

**CAPITAL PROJECTS ADVISORY REVIEW BOARD
ALTERNATIVE PUBLIC WORKS PROCEDURES
(CHAPTER 39.10 RCW)
SUNSET REVIEW
PERFORMANCE SUMMARY
TO THE
JOINT LEGISLATIVE AUDIT REVIEW COMMITTEE**

July 2012

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Executive Summary

Alternative public works contracting procedures for the State of Washington are described in Chapter 39.10 RCW. This chapter is subject to review, termination, and possible extension under Chapter 43.131 RCW, the Sunset Act. Without reauthorization legislation, RCW 39.10.200 through 39.10.903 are scheduled for repeal under RCW 43.131.408.

Successful adoption and implementation of alternative public works contracting procedures has depended, in great part, on the review and oversight mechanisms put in place by the Legislature in Chapter 39.10 as well as many hours of dedicated work by many stakeholders over several years. Review and oversight of alternative public works contracting procedures are provided by the Capital Projects Advisory Review Board (CPARB). Duties are summarized as follows:

- Develop and recommend to the Legislature, policies to enhance the quality, efficiency, and accountability of capital construction projects.
- Evaluate use of existing and potential use of other alternative contracting procedures.
- Develop and administer data collection for alternative contracting procedures.
- Review and approve alternative public works projects.

CPARB is composed of public owners and representatives from various parts of the design and construction industry and includes four members from the Legislature.

Legislative Recommendations

CPARB successfully recommended policies to enhance capital construction projects delivered through traditional and alternative delivery methods. Since 2007, CPARB has recommended 15 public works bills for introduction (excluding companion bills) to the Legislature that address quality, efficiency, and accountability of traditional and alternative public works contracting. Of the 15 bills introduced, nine were passed and signed into law by Governor Gregoire and six remained in Committee.

During this period the General Contractor/Construction Manager (GC/CM) statute was expanded to allow selection of mechanical and/or electrical contractors in the predesign services phase to increase efficiency of delivering projects. The design-build statute was expanded to include up to ten demonstration projects ranging in cost between \$2 and \$10 million dollars and allow up to two demonstration design-build operate and maintain projects with a duration greater than three years. The Job Order Contracting (JOC) statute was expanded to include additional public bodies including regional universities and Sound Transit.

Evaluate Contracting Procedures

CPARB has prepared and published documents including white papers, guidelines, reports and analysis of public works procurement processes. When requested by the Legislature, CPARB has performed studies and published reports for their use. In total, CPARB has published 14 documents since 2007 of which two are reports to the Legislature, two are guidelines, three are white papers on efficiency and new contracting methods, five are on data collection and reporting, and two are on procedures.

CPARB has also partnered with the construction community to perform ongoing training for contractors and public owners.

Data Collection and Reporting

CPARB developed and implemented a web-based project data collection system for traditional, design-build, and general contractor construction manager contracting methods for major state and local public works projects. CPARB performs project data analysis. CPARB also collected data and published annual reports on the use of JOC.

Review and Approve Alternative Public Works Projects

CPARB established the Project Review Committee (PRC) in 2007. The PRC is responsible to review and approve public works projects using Design Build or GC/CM contracting procedures. The Committee also certifies public bodies to use either of these procedures without further Committee approval. Since 2007, the Project Review Committee has reviewed a total of 61 projects and 15 public body certifications. A total of 52 projects and 14 public body certifications have been approved.

CPARB also performs a critical function in the project and public owner review and approval process. After a decision is published by the PRC, an applicant or interested party can file an appeal of the decision directly to CPARB. To date there have been three appeals of PRC decisions to CPARB and the Board has upheld two of the decisions and reversed one decision.

Alternative public works contracting procurement methods identified in RCW 39.10 provide significant benefits to the citizens of the State of Washington. Through the creation of the alternative public works procurement statutes and CPARB, the processes, procedures, checks and balances have been put in place to benefit the public and contracting communities to ensure successful completion of significant public works projects.

