

# HOUSE BILL REPORT

## SHB 1425

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### As Passed Legislature

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

**Brief Description:** Adopting the recommendations of the alternative public works methods oversight committee.

**Sponsors:** By House Committee on Capital Budget (originally sponsored by Representatives Romero, D. Schmidt, Scott and Chopp).

**Brief History:**

**Committee Activity:**

Capital Budget: 2/13/97, 2/21/97 [DPS].

**Floor Activity:**

Passed House: 3/11/97, 96-1.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON CAPITAL BUDGET

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sehlin, Chairman; Honeyford, Vice Chairman; Ogden, Ranking Minority Member; Sullivan, Assistant Ranking Minority Member; Costa; Hankins; Koster; Lantz; Mitchell; D. Sommers and H. Sommers.

**Staff:** Karl Herzog (786-7271).

**Background:** Most public works construction in Washington is performed by private firms. State and local governments contract with private architectural and construction companies for the design and construction of facilities using specific procedures designated in statute.

There are three primary public works contracting methods used in Washington: Design-bid-build, design-build, and general contractor/construction manager (GC/CM).

1. Design-Bid-Build: Design-bid-build, the traditional contracting method used for most projects, is a sequential form of contracting that separates the design phase

from the construction phase of a project. Under design-bid-build, a government agency contracts with an architectural and engineering firm to design a facility. After the plans and specifications for the facility are complete, the project is put out to public bid, and a construction contract is awarded in lump sum to the lowest responsive bidder.

2. Design-Build: Design-build 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.
3. General Contractor/Construction Manager (GC/CM): GC/CM is another alternative contracting method in use in Washington. GC/CM 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 government 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 (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. The GC/CM firm may not perform construction work on the project. When the plans and specifications for a project phase is complete, the GC/CM firm subcontracts with construction firms to construct that phase. Initial selection of GC/CM finalists is based on the qualifications and experience of the firm. Final selection is based on bid price of GC/CM fees. The selection of subcontractors by the GC/CM is based solely on bid price. The GC/CM must specify contract requirements for minority and women enterprise participation in bid packages that exceed 10 percent of the project cost. Subcontractors who bid on bid packages valued over \$200,000 must post a bid bond, and if awarded the contract, a performance and payment bond.

The vast majority of public works projects use the traditional design-bid-build contracting method. Comparatively, design-build has been used to only a limited extent in Washington. Under explicit statutory authority, port districts have used design-build for over two decades to construct industrial buildings and equipment. The Department of General Administration (GA) and state universities have also used design-build for a small number of projects based upon various legal interpretations of the competitive bidding statutes. GA used design-build to construct three new state agency headquarters buildings in Olympia in the late 1980's and early 1990's. State universities have used design/build to construct student housing and pre-engineered/pre-manufactured buildings on their campuses.

GC/CM was first authorized in Washington in 1991. At that time, GA and the Department of Corrections (DOC) were permitted to use GC/CM on a pilot basis to construct prison facilities valued over \$10 million. Two prison facilities were constructed using GC/CM in the early 1990's: the Airway Heights Corrections Center, and the expansion of the Washington Corrections Center for Women at Purdy. In 1994, the authorization to use GC/CM for prison projects was extended to June 30, 1997, and expanded to include up to two pilot projects valued between \$3 million and \$10 million.

During the 1994 legislative session, a consortium of state agencies and local governments requested that the use of GC/CM be expanded to other agencies and that design-build be explicitly authorized in statute for agencies other than ports. The Legislature responded to this request by authorizing three state agencies and nine local governments to use GC/CM and design-build for a limited set of projects on a pilot basis through June 30, 1997.

#### Authorized Agencies

1. Department of General Administration (for projects in addition to prisons)
2. University of Washington
3. Washington State University
4. Cities with populations over 150,000. Currently:
  - a. Seattle;
  - b. Spokane; and
  - c. Tacoma.
5. Counties with populations over 450,000. Currently:
  - a. King;
  - b. Pierce; and
  - c. Snohomish.
6. Port districts with populations over 500,000. Currently:
  - a. Port of Seattle; and
  - b. Port of Tacoma (Port districts received authorization for GC/CM only).
7. Public Facilities District for construction of a baseball stadium.

#### Authorized Projects

1. Design-Build: Projects valued over \$10 million where construction activities are highly specialized, the project design is repetitive in nature, or program elements of the project do not involve complex functional interrelationships.
2. GC/CM: Projects valued over \$10 million where the project involves complex scheduling, construction occurs at an existing facility which must continue to operate during construction, or where involvement of the GC/CM firm during design is critical to the success of the project.

Agencies are required to follow a series of procedural requirements in order to use design-build and GC/CM under the 1994 legislation. First, agencies must advertise their intention to use one of the alternative methods and conduct a hearing to receive public comment. An agency decision to use an alternative method may be appealed to superior court within 30 days of the decision. Second, agencies must use specified procedures and criteria for selecting design-build and GC/CM firms. Third, agencies must follow a series of project management and contracting requirements to ensure that the project is adequately staffed, and that contracting safeguards, such as adequate budget contingencies, are provided for.

There are currently 16 GC/CM and two design-build projects proceeding under the 1994 legislation, with a combined value of \$1.25 billion. Most of the projects are only in the early stages of design or construction.

The 1994 legislation created a temporary independent oversight committee to review the utilization of the design-build and GC/CM. The committee is composed of four members of the Legislature, one from each caucus, appointed by the Speaker of the House and President of the Senate, and representatives from state and local agencies, the construction and design industries, and labor, appointed by the Governor. The committee report, issued on January 21, 1997, recommended that the authorization to use the alternative methods on a pilot basis be extended for four years, and that certain modifications be made to the alternative contracting procedures to increase the efficiency and effectiveness of the methods.

