

SENATE BILL REPORT

SB 6454

As Reported by Senate Committee On:
Governmental Operations, February 6, 2014

Title: An act relating to exempting from public inspection certain public works proposals and documents.

Brief Description: Exempting from public inspection certain public works proposals and documents.

Sponsors: Senator Keiser.

Brief History:

Committee Activity: Governmental Operations: 2/03/14, 2/06/14 [DPS].

SENATE COMMITTEE ON GOVERNMENTAL OPERATIONS

Majority Report: That Substitute Senate Bill No. 6454 be substituted therefor, and the substitute bill do pass.

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

Staff: Samuel Brown (786-7470)

Background: Alternative Public Works Contracting Methods. Public works contracts of a large dollar amount that meet certain criteria and have been approved by the Capital Projects Advisory Review Board may be awarded through alternative contracting procedures in which the selection of a contractor is based on factors other than low bid. A limited number of public entities are authorized to use alternative public works contracting procedures. There are three alternative procedures authorized by law: design-build (DB), general contractor/construction manager (GCCM), and job order contracting (JOC).

DB melds design and construction activities into a single contract, and may only be used on projects valued over \$10 million under certain circumstances. GCCM utilizes the services of a project management firm which bears significant responsibility and risk in the contracting process. There are no restrictions on the dollar value of the project for use of GCCM. Under JOC, a contractor agrees to perform an indefinite quantity of public works jobs, defined by individual work orders, over a fixed period of time. For JOC, the maximum total dollar

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amount that may be awarded is \$4 million, or \$6 million for counties with a population over 1 million people.

Public Records Act (PRA). The PRA, enacted in 1972 as part of Initiative 276, requires that all state and local government agencies make all public records available for public inspection and copying unless certain statutory exemptions apply. The provisions requiring public records disclosure must be interpreted liberally while the exemptions are interpreted narrowly to effectuate the general policy favoring disclosure.

Generally, all proceedings, records, contracts, and other public records relating to alternative public works transactions are public records and available for public inspection and copying. However, trade secrets or other proprietary information submitted by a bidder, offeror, or contractor are not subject to public disclosure if the bidder, offeror, or contractor specifically states in writing why protection is necessary.

Summary of Bill (Recommended Substitute): Proposals submitted in response to a competitive solicitation and related evaluation documents for projects using the DB contracting method are exempt from public disclosure until either the public body notifies the highest scoring finalist for the bid or the selection process is terminated.

EFFECT OF CHANGES MADE BY GOVERNMENTAL OPERATIONS COMMITTEE (Recommended Substitute): The exemption only applies to proposals submitted in response to a DB contract solicitation, and the exemption ends when the highest scoring finalist for the DB contract is notified, or the selection process is terminated.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: There is some confusion about whether these documents are subject to public disclosure. Contractors are concerned that if they are open, some of the competitive bid information would be used against them. This is a narrowly drawn bill to provide an exemption from disclosure for a limited time while the bid is under consideration, and we support an amendment that narrows the timeframe further. When the finalists for the contract are selected, there becomes a rational reason to have access to counter-proposals to look at their legitimacy. A protest procedure is set out in law already. The downside to opening up information between the competitors is that you will not get bidders. This bill clarifies the process for honoring confidentiality while allowing a protest at the appropriate time.

CON: As currently drafted, the only time you would be able to see the information would be after the contract is awarded, and that needs to be fixed. There is an issue regarding at what point the bids may be disclosed, and whether public bodies negotiate with finalists to receive best and final offers. It is unclear how public disclosure operates when the agency can play

bids off of each other and some bidders may receive their competitors' information. Existing protections for trade secrets should be sufficient to cover the bidders.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Van Collins, Associated General Contractors.

CON: Rowland Thompson, Allied Daily Newspapers of WA.