Repeal or sunset of RCW 39.10 would cause the elimination of effective alternative public works procurement methods. Construction costs could increase and the benefit of the collaborative nature of project construction would erode.

Introduction

The purpose of this briefing report is to update the Joint Legislative Audit and Review Committee (JLARC) on how the CPARB has addressed the Sunset Review Management Plan performance measures submitted to JLARC in 2008. This report includes a brief discussion of the background of CPARB, the JLARC legislative sunset review mandate, the data collection plan, and narrative response to each of the evaluation questions.

Background of CPARB

The 2005 Legislature created the CPARB under Engrossed Substitute House Bill (ESHB) 1830 (RCW 39.10), 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. The 2007 Legislature modified RCW 39.10 (2SHB 1506) including the duties of CPARB and many changes to alternative public works methods as recommended by CPARB.

The specific duties of CPARB defined in the statute include:

- Develop and recommend to the Legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods.
- Evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts.
- Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based (RCW 39.10.230).
- Establish a project review committee to review and approve public works projects (RCW 39.10.240).

The Board and subcommittees have been meeting regularly since September 2005.

The Board is composed of public agencies and representatives from various parts of the design and construction industry and includes two members from the House and two members from the Senate.

The Board strives to meet a consensus on issues before providing recommended legislation to the Legislature. Recommendations from the Board tend to have broad support. The Board has made written recommendations to legislative leadership concerning public works legislation not originated by the Board.

JLARC Sunset Review Mandate

Second Substitute House Bill 1506 from the 2007 Legislative Session changed the criteria for which projects qualify for using alternative public works contracts, and modified the procurement and contracting procedures. This legislation also extends the termination date of the legislation

from 2007 to July 2013 and requires JLARC to conduct a sunset review of the implementation of alternative public works contracting. JLARC is to conduct a program and fiscal review of alternative public works contracting, which would include looking at whether the Board and public agencies complied with legislative intent, whether the contracting process has been efficient and cost effective, and the impacts of allowing alternative contracting statutes to expire.

Per the mandate, these were JLARC's questions for evaluation:

1. Did CPARB develop and recommend to the Legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington?
2. Did CPARB make recommendations regarding expansion, continuation, elimination, or modifications of the alternative public works contracting methods?
3. Did CPARB evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts?
4. Did CPARB develop and administer questionnaires designed to provide qualitative data on alternative public works contracting procedures on which evaluations are based?
5. Did CPARB establish a project review committee to review and approve public works projects?
6. Is CPARB operating in an efficient and economical manner and in the public interest by controlling costs?
7. What are the possible impacts of sunsetting (or repealing) RCW 39.10 including terminating the CPARB and alternative public works methods?

Data Collection Plan and Sunset Review Summary to JLARC

Per JLARC's request, the following presents CPARB's Data Collection Plan and Performance Summary for the 2013 JLARC sunset review.

1. Recommend policies to enhance capital construction projects

Did CPARB develop and recommend to the Legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington?

Draft Legislation Recommended (2008 Plan - Measure 1A)

CPARB successfully recommended policies to enhance capital construction projects delivered through the traditional and alternative delivery methods. Recommendations related to the traditional delivery methods included legislative changes to the Small Works statute RCW 39.04.155 that increased project limits, added provisions for small business and improved efficiency of the limited small works delivery process. Recommendations related to alternative delivery methods included adding a provision under the GC/CM statute to include mechanical and/or electrical contractors as construction managers and expanding

the design-build statute to allow use of demonstration projects with a value between \$2 to \$10 million dollars and uses of the design-build operate and maintain statute beyond a three year time frame with project review committee approval.

Capital construction projects in Washington have benefitted from these changes by increased efficiency in the delivery process and increased flexibility to respond to project needs.

