

HOUSE BILL REPORT

SHB 1295

As Passed Legislature

Title: An act relating to public works contracting procedures.

Brief Description: Concerning public works contracting procedures.

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

Brief History:

Committee Activity:

Capital Budget: 1/29/19, 2/26/19 [DPS].

Floor Activity:

Passed House: 3/7/19, 96-1.

Passed Senate: 4/16/19, 48-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Removes limitations on design-build projects between \$2 million and \$10 million.
- Modifies evaluation criteria to include Office of Minority and Women's Business Enterprises (OMWBE) certified business utilization and reporting requirements as part of a signed design-build contract.
- Requires evaluation of a design-build proposal to include past utilization of OMWBE certified businesses.
- Requires a signed contract to include tracking and reporting of the use of OMWBE certified businesses and veteran certified businesses.
- Makes job order contracting available to any public entity.
- Requires evaluation criteria to include past performances of subcontractor inclusion plans.
- Raises the maximum amount for a work order from \$350,000 to \$500,000.
- Requires an apprenticeship utilization program for any contract over \$350,000 and exceeding 600 hours in a single trade.

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.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Steele, Assistant Ranking Minority Member; Callan, Corry, Davis, Eslick, Gildon, Irwin, Jenkin, Leavitt, Lekanoff, Maycumber, Morgan, Riccelli, Santos, Sells, Stonier and Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Dye.

Staff: Steve Masse (786-7115).

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 can be discussed. The CPARB consists of 23 members, including four Legislative members: 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.

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. With some restrictions, the use of 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. Design-build is an alternative contracting method that melds design and construction activities into a single contract. General Contractor/Construction Manager is an alternative contracting method that utilizes the services of a project management firm that 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.

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.

In 2003 job order contracting was authorized in law 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, 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 of Substitute Bill:

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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This recommendation was put together by the Design Build Practices Committee within the Capital Projects Review Board to improve outcomes. There are multiple stakeholders involved, and it should streamline the process by eliminating redundancies and clarifying price related factors. This will help eliminate waste and provide certainty with capital projects.

More tools to work with in public works projects is beneficial to the public and labor by increasing efficiencies and lowering costs. Equity for minority businesses is provided.

(Opposed) None.

(Other) Some school districts may have difficulty with the reporting requirements due to not having much of a staff. Smaller firms may have difficulty competing with some of the design-build. Gradual implementation may be better for some firms.

Persons Testifying: (In support) Walter Schact and Rebecca Keith, Capital Project Advisory Review Board; Tae-Hee Han, Sound Transit; Frank Lemos; Jerry VanderWood, Associated General Contractors; Andy Thompson, Granite Construction; Steve Tatge, University of Washington; and Chris Herman, Washington Public Ports Association.

(Other) Charlie Brown, Puget Sound School Coalition.

Persons Signed In To Testify But Not Testifying: None.