

HOUSE BILL REPORT

HB 1197

As Passed House:

March 10, 2009

Title: An act relating to alternative public works.

Brief Description: Regarding alternative public works contracting procedures.

Sponsors: Representatives Haigh, Kristiansen, Hunt and Armstrong; by request of Capital Projects Advisory Review Board.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/23/09, 2/5/09 [DP];

Capital Budget: 2/19/09 [DP].

Floor Activity

Passed House: 3/10/09, 96-0.

Brief Summary of Bill

- Requires the Capital Projects Advisory Review Board to develop guidelines for the review and approval of design-build demonstration projects that include operations and maintenance services.
- Allows for 10 design-build projects with a total project cost between \$2 and \$10 million.
- Allows for two design-build projects that include procurement of operations and maintenance services for a period longer than three years.
- Requires public bid openings for the general contractor/construction manager contracting method.
- Expands the use of job order contracting.

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.

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.

Staff: Marsha Reilly (786-7135)

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 14 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Blake, Chase, Hope, Jacks, Maxwell, McCune, Orwall, Smith and White.

Staff: Steve Masse (786-7115)

Background:

Alternative methods for constructing public works were first used on a very limited basis and then adopted in statute in 1994 for certain pilot projects. These alternative procedures include a design-build process, a general contractor/construction manager (GCCM) process, and job order contracting process. Originally, the use of these alternative methods were limited to a handful of public entities.

The design-build procedure 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 employs the services of a project management firm that bears significant responsibility and risk in the contracting process. The government agency 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. When the plans and specifications for a project phase are complete, the GCCM firm subcontracts with construction firms to construct that phase. Initial selection of the GCCM finalists is based on the qualifications and experience of the firm.

In 2003 job order contracting was authorized as an alternative public works contracting procedure. Under a job order contract, a contractor agrees to perform an indefinite quantity of public works jobs, defined by individual work orders, over a fixed period of time. A public entity may not have more than two job order contracts in effect at any one time. The maximum total dollar amount that is awarded under a job order contract may not exceed \$2 million in the first year, \$5 million over the first two years, or \$8 million over a three-year period if the contract is renewed or extended. The authority to use job order contracting is limited to the Department of General Administration (GA), the University of Washington (UW), Washington State University (WSU), certain cities and counties, port districts, certain public utility districts, school districts, and the state ferry system.

In 2005 the Capital Projects Advisory Review Board (CPARB) was established to monitor and evaluate the use of traditional and alternative public works contracting procedures and to evaluate potential future use of other alternative contracting procedures. In 2007 the CPARB

presented recommendations for the expanded use of these procedures and processes that the Legislature enacted into law. A project review committee (review committee) was created to certify public bodies to use either design-build, the GCCM, or both procedures, or to approve projects on a project-by-project basis. The use of the procedures is generally limited to projects with a total project cost of \$10 million or more. However, the GCCM process may be used on projects with a total project cost of less than \$10 million with the approval of the committee.

Summary of Bill:

The CPARB must develop guidelines to be used by the review committee for review and approval of design-build demonstration projects that include procurement of operations and maintenance services. In turn, the review committee may authorize two design-build demonstration projects that include operations and maintenance services for a period of longer than three years.

The review committee may approve up to 10 demonstration projects using the design-build process for projects with a total project cost between \$2 and \$10 million. Public bodies certified to use design-build must seek approval from the review committee for these projects. The review committee must report to the CPARB on recommendations for continued use of the design-build procedure for projects estimated under \$10 million.

Changes are made to clarify that public bodies seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years, and those seeking certification for the GCCM process must demonstrate successful management of at least one GCCM project within the previous five years.

Honorarium payments for design-build projects are made to the finalists submitting responsive proposals rather than those submitting a "best and final" proposal. Sealed bids on final proposals for the GCCM projects must be opened and read in public and all previous scoring must be made available to the public.

The GA, the UW, and WSU may issue job order contract work orders for the state regional universities and The Evergreen State College.

The statute regarding negotiated adjustments to the lowest bid or proposal for design-build projects is repealed.

Appropriation: None.

Fiscal Note: Not requested.

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) This bill is part clean-up, part expansion, and part new legislation. It was clear from the projects that came before the CPARB that there was a need for clarification. There is a need for transparency regarding the bid openings for the GCCM projects. Design-build projects are suited for a certain type of complex project, and there are lower dollar projects that also are complex and better suited for this process. The review committee may authorize any public entity to use the design-build method on projects over \$10 million. This bill allows the review committee the discretion to approve 10 design-build demonstration projects of a lower dollar amount. Job order contracting is expanded to allow the GA, the UW, and WSU to issue work orders for the regional universities. This is a long awaited authorization that provides efficiency and flexibility and allows small project budgets to be spent on real jobs with less going towards administrative costs.

(Opposed) None.

Staff Summary of Public Testimony (Capital Budget):

(In support) Alternative public works contracting methods can help public bodies to work strategically and achieve more work with the same project level funding.

(Opposed) None.

Persons Testifying (State Government & Tribal Affairs): Representative Haigh, prime sponsor; Bob Maruska, Capital Projects Advisory Review Board; and Olivia Yang, University of Washington.

Persons Testifying (Capital Budget): Olivia Yang, University of Washington and Capital Projects Advisory Review Board.

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

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