CPARB met regularly during this period to discuss and consider policies and measures to improve public works capital projects. A number of the policies and measures that required legislative action were put into draft legislation and recommendations made to the Legislature for improvement of public works contracting. The following is a list of the draft legislation proposed by CPARB:

Session	Bill	Subject	Pass
2007	2SHB 1506	CPARB and many stakeholders contributed to significant changes to RCW 39.10 : <ul style="list-style-type: none"> • Extended use of alternative public works until 2013 • Created the Project Review Committee • Design-build (DB), GC/CM, and JOC changes • See attached summary of changes April 24, 2007. 	Yes
2007	SHB 2010 SB 5856	Providing responsible bidder criteria and related requirements for public works contracts. CPARB was tasked to provide guidelines for using supplemental bidder responsibility.	Yes
2007	HB 2009	Modifying trench excavations on public works projects provisions. Proposed to remove trench safety as a separate line item from bidding forms.	No
2008	HB 2780	Alternative Public Works Changes to include demonstration project for DB from \$2-10 and Design Build Operate and Maintain (DBOM) for more than three years.	No
2009	HB 1195	Process undisputed claims (issue change orders) within 30 days of completion of work by contractor. After 30 days, interest will accrue on the dollar amount not in dispute.	Yes
2009	HB 1196	Increase Small Works Roster project dollar limits from \$200,000 to \$300,000, and the requirement to notify contractors on the roster of quotations being sought when the estimated cost is \$100,000 or more is changed to \$150,000 or more; added provisions for small business and improved efficiency of the limited small works delivery process.	Yes
2009	HB 1197	Alternative public works changes: Requires the Board to develop guidelines for the review and approval of design-build demonstration projects that include operations and maintenance services; incorporates provisions of HB 2780, allows for 10 DB projects with a total project cost between \$2 and \$10 million	Yes

		dollars; allows for two DB projects that include procurement of operations and maintenance services for a period longer than three years; clarifies that public bodies seeking certification for the DB procedure must demonstrate successful management of at least one DB project within the previous five years, and those seeking certification for the GC/CM process must demonstrate successful management of at least one GC/CM project within the previous five years; allows honorarium payments to DB finalists submitting "responsive" proposals, rather than "best and final"; requires public bid openings for GC/CM and that scores be open for public review; and allows the Department of Enterprise Services (DES), formerly the Department of General Administration, University of Washington (UW), and Washington State University (WSU) to issue job order contracts for regional universities and The Evergreen State College.	
2009	HB 1198	Increase and revise public works bid limits. CPARB bill included all major public entities. HB 1847 included several other public entities and the provisions of HB 1198 were rolled into HB 1847.	Yes
2009	HB 1199	Regarding retainage of funds on public works projects.	Yes
2009	HB 1200	Regarding expanding the ability to negotiate an adjustment to a bid price on public works.	No
2010	SB 6401	Providing an alternative process for selecting an electrical contractor or a mechanical contractor, or both, for GC/CM projects.	Yes
2011	HB 1970	Allowing the waiver of certain requirements for public works projects costing less than five thousand dollars; protest language for GC/CM.	No
2011	HB 1971	Concerning the alternative subcontractor selection process. (For GC/CM projects, during the alt. selection process allowed for mechanical and electrical sub-contractors. bidder protests must be submitted to the public body and the GC/CM and not just the GC/CM).	No
2012	HB 2327	Relating to alternative public works, including adding outreach plans to selections, and clarifying the use of DB.	No
2012	HB 2328	Job Order Contracting – added authority for regional universities and Sound Transit; increased work order limit to \$350k, changed data reporting period.	Yes

Other Recommendations including reports to the Legislature (2008 Plan - Measure 1B)

CPARB has prepared and published documents including white papers, guidelines, reports and analysis of public works procurement processes. In addition, when requested by the Legislature, CPARB has performed studies and published reports for their use. The following is a list of documents published by CPARB on its website:

