

# HOUSE BILL REPORT

## HB 1690

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### As Passed House:

March 5, 2009

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

**Brief Description:** Authorizing alternative public works contracting procedures.

**Sponsors:** Representatives Hasegawa, Hunt, Hudgins, Anderson and Kenney.

### Brief History:

#### Committee Activity:

State Government & Tribal Affairs: 2/10/09, 2/19/09 [DP];

Capital Budget: 2/24/09, 2/27/09 [DP].

#### Floor Activity

Passed House: 3/5/09, 97-0.

### Brief Summary of Bill

- Clarifies the legislative intent regarding the use of alternative public works contracting procedures.
- Requires the University of Washington Board of Regents to comply with alternative public works contracting procedures and to seek the approval of the Capital Projects Advisory Review Board (CPARB) before using new alternative contracting procedures.
- Directs the CPARB to evaluate new alternative contracting procedures and to authorize use of such new procedures as demonstration projects.

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### HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

**Staff:** Marsha Reilly (786-7135)

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### HOUSE COMMITTEE ON CAPITAL BUDGET

*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.*

**Majority Report:** Do pass. Signed by 15 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Blake, Chase, Grant-Herriot, Hope, Jacks, Maxwell, McCune, Orwall, Smith and White.

**Staff:** Steve Masse (786-7115)

**Background:**

Public Works Contracting.

State law provides that public bodies must generally award contracts for public works following a competitive process in which the contract is awarded to the bidder submitting the lowest responsive bid. A public body's specific statutes generally define the process for competitive bidding, and often sets forth the specific dollar amount that necessitates a public bid.

Contracting Procedures.

The traditional contracting method of awarding a public works contract to the lowest responsible bidder is typically referred to as the design-bid-build (DBB) contracting method. Under the DBB procedure, the architectural design phase of a project is separate from the construction process. After the detailed design and construction documents are completed by an architectural firm, the construction phase of the project is put out for competitive bid. A construction contract is awarded to the lowest responsible bidder.

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

The DB method 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. 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.

The GCCM method is one in which the public entity employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The public entity first contracts with an architectural and engineering firm to design the facility and, early in the project, also contracts with a GCCM 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.

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.

Capital Projects Advisory Review Board.

The Capital Projects Advisory Review Board (CPARB) was established in 2005 to evaluate public capital projects construction processes and to advise the Legislature on policies related

to alternative public works delivery methods. Specifically, the CPARB must develop and recommend to the Legislature:

- criteria that may be used to determine effective and feasible use of alternative contracting procedures;
- qualification standards for general contractors bidding on alternative public works projects; and
- policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods, and recommendations on expansion, continuation, elimination, or modification of alternative public works contracting methods.

The CPARB must also evaluate the future use of other alternative contracting procedures, including competitive negotiation contracts.

#### The University of Washington's Contracting Authority.

Several statutes and statutory schemes address public works contracting for the University of Washington (UW), including statutes that apply to all state colleges and universities generally; statutes that apply specifically to the UW, and statutory schemes addressing public works and alternative public works contracting procedures.

The UW's specific statutory authority allows it to enter into such contracts as the Board of Regents (Board) deems essential to its purposes, except as otherwise provided by law. Another specific statute allows the Board to enter into such contracts with one or more contractors for the erection and construction of university buildings or improvements and that such contracts shall be let after public notice and under such regulations as established by the Board or as otherwise provided by law.

Public works statutes that apply to state colleges and universities requires that when the cost of a public works project meets or exceeds \$50,000 (or \$35,000 if the work involves one trade or craft area), complete plans and specifications must be prepared, and then a contract must be put out for public bid and awarded to the lowest responsible bidder.

An Attorney General Opinion was requested to determine if the UW had the authority to adopt a rule to allow the use of an alternative contracting procedure not currently authorized by law. The informal opinion concluded that the Legislature's apparent intent was to require the UW to follow the requirements relating to alternative public works contracting procedures when employing one of the three alternative contracting methods, however, its specific public works contracting authority permits it to establish other alternative contracting procedures by rule.

