

HOUSE BILL REPORT

HB 1970

As Passed Legislature

Title: An act relating to state highway construction project alternative contracting procedures.

Brief Description: Concerning state highway construction project alternative contracting procedures.

Sponsors: Representatives Zahn and Donaghy.

Brief History:

Committee Activity:

Transportation: 2/24/25, 2/26/25 [DP].

Floor Activity:

Passed House: 3/5/25, 97-0.

Senate Amended.

Passed Senate: 4/16/25, 48-1.

House Concurred.

Passed House: 4/21/25, 97-0.

Passed Legislature.

Brief Summary of Bill

- Authorizes the Washington State Department of Transportation (WSDOT) to use alternative public works contracting procedures, including design-build (DB), progressive design-build (PDB), or general contracting/construction manager (GC/CM) processes.
- Includes PDB and GC/CM procedures in the WSDOT processes for awarding competitively bid highway construction contracts using alternative public works contracting procedures.
- Excludes the WSDOT from seeking Capital Projects Advisory Review Board (Board) certification requirements to use the DB, PDB, or GC/CM contracting procedure on individual projects.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Allows for the WSDOT to no longer be subjected to Board approval requirements for GC/CM projects after delivering three GC/CM projects approved by the Board.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 27 members: Representatives Fey, Chair; Bernbaum, Vice Chair; Donaghy, Vice Chair; Reed, Vice Chair; Barkis, Ranking Minority Member; Low, Assistant Ranking Minority Member; Mendoza, Assistant Ranking Minority Member; Schmidt, Assistant Ranking Minority Member; Bronoske, Dent, Duerr, Entenman, Griffey, Hunt, Klicker, Ley, Nance, Orcutt, Paul, Ramel, Richards, Stuebe, Taylor, Timmons, Volz, Wylie and Zahn.

Staff: Christine Thomas (786-7142).

Background:

Traditional Public Works Contracting.

Public work means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality. Once a public body secures design of a public works project, either through in-house engineering or hiring a consultant, a competitive bidding process is required for most of those projects. State law generally requires agencies to award public works contracts to a responsible bidder with the lowest responsive bid. Contractors that provide the bid are referred to as the prime contractor and this process of awarding public works contracts is often referred to as the design-bid-build process.

Alternative Public Works Contracting Procedures.

Alternative public works contracting procedures include: (1) the design-build (DB) procedure; (2) general contracting/construction manager (GC/CM) contracting procedure, and (3) job order contracting. The design-build procedure means a contract between a public body and another party in which the party agrees to both design and build the facility. The Washington State Department of Transportation (WSDOT) may and is encouraged to use the DB procedure for public works projects over \$2 million when construction activities are highly specialized and the DB approach is critical to develop construction methodology, the project selected provides for greater innovation and efficiency opportunities, or project delivery cost savings would be significant. A GC/CM is a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as the GC/CM during the construction phase.

Progressive design build (PDB) is generally defined as a method of contracting under which

a public body selects a design-builder before establishing a final project design, price, and schedule, with the public body and design-builder collaborating on final project scope, schedule, and price thereafter. The WSDOT using the PDB procedure is subject to the DB procedure requirements applicable to other public bodies. The WSDOT has started using the PDB procedure on several projects.

Capital Projects Advisory Review Board.

The Capital Projects Advisory Review Board (Board) was created by the Legislature in 2005 to review alternative public works contracting procedures and provide guidance to state policymakers on ways to further enhance the quality, efficiency, and accountability of public works contracting methods. In addition to evaluating public works contracting procedures, the Board appoints members to the Project Review Committee (PRC) to certify public bodies to use either design-build, GC/CM, or both procedures and to approve the use of design-build or GC/CM procedures on a project-by-project basis.

When certified by the Board through the PRC, public bodies may use the design-build procedure, including progressive design-build, for public works projects in which the total project cost is over \$2 million and where the construction activities are highly specialized and a design-build approach is critical in developing the construction methodology, or greater innovation, efficiencies, or savings would be realized. The WSDOT is encouraged to use the design-build procedures when these conditions are met.

When certified by the Board through the PRC, public bodies may use the GC/CM procedure for public works projects where the involvement of the GC/CM during the design stage is critical to the success of the project. Other conditions where a GC/CM is allowed include a project involving complex scheduling, phasing, or coordination or the project is, and the public body elects to procure the project as, a heavy civil construction project.

Summary of Bill:

The WSDOT is not subject to the certification requirements in the Board's provisions to use the DB or GC/CM contracting procedures on individual projects. In addition to the authority the WSDOT has to use the DB procedure, the WSDOT is also authorized to use the PDB and GC/CM contracting procedures as defined in the Board's provisions.

The WSDOT must develop processes for awarding competitively bid highway construction projects for the three authorized alternative public works contracting procedures.

For the first three GC/CM projects that the WSDOT delivers after July 1, 2025, the WSDOT must pursue approval of the projects to use the GC/CM contracting procedure. After three such approvals have been granted, the WSDOT is not subject to the Board's approval requirements.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) One of the biggest issues in the construction industry today is the high cost of projects and that there are fewer contractors working on large highway construction projects. Ten years ago, the Legislature allowed and encouraged the WSDOT to use the design-build alternative project delivery method for highway construction projects over \$2 million. That delivery method worked for a bit of time to reduce project costs. However, using design-build as a procurement method to secure a guaranteed maximum price may lock in unrealized risk that the WSDOT unnecessarily pays. On the other side, if construction costs spike, the design-builder may have underestimated project costs and conflicts may arise about the full design, quality, and expected performance of the project.

The ability of the WSDOT to use the best tools for the right projects is necessary to address the trend in the industry that is seeing rising costs on highway construction projects. The WSDOT has been training staff in the last several years to use progressive design-build and they have demonstrated a high understanding of that alternative contracting process by delivering several projects using that method. Seeking approval of three GC/CM projects by the PRC would ensure that the WSDOT would have the right resources and training to deliver projects using that procurement method for which they don't have a lot of experience. Allowing the WSDOT to choose from an array of alternative contracting procedures would position them for success in delivering major highway construction projects.

(Opposed) None.

Persons Testifying: Representative Janice Zahn, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.