**Summary:** The authorization to use the design-build and GC/CM public works contracting methods is extended from June 30, 1997, to June 30, 2001. The following changes are made to agency and project eligibility criteria, and the administrative and contracting procedures required under the alternative methods.

1. Public Comment Procedures: Agencies may use a public comment period in lieu of a public hearing to receive public comment on the decision to use an alternative method. If the agency receives significant adverse comments during the public comment period, then it must hold a public hearing.
2. Design-Build Agency Eligibility: The single-project restriction on the use of design-build by GA is eliminated. Port districts with populations greater than 500,000 are permitted to use the new design-build procedures under created in 1994 in addition to the design-build procedures they have traditionally been authorized to use. Cities that supply water to over 350,000 people may use the design-build procedure for one water system demonstration project.
3. Design-Build Project Eligibility: Agencies may use design-build on projects valued over \$10 million where regular interaction and feedback from facilities users and operators during design is not critical to an effective design. This

replaces the authorization to use design-build on projects where program elements of the design are simple and do not involve functional interrelationships. Two new types of design-build projects are authorized: Construction of pre-engineered metal buildings or pre-fabricated modular buildings regardless of cost; and construction of new student housing projects valued over \$5 million. Agencies may also use design-build on projects where the agency provides preliminary engineering and architectural drawings as part of the request for proposal.

4. Design-Build Contractor Selection: Agencies may score design-build proposals using a system that measures quality and technical merits on a unit price basis. Agencies may also base the final selection of a design-build firm on the lowest responsive bid when all firms are determined to be capable of producing plans and specifications that meet project requirements. Prospective design-build firms must submit a copy of their accident prevention program as part of their proposals. Agencies may consider the location of a firm when evaluating proposals.
5. GC/CM Contractor Selection: Prospective GC/CM firms must submit a copy of their accident prevention program as part of their proposals. Agencies may base the final selection of a GC/CM firm on a weighted scoring of qualifications, experience, project proposals, and bid prices. Language is added suggesting that agencies should select GC/CM firms early in the life of the project, and in most situations no later than the completion of schematic design.
6. GC/CM Self-Performance of Construction Work: GC/CM firms are permitted to bid on subcontract work under the following conditions: the project must be valued over \$20 million; the work must be customarily performed by the company; the bid opening must be managed by the agency; the GC/CM must publish its intention to bid in the bid solicitation; and the total value of the subcontract work performed by the GC/CM is less than 20 percent of the project construction cost.
7. GC/CM Subcontracting Procedures: Agencies and GC/CMs may prequalify subcontractors based on a firm's ability to meet time, budget, and specification requirements on previous projects. Bidders on subcontract bid packages valued over \$100,000 must submit, as part of the bid or within one hour after the published bid submittal time, the names of subcontractors whose subcontract amount is more than 10 percent of the bid package price and with the whom the bidder, if awarded the contract, will subcontract for performance of the work designated. The requirement that GC/CMs specify contract requirements for minority and women-owned business participation in bid packages exceeding 10 percent of the project cost is eliminated. Instead GC/CMs must submit a plan for approval by the agency, in consultation with the Office of Minority and Women's Business Enterprises, or the equivalent local agency, that equitably spreads women and minority enterprise opportunities to as many firms in as many bid packages as

is practicable. The threshold for mandatory subcontractor bid, performance, and payment bonds is raised from \$200,000 to \$300,000.

8. **Demonstration Projects:** Authorized agencies are permitted to use GC/CM and design-build on demonstration projects valued between \$3 million and \$10 million. GA is authorized to use the alternative methods on up to three demonstration projects; all other agencies may use the alternative methods on one demonstration project. Agencies must give weight to proposers' experience working on projects valued between \$3 million and \$10 million when selecting GC/CM or design-build firms for demonstration projects. Cities that supply water to over 350,000 people may use the design-build procedure for one water system demonstration project valued over \$10 million. If an agency does not use its demonstration project authorization, it may transfer its authority to another authorized agency.
9. **Oversight Committee:** Representatives from the Office of Minority and Women's Business Enterprises and subcontractors are added to the oversight committee. The Governor is directed to maintain a balance between public agencies and the private sector when making appointments to the oversight committee. The committee is directed to pursue the development of a mentoring program for expansion of GC/CM and design-build to other agencies. The committee is also authorized to conduct a review of traditional public works contracting procedures used by state agencies and municipalities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 1997.

**Testimony For:** This consensus legislation results from an open, collaborative process that was open to all interested parties. The public sector should have access to these alternative contracting methods, which work well in the private sector. The alternative methods provide valuable tools to agencies, and allow the type of flexibility needed to stretch public dollars. Much of what has been learned about the methods over the past several years is included in the bill. Continuing to limit the number of agencies and projects that are eligible to use the alternative contracting methods is the correct way to experiment with the methods. While the existing design-bid-build contracting method is fair and objective, it does not permit collaboration between designer and contractor, and does not always ensure that the best firms build projects. The alternative methods promise to decrease construction claims and projects delays. The minority and women's business enterprises plan outlined in the bill is preferable to the specific contract requirements under current law.

**Testimony Against:** None.

**Testified:** Representative Sandra Romero, prime sponsor; Representative Dave Schmidt; Larry Stevens, United Subcontractors Association; Fred King, Department of General Administration; Doug Holen, University of Washington; Rodney Eng, City of Seattle; Jim Medina, Office of Minority and Women's Business Enterprises; Robert Coons, Washington State University; Scott Taylor, Washington Public Ports Association; Cliff Webster, Architects and Engineers Legislative Council; Terry Finn, Port of Seattle; and Duke Schaub, Margo Easton and Phil Lovell, Associated General Contractors.