

# FINAL BILL REPORT

## SHB 1295

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Synopsis as Enacted

**Brief Description:** Concerning public works contracting procedures.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representative Tharinger).

**House Committee on Capital Budget**  
**Senate Committee on State Government, Tribal Relations & Elections**

### **Background:**

#### Capital Projects Advisory Review Board.

The Capital Projects Advisory Review Board (CPARB) monitors and evaluates the use of traditional and alternative public works contracting procedures and evaluates 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, including: two from the House of Representatives, appointed by the Speaker of the House of Representatives, and two from the Senate, appointed by the President of the Senate.

#### Alternative Contracting Procedures.

With some restrictions, alternative public works contracting procedures are authorized to a limited number of public entities. Public works contracts of a large dollar amount that meet certain criteria and have been approved by the CPARB may be awarded through alternative contracting procedures in which the selection of a contractor is based on factors other than low bid. Alternative contracting methods include design-build and job order contracting.

#### 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 and projects between \$2 million and \$10 million under certain conditions. Contracts for design-build services are awarded through a competitive process using public solicitations of proposals. Finalists' proposals are evaluated solely on factors identified in the request for proposals.

#### Job Order Contracting.

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*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.*

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, except for the Department of Enterprise Services (DES), which may have six contracts in effect. The maximum total dollar amount that is awarded under a job order contract may not exceed \$4 million per year for a maximum of three years, except for counties with a population of more than one million, which may award up to a maximum of \$6 million per year for a maximum of three years. Individual work orders are limited to no more than \$350,000. No more than two work orders of \$350,000 may be issued by a public body in a 12-month period.

Job order contracts may be executed for an initial contract term of two years, with an option to extend or renew the contract for an additional year, provided that any extension or renewal is priced as provided in the original proposal and is mutually agreed upon by the public body and the job order contractor.

A job order contractor must subcontract 90 percent of the work under the contract, and may self-perform 10 percent. The direct use of job order contracting procedures is authorized for a limited number of public entities:

- the DES;
- state universities, regional universities, and The Evergreen State College;
- Sound Transit;
- cities with a population greater than 70,000 and any public authority chartered by such city;
- counties with a population greater than 450,000;
- 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;
- the state ferry system; and
- the Department of Transportation, for the administration of building improvement, replacement, and renovation projects only.

#### Office of Minority and Women's Business Enterprises.

The Office of Minority and Women's Business Enterprises (OMWBE) was created to provide minority and women-owned and controlled businesses with the maximum practicable opportunity for increased participation in public-works contracts and public contracts for goods and services.

The OMWBE is the sole authority in Washington for certifying minority, women-owned, and socially and economically disadvantaged business enterprises. Certified business enterprises are listed in the OMWBE database. Cities, counties, state agencies, transportation, and educational institutions use the database to source small and diverse firms for potential contracting opportunities. Among other duties, the OMWBE must identify barriers to equal participation by qualified businesses in all state agency and educational contracts, and the OMWBE must establish annual participation goals by qualified businesses for each state agency and educational institution.

#### Public Works Apprenticeship Utilization Requirements.

Contracts for public works that are estimated to cost \$1 million or more must require that at least 15 percent of the labor hours be performed by apprentices enrolled in approved apprenticeship training programs. This requirement applies to most contracts awarded by the state, school districts, and state four-year higher education institutions. Awarding entities may adjust the apprentice utilization requirements on specific projects for certain reasons, such as if there is a lack of apprentices in a specific geographic area.

**Summary:**

The dollar limits on design-build contract amounts are removed. Request for qualifications must include the estimated contract value and intended use of the project. The evaluation criteria for a design-build contract award must include OMWBE certified business utilization and reporting requirements, and the ability of the contractor to provide a performance and payment bond. The signed contract must include reporting requirements of OMWBE certified businesses and veteran owned businesses.

Job order contracting is available for any public entity to use. The total maximum dollar amount awarded does not include sales tax, and any unused amount may be transferred to the following year. The maximum work order amount is increased from \$350,000 to \$500,000. The number of job order contracts that may be awarded by a public entity is increased from two to three. Bonding requirements for subcontractors are limited. Apprenticeship utilization is required for any contract over \$350,000 with over 600 hours in a single trade.

**Votes on Final Passage:**

House	96	1
Senate	48	0

**Effective:** July 28, 2019