Legislative Requested Reports

- UW Husky Stadium Procurement Model, 2009
- K-12 Performance Based Construction Contracts, 2011

Guidelines

- Bidder Responsibility Criteria, 2007
- Evaluation of Design Build Operate and Maintain evaluation by the Project Review Committee, 2009

White Papers

- Optimizing Efficiency in Capital Project Delivery within Current Washington Public Works Statute, 2009
- Integrated Project Delivery Task Force Presentation, 2009
- Best Value Task Force Recommendations, 2010

Data Collection

- Design Build Bid (DBB), GC/CM and DB Data Collection System
- JOC Data Collection Form
- JLARC Data Collection Plan, 2008
- Annual JOC Reports
- DBB, GC/CM and DB Data Analysis, 2011

Procedures

- CPARB Organization and Operating Procedures, 2005
- Project Review Committee Bylaws, 2007

In addition to the publications, CPARB regularly establishes subcommittees and work groups to study and address ongoing issues and concerns. One of the more recent work groups focused on ways to increase opportunities for small business, and women and minority contractors' participation in public works.

Alternative public works procurement requires unique knowledge and skills to successfully implement. CPARB partnered with the construction community to perform ongoing training opportunities for contractor and public owners.

2. Recommend changes to alternative public works contracting methods

Did CPARB make recommendations regarding expansion, continuation, elimination, or modifications of the alternative public works contracting methods?

Draft Legislation Recommended (2008 Plan - Measure 2A)

CPARB made a number of recommendations to expand the use of alternative public works contracting. During this period CPARB recommended legislation to expand the use of two additional public bodies including regional universities and Sound Transit. As noted in response 1A, the General Contractor/Construction Manager GC/CM statute was expanded to include the ability for a GC/CM, in conjunction with public owners, to select mechanical and/or electrical contractors in the predesign services phase to increase the efficiency of delivering projects. The design-build statute was also expanded to include up to ten demonstration projects ranging in cost between \$2 and \$10 million dollars and allow up to two demonstration design-build operate and maintain projects with a duration greater than three years.

CPARB also made recommendations to limit the use of the design-build alternative delivery method for modular construction.

An incremental approach to expansion and modification of the alternative public works statute is used by CPARB. As changes are made, the impacts are evaluated and further recommendations are developed. The collaborative process has proven successful in development of CPARB recommendations.

Please refer to the table of recommended legislation in response to question 1A for a complete list of bills.

Other Recommendations including reports to the Legislature (2008 Plan - Measure 2B)

CPARB, in cooperation with the Office of Attorney General (AG), conducted an evaluation of the applicability of RCW 39.10 to Washington State Housing Authorities. An issue was brought to the Board's attention where a housing authority was soliciting a design build project that had not been reviewed or approved by the PRC. CPARB reviewed relevant information and requested a formal AG opinion concerning whether housing authorities are exempt or included in the alternative public works statute. The AG's opinion concluded that housing authorities are "public bodies" and therefore required to follow the requirements of RCW 39.10. CPARB provided the information to housing authorities for their use. As a result of the findings, Washington State Housing Authorities recommended a bill to the Legislature (HB 1690) to clarify how public bodies use alternative public works.

Recommendations that do not require legislative action were communicated via CPARB meeting minutes and/or correspondence or reports to the Legislature. CPARB will provide copies of other recommendations and reports to JLARC upon request.

3. Evaluate the use of contracting procedures

Did CPARB evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts?

Draft Legislation Recommended (2008 Plan - Measure 3A)

CPARB developed a number of recommendations in the form of legislation to change existing contracting procedures. Several of the more significant recommendations included: legislation that requires CPARB to develop bidder responsibility criteria guidelines for more consistent application in the selection process; legislation requiring public owners to process undisputed claims within 30 days of completion of the work by the contractor; revised requirements for retainage of funds on public works projects; and legislation expanding the ability to negotiate an adjustment to a bid price on public works project.

