.

Persons Testifying: (In support) Representative Dunshee, prime sponsor; and Van Collins, Associated General Contractors.

(Opposed) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.