

SENATE BILL REPORT

SB 6428

As Reported by Senate Committee On:
Governmental Operations, February 4, 2014

Title: An act relating to heavy civil construction projects.

Brief Description: Concerning heavy civil construction projects.

Sponsors: Senators Liias and Hasegawa.

Brief History:

Committee Activity: Governmental Operations: 2/03/14, 2/04/14 [DP].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: Do pass.

Signed by Senators Roach, Chair; Benton, Vice Chair; Hasegawa, Ranking Member; Conway and McCoy.

Staff: Karen Epps (786-7424)

Background: The Capital Projects Advisory Review Board (CPARB) provides an evaluation of public capital project construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public works delivery methods. Twenty-three members serve on CPARB. Fourteen members are appointed by the Governor, including representatives from general construction, architecture, engineering, subcontracting, construction trades labor organizations, private industry, a few state agencies, and domestic insurers. Additional members are selected by the Association of Washington Cities, the Washington State Association of Counties, the Washington Public Ports Association, the Association of Washington Public Hospital Districts, and the Washington State School Directors' Association. CPARB also includes four members of the Legislature, two from the House of Representatives and two from the Senate.

Public works contracts of a large dollar amount that meet certain criteria and have been approved by CPARB may be awarded through an alternative contracting procedure in which the selection of a contractor is based on factors other than low bid. There are three alternative procedures authorized by law: design-build (DB), job order contracting, and general contractor/construction manager (GC/CM). A project review committee was created to certify public bodies to use either DB, GC/CM, or both procedures; or to approve projects

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on a project-by-project basis. The certification is for three years. The authorization to use alternative public works procedures expires June 30, 2021.

The GC/CM alternative contracting method utilizes the services of a project management firm which bears significant responsibility and risk in the contracting process. Under GC/CM, the public entity contracts with an architectural and engineering firm to design a facility. The public entity 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. When the plans and specifications for a project phase are 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 the bid price of GC/CM fees.

The GC/CM or its subsidiaries may bid or self perform on work or for the supply of equipment or materials under certain conditions, but they are limited to no more than 30 percent of the total construction contract.

Summary of Bill: Public bodies may use the GC/CM alternative contracting method for a heavy civil construction project, a civil engineering project that is predominately infrastructure improvements. A public body's application to use an alternative contracting procedure must include a declaration that they plan to procure the project as a heavy civil construction project. The public solicitation of proposals for a heavy civil construction project under the GC/CM method must:

- identify the minimum percent of the cost of the work that will be the self-perform portion;
- identify whether the self-perform portion is a cost of the work to which the GC/CM's manager's percent fee applies; and
- require any proposal to indicate the proposer's fee for the self-perform portion of the project.

On a heavy civil construction project, the GC/CM must submit a construction management and contracting plan that includes the following:

- the scope of work and cost estimates for each bid package;
- the proposed price and scope of work for the negotiated self-perform portion of the project;
- the bases used by the GC/CM to develop all cost estimates, including the negotiated self-perform portion of the project; and
- the GC/CM's updated outreach plan.

The self-perform portion of the project cannot exceed 50 percent of the cost of the project. The public body and the GC/CM may negotiate the scopes of work to be procured by bid and the price and scope of work for the self-perform portion of the project. The public body and the GC/CM must negotiate, to the public body's satisfaction, a fair and reasonable outreach plan. If negotiations fail, the public body may terminate negotiations with the GC/CM and they can then negotiate with the next-highest scoring GC/CM until an agreement is reached or the process is terminated. At least 30 percent of the cost of the work of the project must be

procured through competitive sealed bidding and the GC/CM or its subsidiaries are prohibited from bidding.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: CPARB is recommending this change. CPARB has considered this change for 18 months. Heavy civil could be considered those projects that are flat, such as highways and airports. There is currently a limitation on the amount of work the general contractor can do, but some agencies and some other states require a general contractor to do a minimum of 30 percent. This bill is designed to be more consistent with what the industry practice is around the amount of work a general contractor can do on a heavy civil construction project. The language in the bill was unanimously approved by CPARB. This bill will benefit the public owners and the general contracting community. The GC/CM bears a heavy responsibility and risk in heavy civil construction projects. In order for a GC/CM to be successful on a heavy civil construction project, the contractor needs to self-perform certain aspects of the project to manage the risk. By self-performing at a higher percentage, the GC/CM can best deliver on the commitments made under the contract. CPARB created a Heavy Civil Committee to look at this issue. The committee wanted to make sure that all impacted parties, including small businesses, minority businesses, building trades, prime contractors, subcontractors, and a number of state agencies were represented and heard at the meeting. The changes in this bill are unanimously approved by the committee and CPARB. GC/CM allows state agencies to receive input from the most qualified construction contractor when planning the construction of the project. The limitation of 30 percent is not consistent with current heavy civil construction practices. Some federal agencies require that a minimum of 30 percent of the work be self-performed. This bill will give public entities flexibility and could lead to cost savings on these projects.

Persons Testifying: PRO: Bob Maruska, CPARB; John Boknecht, Stacy and Witbeck, Inc.; Larry Stevens, Mechanical Contractors Assn., National Electrical Contractors Assn.; Howard Hillinger, Parametrix, Inc.; Linneth Riley-Hall, CPARB Heavy Civil Committee.