As noted above, CPARB also reviewed and discussed other legislation that revised existing public works bid limits and revised the Small Works Roster project limits.

Other recommendations including reports to the Legislature (2008 Plan - Measure 3B)

In the furtherance of public works alternative contracting, CPARB evaluated several emergent contracting methods to determine their applicability to Washington state. White papers were developed for the Integrated Project Delivery method where a tri-party agreement is entered with the owner, designer and contractor that enable all to share in project risks and savings, and the Best Value contracting method where factors other than low bid are considered by the public owner in determining the bidder that best meets project needs. While neither of these new contracting methods has been recommended for immediate adoption, CPARB continues to evaluate key benefits of these alternatives as they relate to current alternative contracting procedures.

A new alternative contracting method was developed by UW for the Husky Stadium Renovation project. Under existing statutes for UW, the Board of Regents is permitted to approve such contracting methods. At the request of the Legislature, CPARB conducted a review of the UW Stadium Developer Model to determine how it relates to current alternative public works methods. CPARB responded to legislators' request and issued a final report of the UW's Stadium Developer Model in 2009.

As noted in response to item 2B, and the Stadium Developer Model study, the Legislature passed HB 1690 to clarify the use of alternative public works contracting in the State of Washington. In part the bill reads as follows:

The stated intent is to clarify that, unless otherwise specifically provided for in law, public bodies that want to use an alternative public works contracting procedure may use only those procedures as specifically authorized under the statutes for alternative public works.

Evaluations of and recommendations for alternative procedures not authorized specifically by law must be submitted by the CPARB to the appropriate committees of the Legislature.

Housing authorities are subject to the alternative public works contracting procedures except where alternative requirements or procedures of federal law or federal regulation are authorized. Housing authorities also must abide by the state prevailing wage laws except where specifically preempted by federal law or federal regulation.

4. Collect and evaluate data on alternative contracting procedures

Did CPARB develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based?

Data collection system is established (2008 Plan - Measure 4A)

As part of the alternative public works legislation, CPARB was provided with the responsibility of collecting and analyzing data about traditional and alternative contracting methods. CPARB developed and approved data collection systems for traditional, design build, general contractor construction manager and job order contracting methods. DES provides staff support to CPARB, administers the data collection efforts and has developed on-line data collection tools.

A web-based project data collection system was implemented for major state and local public works projects. CPARB's goal is to obtain relevant data on current and past projects so that a meaningful analysis of alternative methods could be conducted and reported to JLARC (sunset review) and others.

In addition to the Project Data Analysis Report, CPARB is also required to publish an annual report on the use of JOC. Data is collected covering a one year period that includes contract dates, job order contractor, public body, number of work orders issued, total dollars for work orders completed, number of change orders, number of subcontractors used, percent of work subcontracted and percent of subcontracted work performed by the Office of Minority and Women Owned Business Enterprises (as certified by OMWBE).

Periodic analysis of project data (2008 Plan - Measure 4B)

Based on data collection efforts, CPARB utilized the services of University staff (through an agreement with DES) to perform an analysis of the data and to prepare a report summarizing the conclusions. Due to budget limitations, a summary presentation of the data analysis was prepared titled *Project Data Analysis Report - May 2011*, which was approved by CPARB in September of 2011. A copy of the summary is available on the CPARB website (<http://www.ga.wa.gov/cparb/>), and has been made available to JLARC for the sunset review.

Results of the annual JOC data collection process were presented to CPARB and made available on the website. JOC annual data collection reports have been made available to JLARC for the sunset review.

Written recommendations to the Legislature (2008 Plan - Measure 4C)

Results from the annual JOC data collection were used by CPARB to evaluate the existing statute and make recommendations to the Legislature for modifications and expansion of the alternative delivery method. In 2012 HB 2328 was passed, originally proposed by CPARB, expanding the authority to use JOC to regional universities and Sound Transit with provisions to increase the single work order limit to \$350,000 and revise the annual data reporting period to a calendar year.