#### **Summary of Bill:**

The stated intent of the legislation is to clarify that, unless otherwise specifically provided for in law, public bodies that want to use an alternative public works contracting procedure may use only those procedures as specifically authorized under the statutes for alternative public works or those approved for use as a demonstration project by the CPARB.

The UW Board is specifically required to comply with the requirements of chapter 39.10 RCW when using any alternative contracting procedures, and it must seek evaluation and approval of the CPARB prior to adopting an alternative procedure that is not specifically authorized by law.

The CPARB is required to evaluate and approve alternative contracting procedures as demonstration projects. Evaluations of alternative procedures not authorized specifically by law, including a recommendation on the use of a new procedure by other public bodies, must be submitted to the appropriate committees of the Legislature. The term "alternative public works contracting procedure" is expanded to include new contracting procedures submitted to the CPARB for approval to use as a demonstration project.

**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 (State Government & Tribal Affairs):**

(In support) The Joint Administrative Rules Review Committee (JARRC) held a hearing on the rule adopted by the UW. The question of whether or not the UW has the authority to use an alternative public works procedure adopted by rule did not get answered. While one Attorney General opinion (AGO) indicated that they did have the authority to do so, other AGOs confirm that they do not. This is an attempt to clear up the ambiguity. The American Institute of Architects supports the bill. The impetus behind the bill was that the UW went beyond their statutory authority in adopting a rule to use a new alternative method. It is important for all public entities to use the same authority. The UW has worked closely with the CPARB, but did not seek approval to use this method. The Association of General Contractors supports the bill as it clears up ambiguities and sets the legislative intent. The CPARB is a valuable tool to vet these issues and its creation has resulted in a decrease in rancor and concerns related to alternative public works. The electrical contractors support the bill. The CPARB process works very well and the UW is on that board. Many believe that the UW does not have this authorization, but it may be based on legislation from way back.

(Neutral) The UW believes that the bill is unnecessary as the rule was related only to Husky Stadium. The particular method adopted by rule is only used by a handful of contractors and it was specifically for the Husky Stadium project. There doesn't appear to be any future use of that rule, but the UW would like to hold onto it.

(Opposed) While Allied Daily Newspapers is in favor of open public bidding, Washington State University is the only university that has a statutory conflict of interest that should be looked at.

**Staff Summary of Public Testimony (Capital Budget):**

(In support) There is consistency in the alternative contracting authority that is provided by the Capital Project Advisory Review Board (CPARB). This process ensures that all interested parties benefit. All parties, including contractors and public entities, participate in the process rather than one particular party. This also ensures that public funds are spent efficiently, adequately, and with proper protections. The University of Washington unilaterally decided they are not applicable. The stadium project is not unique enough to need a separate process. The CPARB was set up to review these processes. The projects should go through the CPARB process. Through CPARB, all of the alternative public works methods have been evaluated. Other public bodies are required to go through this process.

(Neutral) Authority may be needed to an existing rule that would allow the University of Washington to contract on a complicated project for Husky Stadium.

(Opposed) None.

**Persons Testifying** (State Government & Tribal Affairs): (In support) Representative Hasegawa, prime sponsor; Stan Bowman, American Institute of Architects Washington Council; Van Collins, Associated General Contractors; and Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association.

(Neutral) Randy Hodgins, University of Washington.

(Opposed) Rowland Thompson, Allied Daily Newspaper.

**Persons Testifying** (Capital Budget): (In support) Representative Hasegawa, prime sponsor; Van Collins, Associated General Contractors; Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association; Stan Bowman, American Institute of Architects Washington Council; and Dave Johnson, Washington Building and Construction Trades Council.

(Neutral) Randy Hodgins and Olivia Yang, The University of Washington.

**Persons Signed In To Testify But Not Testifying** (State Government & Tribal Affairs): None.

**Persons Signed In To Testify But Not Testifying** (Capital Budget): None.