

SENATE BILL REPORT

SB 5349

As of February 5, 2013

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: Governmental Operations: 2/04/13.

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Staff: Karen Epps (786-7424)

Background: The Capital Projects Advisory Review Board (CPARB) provides an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public works delivery methods. Twenty-three members serve on CPARB. Fourteen members are appointed by the Governor, including representatives from general construction, architecture, engineering, subcontracting, construction trades labor organizations, private industry, a few state agencies, and domestic insurers. The remaining members are selected as follows:

- three members representing local public owners, selected by the Association of Washington Cities, the Washington State Association of Counties, and the Washington Public Ports Association;
- one member, representing public hospital districts, selected by the Association of Washington Public Hospital Districts;
- one member, representing school districts, selected by the Washington State School Directors' Association; and
- four members of the Legislature, two from the House of Representatives and two from the Senate, one from each major caucus, appointed by the Speaker of the House of Representatives and the President of the Senate.

Public works contracts of a large dollar amount that meet certain criteria and have been approved by CPARB may be awarded through an alternative contracting procedure in which the selection of a contractor is based on factors other than low bid. There are three

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alternative procedures authorized by law: Design-Build (DB), General Contractor/Construction Manager (GCCM), and Job Order Contracting (JOC).

A project review committee (review committee) was created to certify public bodies to use either DB, the GCCM, or both procedures, or to approve projects on a project-by-project basis. The certification is for three years. The use of the procedures is generally limited to projects with a total project cost of \$10 million or more. However, GCCM process may be used on projects with a total project cost of less than \$10 million with the approval of the review committee. The review committee reviews and approves not more than ten projects using the DB contracting procedure for projects that have a total project cost between \$2 million and \$10 million.

DB is an alternative contracting method that melds design and construction activities into a single contract. The government agency contracts with a single firm to both design and construct the facility based on the needs identified by the agency. Selection of the firm is based on a weighted scoring of factors, including firms' qualifications and experience, project proposals, and bid prices. In addition to projects that are highly specialized or repetitive in nature, DB may be used for construction of parking garages, and the erection of pre-engineered metal buildings or prefabricated modular buildings.

GCCM is another alternative contracting method that utilizes the services of a project management firm which bears significant responsibility and risk in the contracting process. Under GCCM, the public entity contracts with an architectural and engineering firm to design a facility. The public entity also contracts with a GCCM firm to assist in the design of the facility, particularly in the areas of material selection, construction methods, value engineering, and constructability; 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 GCCM firm subcontracts with construction firms to construct that phase. Initial selection of GCCM finalists is based on the qualifications and experience of the firm. Final selection is based on the bid price of GCCM fees.

Under the JOC method, the public entity awards a contract to a contractor who agrees to perform an indefinite quantity of public works jobs, defined by individual work orders, over a fixed period of time. For JOC, the maximum total dollar amount that may be awarded is \$4 million.

Summary of Bill: The use of alternative public works contracting procedures is extended to 2021. The CPARB member representing cities is appointed by the Governor. Vacancies are filled in the same manner as appointments.

The review committee is no longer required to review and approve the use of GCCM by certified public bodies for projects under \$10 million. Certified public bodies may use GCCM on any size project without obtaining the review committee's approval. Once certified, a public body may use the certified contracting procedure for a period of three years.

Public bodies may use DB for projects in which the construction activities are highly specialized and a DB approach is critical in developing construction methodology; the projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or significant savings in project delivery time would be realized. Pre-fabricated modular buildings are limited to ten per installation site under a DB procedure. The review committee may approve 15 DB projects. The review committee must report annually to CPARB on these projects and make recommendations for further use. Certified public bodies may use DB procedure on no more than five projects between \$2 million and \$10 million during the certification period. Public bodies may consider cost factors other than up front, lump sum pricing on a DB contract. Evaluation factors, weights, and process used by the selection committee must be included in a DB procedure.

Protest procedures must be included in the public notice when selecting a subcontractor on a GCCM project. Protest procedures must include time limits for filing a protest and can be no less than four days from the date the subcontractor, or proposer, was notified of the selection decision. An opportunity for comment on the protest procedures must be provided at the public hearing for a GCCM alternative subcontractor selection process. The process may not proceed to the next phase until two days after all proposers are notified of the committee's selection decision. A proposer may obtain a scoring summary of the evaluation factors for its proposal. The GCCM firm must notify all proposers of the selection decision and make a selection summary of the final proposals available within two days of notification. If a public body receives a timely protest from the most qualified firm, the GCCM firm may execute a contract until two business days after the final protest decision issued by the public body is transmitted to the protestor. A GCCM firm must not assign warranty responsibility nor the terms of its contract or purchase order with vendors for equipment or material purchases, to subcontract bid package bidders or subcontractors who have been awarded a contract. The GCCM firm and the public body must make the specific eligibility criteria and applicable weights given to each criteria available at least five days before a hearing.

For JOC, the maximum total dollar amount that may be awarded in counties with a population of more than 1 million is \$6 million.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The alternative contracting procedures are smart, innovative things for our state to use that enable public entities to be both effective with taxpayer dollars and strike the right balance between delivery and other requirements. CPARB is a very functional board and works in a collaborative fashion. The statute had a sunset clause and this bill moves the sunset clause forward. The other changes are all issues that CPARB agreed to under a consensus process. These are tweaks and appropriate minor changes to the statute. The CPARB is made up of experts in their fields. JLARC reviewed the current statutes, found that it is performing well, and recommended continuing the use of

these alternative contracting methods. The language in the bill was unanimously approved by CPARB. This program benefits taxpayers, public bodies, private contractors, and organized labor.

Persons Testifying: PRO: Senator Dammeier, prime sponsor; Bob Maruska, Ed Kommers, CPARB; Robynne Parkinson, DB Institute of America; Van Collins, Associated General Contractors.