5. Establish a project review committee to approve public works projects

Did CPARB establish a project review committee to review and approve public works projects?

Project Review Committee (PRC) established (2008 Plan - Measure 5A)

CPARB established the PRC in 2007 and provides administrative support to the committee. CPARB approved and published the PRC Bylaws. As part of the legislation to include demonstration projects for DBOM beyond duration of three years, CPARB published guidelines for evaluation of DBOM projects by the PRC.

CPARB provides the PRC member list and operating procedures to JLARC and other stakeholders on CPARB's PRC website: <http://www.des.wa.gov/cparb/PRC/index.html>.

Number of projects reviewed, approved, and disapproved by the PRC (2008 Plan - Measure 5B)

CPARB's PRC website maintains lists of all projects reviewed. The results are summarized below.

Project Applications

61 projects were reviewed
52 projects were approved; and
9 projects were disapproved

Public Body Certifications

15 certifications were reviewed
14 certifications were approved; and
1 certification was disapproved

Most of the public bodies, whose projects were disapproved by the PRC, repackaged their projects, enhanced their technical resources or made other changes as needed. The resubmitted projects were then reviewed and approved by PRC. Only one of the projects disapproved was not resubmitted by the public body.

CPARB also performs a critical function in the project and public owner review and approval process. After a decision is published by the PRC, an applicant or interested party can file an appeal of the decision directly to CPARB. The Board is responsible for holding a hearing on the appeal, allowing all parties to provide CPARB with information for consideration of the appeal. CPARB has 45 days to issue a response to the appeal by either upholding the

decision of the PRC or reversing the decision. To date there have been three appeals of PRC decisions to CPARB and the Board has upheld two of the decisions and reversed one decision.

Qualified owners are using alternative public works methods for appropriate projects. (2008 Plan - Measure 5C)

PRC determines whether public works projects are well suited for use of alternative contracting methods, and ensuring owners have the skills and expertise available on the project team to successfully implement projects using the alternative method.

CPARB believes that the PRC is effective in meeting the intent of being the “gatekeeper” in evaluating public bodies who submit projects for approval are qualified, and that the projects are appropriate for use of alternative public works methods.

6. Control costs by operating in an efficient and economical manner

Is CPARB operating in an efficient and economical manner and in the public interest by controlling costs?

Expenditures are within the funding amounts (2008 Plan - Measure 6A)

CPARB has managed costs within its appropriation including reductions imposed by the Legislature. The impact of a reduction in CPARB’s operating budget resulted in the elimination of outside support services for Board meetings, reductions in staff time available to support the Board and the PRC, reduction in support of the web-based data collection system and reduction of data analysis efforts. The Board changed from a monthly meeting schedule to a quarterly meeting schedule to reduce operating costs.

The alternative public works statute includes provisions for administrative support to CPARB through GA now Department of Enterprise Services (DES), and is responsible for management of support services within the appropriated operating budget. CPARB operating funds were identified under the DES operating budget as a line item from the State’s General Fund.

It should be noted that all members of CPARB are volunteer and not compensated for their service. The collective value of the volunteer services far exceeds the operating costs and should be recognized as a significant value added to the services provided by CPARB. At the request of the Office of Financial Management, CPARB staff prepared a report on the effectiveness of CPARB and its funding. In accordance with current statutes, members of CPARB are eligible for travel reimbursement from State funds. As a demonstration of their commitment and value of CPARB work, members have forgone travel reimbursement (including cross state travel and lodging) to reduce operating costs.

CPARB reviews the available operating budget expenditures and discusses required adjustments in support services with DES to maintain the overall budget. Copies of budget documents are available on the CPARB website and available to the public.

7. Detail the possible impacts of sunseting (or repealing) RCW 39.10 (2008 Plan – Measure 7A)

What are the possible impacts of sunseting (or repealing) RCW 39.10 including terminating the CPARB and alternative public works methods?

