

FINAL BILL REPORT

SB 6401

C 163 L 10
Synopsis as Enacted

Brief Description: Concerning an alternative process for selecting an electrical contractor or a mechanical contractor, or both, for general contractor/construction manager projects.

Sponsors: Senator Brandland.

Senate Committee on Government Operations & Elections
House Committee on State Government & Tribal Affairs
House Committee on Capital Budget

Background: Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public works projects are completed using the design-bid-build procedure in which the construction contract is awarded to the lowest responsive bidder. Alternative methods for contracting in which the project is awarded based on factors other than cost may also be used by those public entities who have had projects approved by the Capital Projects Advisory Review Board (CPARB).

Design build is an alternative contracting method that melds design and construction activities into a single contract. The public 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 firm's qualifications and experience, project proposals, and bid prices.

The General Contractor/Construction Manager (GC/CM) is another alternative contracting method that utilizes the services of a project management firm which bears significant responsibility and risk in the contracting process. As with design-bid-build, under GC/CM the agency contracts with an architectural and engineering firm to design a facility. The agency 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 the plans and specifications for a project phase is complete, the GC/CM firm subcontracts with construction firms to construct that phase.

Once the most qualified finalists are identified, final proposals are submitted, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work. The public agency must select the firm submitting the highest scored final proposal using evaluation factors and the relative weight of those factors published in the solicitation of proposals.

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.

GC/CM subcontract work and equipment and material purchases are competitively bid with public bid openings and are awarded to the responsible bidder submitting the lowest responsive bid. The criteria used by the GC/CM and public body to evaluate bidder responsibility must be included in the bid packages.

Summary: An alternative process for selecting subcontractors for GC/CM projects is established. The process may only be used for the selection of a mechanical subcontractor, an electrical subcontractor, or both, and when the anticipated value of the subcontract will exceed \$3 million.

To use the process, the public agency and the GC/CM must determine that using the process is in the best interest of the public. A hearing must be conducted for the purpose of receiving comments and the hearing notice must be published in a legal newspaper at least 14 calendar days before the hearing. Notice of the public solicitation of proposals must be provided to the Office of Minority and Women's Business Enterprises. A public solicitation of subcontractor proposals must include a complete description of the project, including problematic, performance, and technical requirements and specifications; the reasons for using the alternative selection process; a description of the minimum qualifications of the firm; a description of the evaluation process; the form of the contract, including any preconstruction services; the estimated maximum allowable subcontract cost; and bid instructions for finalists.

Evaluation factors include, but are not limited to:

- the ability of the firm's professional personnel;
- the firm's past performance on similar projects;
- the firm's ability to meet time and budget requirements;
- the scope of self-performed work and the firm's ability to perform that work;
- the firm's proximity to the project location;
- the firm's capacity to successfully complete the project;
- the firm's approach to executing the project;
- the firm's approach to safety on the project;
- the firm's safety history;
- if selected as a finalist, the firm's fee and cost proposal; and
- the firm's plan for outreach to minority and women-owned businesses.

A committee is formed to evaluate the proposals and must include at least one representative from the public body. Final proposals will be requested from the most qualified firms. The firm submitting the highest scored final proposal must be selected. If the GC/CM is unable to negotiate a satisfactory maximum allowable subcontract cost with the selected firm that is deemed to be fair, reasonable, and within available funds, negotiations with that firm must be formally terminated and negotiations will begin with the next highest scored firm.

The GC/CM may contract with the selected firm to provide services during the design phase of a project. The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond, and must be negotiated when the construction documents and specifications are at least 90 percent complete.

If the work of the mechanical or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not negotiated as part of an incentive clause becomes part of the risk contingency included in the GC/CM's maximum allowable construction cost. If the work is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of the subcontractor. An independent audit must be conducted upon completion of the contract to confirm the proper accrual of costs as outlined in the contract.

A mechanical or electrical contract selected using this procedure may perform work with its own forces. If the firm elects to contract out some of its work, it must select a subcontractor using the low bid procedures.

Votes on Final Passage:

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| Senate | 48 | 0 | |
| House | 98 | 0 | (House amended) |
| Senate | 47 | 0 | (Senate concurred) |

Effective: June 10, 2010