

# HOUSE BILL REPORT

## SHB 1466

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### As Amended by the Senate

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

**Brief Description:** Revising alternative public works contracting procedures.

**Sponsors:** House Committee on Capital Budget (originally sponsored by Representatives Haigh, Warnick, Dunshee, Fey, Kristiansen and Reykdal).

**Brief History:**

**Committee Activity:**

Capital Budget: 2/11/13, 2/28/13 [DPS].

**Floor Activity:**

Passed House: 3/9/13, 95-0.

Senate Amended.

Passed Senate: 4/16/13, 47-0.

#### Brief Summary of Substitute Bill

- Extends alternative contracting procedures to June 30, 2021.
- Modifies the criteria to use the Design Build and General Contractor/ Construction Manager contracting procedures.
- Modifies notification procedures.
- Increases Job Order Contracting limits to \$6 million for certain counties.

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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 Dunshee, Chair; Stanford, Vice Chair; Warnick, Ranking Minority Member; Hawkins, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Appleton, Fey, Riccelli, Scott, Smith and Stonier.

**Staff:** Steve Masse (786-7115).

**Background:**

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*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.*

### Capital Projects Advisory Review Board.

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. The CPARB also provides a forum in which best practices and concerns about alternative public works contracting can be discussed.

The CPARB consists of 23 members. Of those, 14 are appointed by the Governor. The remaining four consist of two from the House of Representatives, appointed by the Speaker of the House, and two from the Senate, appointed by the President of the Senate, one from each major caucus. Three of the members are selected by public owners, including the Association of Washington Cities, the Washington State Association of Counties, the Washington Public Ports Association, Washington Public Hospital Districts, and the Washington State School Director's Association.

### Alternative Contracting Procedures.

Alternative forms of public works were first used on a very limited basis and then adopted in statute in 1994 for certain pilot projects. These alternative procedures included a Design Build process and a General Contractor/Construction Manager (GC/CM) process which may be used on projects costing in excess of \$10 million.

With some restrictions, the use of alternative public works contracting procedures are authorized to a limited number of public entities, including:

- the Department of General Administration;
- the University of Washington;
- the Washington State University;
- cities with a population greater than 70,000 and any public authority chartered by such city;
- counties with a population greater than 450,000;
- public hospital districts with total revenues greater than \$15 million;
- port districts with total revenues greater than \$15 million per year;
- public utility districts with revenues from energy sales greater than \$23 million per year;
- school districts for the GC/CM projects; and
- the state ferry system.

The authorization to use alternative public works procedures expires June 30, 2013.

### Design Build.

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. It may be used on projects valued over \$10 million where:

- the construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology;
- the project design is repetitive in nature and is an incidental part of the installation or construction; or

- regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

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.

#### General Contractor/Construction Manager.

The GC/CM 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 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 are complete, the GC/CM firm subcontracts with construction firms to construct that phase. Initial selection of the GC/CM finalists is based on the qualifications and experience of the firm.

#### Job Order Contracting.

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 \$3 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.

#### **Summary of Substitute Bill:**

The use of alternative public works contracting procedures is extended to 2021.

#### Capital Projects Advisory Review Board.

The representative from the Association of Washington Cities is appointed by the Governor rather than self appointed.

#### Design Build.

Changes to using the Design Build process include modifying the criteria necessary to be eligible to use the process where only one criteria needs to be met. Criteria includes:

- personnel from the public body or their consultants must be knowledgeable;
- the construction must be highly specialized;
- there is opportunity for innovation between the contractor and consultant; and
- the project can be done in a shorter construction schedule.

Changes to evaluating Design Build proposers include adding:

1. The option of using experience in the utilization of disadvantaged businesses and small businesses.
2. A proposer's past performance with life-cycle or energy performance design build goals.
3. Operating costs and price related factors, rather than the proposal price.

#### 4. Outreach plans to disadvantaged businesses and small businesses.

A life cycle cost model must be provided by the public body in the Request for Qualifications if a life cycle cost analysis is required in the proposal. The \$10 million project cost requirement is removed. A public body may use Design Build for projects between \$2 million and \$10 million for up to five projects.

Eligible project types are modified to include portable facilities used for K-12 school facilities, and prefabricated buildings are limited to no more than 10 per site.

#### General Contractor/Construction Manager.

Changes to the GC/CM process include removing the three-year certification, and removing the \$10 million requirement to use the GC/CM. The certification renewal period for public bodies is increased from one year to a three years. Preconstruction services are added to the scope of services that may be provided by the GC/CM to the public body. The evaluation factors for selecting a GC/CM may include outreach plans to disadvantaged businesses and small businesses.

The protest procedures are modified to include notification of all of the firms qualified for the next phase of selection, and to all subcontractors that submitted bids. If requested, the GC/CM must provide the scoring results to all subcontractors that submitted bids in that phase of the process.

#### Job Order Contracting.

Job Order Contracting is modified to be used only by public bodies of the State of Washington, and the maximum contract amount per year is increased from \$4 million to \$6 million for counties with a population over 1 million people.

#### **EFFECT OF SENATE AMENDMENT(S):**

##### The Senate amendment:

- Removes requirement that a life cycle cost model be provided to the documents a public entity provides for qualification documents to design build proposers.
- Removes evaluation factors for design build proposals including:
  - A proposer's past performance with life cycle or energy performance design build goals.
  - Operating costs in price related factors.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on June 30, 2013.

#### **Staff Summary of Public Testimony:**

(In support) The CPARB is an excellent working group that benefits from collaboration of diverse stakeholders. The Joint Legislative Audit Review Committee sunset review

recommends reauthorization, and there is unanimous agreement with CPARB members. The functions of CPARB benefit both taxpayers and public bodies. The result is higher quality, better performing buildings for public bodies.

(Opposed) None.

**Persons Testifying:** Ed Kommers, Bob Maruska, and Dan Seydel, Capital Projects Advisory Review Board; Stan Price, Northwest Energy Efficiency Council; Mike Locke, McKinstry Company; and Van Collins, Associated General Contractors.

**Persons Signed In To Testify But Not Testifying:** None.