Alternative public works contracting procurement methods identified in RCW 39.10 provide significant benefits to the citizens of the State of Washington. Through use of alternative procurement methods, capital projects can be constructed in ways that optimize risk sharing among all parties, provide opportunities for more efficient project delivery and minimize total cost to the public.

The Legislature recognized that public works contracting is often complex and requires input from a broad spectrum of participants. Through the creation of the alternative public works procurement statutes and CPARB, processes, procedures, and checks and balances have been put in place to protect the public and contracting communities and ensure successful completion of significant public projects.

If CPARB was eliminated, the Legislature would lose the resource of having a diverse body that brings together stakeholders to vet traditional and alternative public works design and construction issues, resolves conflicting interests, and makes policy recommendations to them. Legislative Committee Chairs in both houses have expressed appreciation for CPARB's stakeholder work and advisory capacity when CPARB initiated bills were presented. The state would also lose the "gatekeeper" capacity and role that the Project Review Committee provides in ensuring qualified public bodies are using appropriate alternative project procedures on their projects.

If public bodies were to lose the ability to use the GC/CM contracting procedure, the state would lose the benefit of integrating construction professionals early in the design process to improve constructability of a project and to maximize value and cost savings. Public bodies would also lose the ability to select the general contractor (GC/CM) based on qualifications and price (and not just price.)

If public bodies were to lose the ability to use the DB contracting procedure, the state would lose the benefit of: selecting this method for projects with highly specialized equipment or repetitive or simpler design; selecting a design and construction team based on qualifications; and saving time on getting construction started and completed.

If public bodies were to lose the ability to use the JOC contracting procedure, the state would lose the benefits of:

- Executing small projects quickly
- Saving money when full design is not needed, even when consultants are involved
- Saving owner project management time for ease of use.

Repeal, or sunset of RCW 39.10 would cause the elimination of all the effective alternative public works procurement methods (Design Build, GC/CM, and JOC), and would erode the benefits of the collaborative nature of project construction.

Attachment

Summary of 2007 CPARB Proposed Legislation 2SHB1506 – Changes and extension of RCW 39.10 Alternative Public Works Legislation.

Capital Projects Advisory Review Board Summary of Proposed Legislation 2SHB1506

April 2007

Summary of proposed changes to RCW 39.10 as passed by the 2007 Legislature 2SHB 1506. Find more information on the Capital Projects Advisory Review Board (CPARB) website: <http://www.des.wa.gov/cparb/>.

New sunset for alternative public works contracting procedures – June 30, 2013.

This bill modifies RCW 39.10 (and several others) and addresses alternative public works procedures, known as design-build (DB), general contractor/construction manager (GC/CM), and job order contracting (JOC).

Sec. 101 Expands the definition of public bodies and authorized users for the DB and general contractor/construction manager (GC/CM) alternative public works contracting procedures. This is done in conjunction with a new centralized project review committee that reviews and approves public works projects using DB or GC/CM procedures and certifies public bodies for three years to use these procedures for projects with a total project cost of \$10 million.

Sec. 102 and 103 Capital Projects Advisory Review Board– The bill adds six board members for more balance between public and private sectors. It updates duties of the board to analyze and recommend improvements to traditional and alternative public works: deletes those already completed/addressed, adds appointment of the project review committee, and data collection for alternative public works contracting procedures.

Sec. 104 to 109 Project Review Committee – The Board establishes this Committee to review and approve GC/CM and DB projects and project teams and to certify public bodies for three years to use these procedures for projects with a total project cost of \$10 million. The committee also reviews and approves the use of GC/CM procedures by certified public bodies for projects under \$10 million. The Committee will have balanced representation on panels of at least six members to evaluate public bodies and projects. The Committee will hold regular public meetings as often as necessary to ensure timely certifications and project approvals. It will publish notice of meeting, post notice and project information on its website, and have public comment provisions. The Committee shall determine if public bodies meet specific qualifications and experience criteria to be certified or get project approval for use of alternative public works contracting procedures. If the Committee does not meet within 60 days of a public body's request, the application will be deemed approved. There also is an appeals process that goes to the Board. The public body must comply with the Board's final determination. This Committee will eliminate two boards: the Public Hospital Districts Project Review Board and the School Districts Projects Review Board, currently authorized in 39.10.115 and 39.10.117 respectively.

