

HOUSE BILL REPORT

SB 5349

As Reported by House Committee On: Capital Budget

Title: An act relating to revisions to alternative public works contracting procedures.

Brief Description: Revising alternative public works contracting procedures.

Sponsors: Senators Dammeier, Hasegawa, Hewitt, Keiser, Rivers, Hobbs and Kline.

Brief History:

Committee Activity:

Capital Budget: 3/8/13, 4/8/13 [DPA].

**Brief Summary of Bill
(As Amended by Committee)**

- Extends alternative contracting procedures to June 30, 2021.
- Modifies the criteria to use the Design Build and General Contractor/ Construction Manager contracting procedures.
- Modifies notification procedures.
- Increases Job Order Contracting limits to \$6 million for certain counties.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended. Signed by 9 members: Representatives Dunshee, Chair; Stanford, Vice Chair; Warnick, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Appleton, Fey, Riccelli, Smith and Stonier.

Minority Report: Do not pass. Signed by 2 members: Representatives Hawkins, Assistant Ranking Minority Member; Scott.

Staff: Steve Masse (786-7115).

Background:

Capital Projects Advisory Review Board.

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.

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 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 can be discussed. The CPARB consists of 23 members. Of those, 14 are appointed by the Governor. The remaining four consist of 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 in statute in 1994 for certain pilot projects. These alternative procedures included a Design Build process and a General Contractor/Construction Manager (GC/CM) process which may be used on projects costing in excess of \$10 million.

With some restrictions, the use of alternative public works contracting procedures are authorized to a limited number of public entities, including:

- 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 such city;
- 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 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 plans and specifications for a project phase are complete, the GC/CM firm subcontracts with construction firms to construct that phase. Initial selection of 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 of Amended Bill:

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

Capital Projects Advisory Review Board.

A representative from the Association of Washington Cities is appointed to the CPARB by the Governor rather than self appointed.

Design Build.

Changes to 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 includes:

- 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.

Disadvantaged businesses and small businesses are defined, and outreach plans may be considered in the evaluation factors for design build or contractor/construction manager proposals. A life cycle cost model may be made available in the request for qualifications.

The evaluation factors for selection of the Design Build firm include: (1) cost or price related factors, rather than the proposal price; (2) the proposer's experience using life cycle cost analysis; and (3) the option for using experience in utilization of disadvantaged business

and small businesses. The \$10 million project cost requirement is removed. A public body may use the Design Build procedure for projects between \$2 million and \$10 million for up to five projects.

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

General Contractor/Construction Manager.

Changes to the GC/CM process include removing the three year certification, and removing the \$10 million requirement. The certification renewal period for public bodies is increased from one year to three years. Preconstruction services are added to the scope of services that may be provided by the GC/CM to the public body.

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 is modified to be used only by public bodies of the state of Washington, and the maximum contract amount per year is increased from \$4 million to \$6 million for counties with a population over 1 million people. Procuring architectural/engineering services is removed from Job Order Contracting.

Amended Bill Compared to Original Bill:

The amended bill defines disadvantaged and small businesses and adds outreach plans to the list of evaluation factors for Design Build and GC/CM proposals. Life cycle cost models are required to be provided in requests for qualifications from public entities. The amended bill removes the procurement of architectural/engineering services from Job Order Contracting. Experience using life cycle cost analysis is added to the potential criteria for Design Build firm selection. Operating costs are added to the price related factors when considering a Design Build firm's experience.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect on June 30, 2013.

Staff Summary of Public Testimony:

(In support) The CPARB makes a valuable contribution to the success of alternative contracting methods. Reauthorizing CPARB and alternative contracting methods allow public entities to have options for contracting for public works projects.

(Opposed) None.

Persons Testifying: Senator Dammeier, prime sponsor; Stan Price, Northwest Energy Efficiency Council; Bob Maruska and Ed Kommers, Capital Projects Advisory Review Board; Van Collins, Associated General Contractors; and Paul W. Locke.

Persons Signed In To Testify But Not Testifying: None.