Design Build (Section 200)

1. Project and Owner criteria developed.
2. Project thresholds remains at \$10 million.
3. Data collection will be required from public body, designer, contractor and subcontractors.
4. Selection process modified to be less onerous (and less costly) for Phase 1 submittals.
5. Pre-engineered metal or pre-fabricated modular building projects are allowed to use design build and are not subject to approval by the Project Review Committee.
6. Parking garage projects may use design build process regardless of cost and subject to Project Review Committee process.
7. Deleted student housing over \$5 million from allowable use.
8. If all proposals are rejected, the public body must provide its reasons in writing to the proposers.
9. Except for utility projects, the public body shall not use design-build procedure to procure operations and maintenance services for a period longer than three years.

General Contractor/Construction Manager (Section 300)

1. Maximum Allowable Construction Cost may only be negotiated when design is sufficiently complete at 90 percent.
2. Major bid packages may be bid prior to agreement of MACC. GC/CM may issue intent to award.
3. Public body may authorize early bid packages to be bid and awarded.
4. Owners must process change orders in 30 days or interest will accrue on completed work that has a price agreed to.
5. GC/CM may not hinder/delay subcontractors (with provisions).
6. GC/CM may not delegate mgmt duties to subcontractors (with provisions.)
7. Allow subs right to damages for changes to construction schedule or work (with provisions).
8. Subs must pay for damage they cause to other subs work.
9. Subs not required to waive bond and retainage rights except for payments received or to be received.
10. When GC/CM wants to make pre-bid determination of subcontractor eligibility (prequalify subs) require publishing of intent and screening criteria and provide hearing
11. Responsibility shall be determined in accordance with criteria listed in the bid documents.
12. Negotiated support services are defined and cannot be delegated to the subcontractors.
13. Eliminate/delete requirement to list subcontractors for sub-bids for GC/CM.
14. Purchase of equipment cannot be assigned to subcontractors and would be counted toward self-performed work.
15. Public body must confirm that a constructability analysis has been done prior to bidding.
16. Data collection will be required from public body, designer, contractor and subcontractors.
17. Project thresholds have been removed for GC/CM (no longer \$10 million).
18. Incentives cannot come from MACC contingency intended for coordination of subcontractor work.
19. Project criteria modified.
20. A public body shall not evaluate or disqualify a proposal based on terms of a collective bargaining agreement.
21. In preparing subcontract bid packages the GC/CM shall not be required to violate or waive terms of a collective bargaining agreement.

Job Order Contracting (Section 400)

1. No expansion of currently authorized users, except Parks may use Enterprise Services work orders.
2. Work order dollar limits to increase allowing two work orders \$300,000 - \$350,000, all others \$300,000 maximum.
3. Total \$4 million dollar limit on JOC
4. Changes amount of subcontracted work from 8 percent to 90 percent.
5. Distribute work to more than one subcontractor.
6. Advertise to subs once a year.
7. Report data on JOC projects.
8. Use other available lists to get the word out to contractors, i.e. small works rosters.
9. Cannot hire JOC for design not associated with work order.
10. If project needs design, procurement of designer must be in line with RCW 39.80.040.

Sec. 502 Allows projects already approved by the Public Hospital District and Public School District Project Review Boards not have to go to the Project Review Committee for approval. The board can grant an exemption from any provision of the legislation for projects advertised before the effective date of the legislation. A public body seeking an exemption must submit a request in writing to the board no later than December 31, 2007, and the board must respond within 60 calendar days.