

Alternative Public Works Procedures Sunset Review: Legislature Should Continue Authority to Use Alternative Procedures Report 13-2

February 20, 2013



STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

STUDY TEAM

Mark Fleming
Eric Thomas

PROJECT SUPERVISOR

Valerie Whitener

LEGISLATIVE AUDITOR

Keenan Konopaski

Copies of Final Reports and Digests are available on the JLARC website at:

www.jlarc.leg.wa.gov

or contact

Joint Legislative Audit & Review Committee

1300 Quince St SE
Olympia, WA 98504-0910
(360) 786-5171
(360) 786-5180 FAX

REPORT SUMMARY

The Legislature Should Continue the Authority to Use Alternative Public Works Procedures

Under the sunset statutes, the authority for public bodies to use alternative procedures to construct public works terminates on June 30, 2013. These statutes further direct JLARC to review the use of these procedures. This JLARC sunset review recommends that the Legislature continue the authority to use alternative procedures. This review also recommends that public bodies maintain information to demonstrate compliance with a key statutory requirement and that the Capital Projects Advisory Review Board (CPARB) provide guidance for that purpose. CPARB should also clarify reporting for job order contracts and rethink how to monitor and evaluate the use of alternative procedures.

Alternative Procedures Provide Options for Managing Construction Risk

Awarding contracts based on the lowest responsible bid has been the traditional method for delivering public works projects and remains appropriate for many projects. However, this procedure, known as design-bid-build, creates potential risk by separating design and construction activities. The separate phases limit designers' ability to obtain practical advice based on construction contractors' experience. The separate phases also limit the contractors' ability to become familiar with projects before starting construction.

To mitigate these risks, many states have authorized alternative procedures that select construction contractors early in the design process based on qualifications rather than price. In Washington, these alternative procedures include general contractor/construction manager and design-build for projects over \$10 million and, with special approval, for projects under \$10 million. These procedures integrate the design and construction teams, with the goal of allowing contractor expertise to inform the design and improving communication among the project owner, designer, and contractor. Job order contracting, an alternative procedure for projects under \$350,000, provides an on-call contractor and fixed pricing for small projects.

Public Bodies Are Following Statutory Requirements Established to Ensure the Public Interest

In reauthorizing use of alternative procedures in 2007, the Legislature established requirements to ensure that the alternative procedures would be implemented in a fair and open process based on objective criteria.

As shown on the following table, JLARC’s review of a sample of projects found that public bodies follow these requirements, although documentation of that compliance is sometimes lacking.

| Requirement | GCCM | DB | JOC |
|--------------------------------------|------|-----|-----|
| Project Review Committee approval | Yes | Yes | NA |
| Used for appropriate projects | Yes | Yes | NA |
| Public notice | Yes | Yes | Yes |
| JOC contract & subcontracting limits | NA | NA | Yes |
| GCCM subcontract limits | Yes* | NA | NA |

*Documentation of full compliance was lacking for some projects.

Project Managers Value Option of Alternative Procedures for Delivering Certain Types of Projects

A consensus exists among project managers contacted by JLARC that alternative procedures are an important option for delivering large, complex projects or projects that need to meet a specific schedule. The managers stated that alternative procedures improve project quality and value through collaboration among project owners, architects, engineers, and construction contractors.

CPARB Should Rethink Its Approach to Collecting Project Information

CPARB’s effort to collect project data for evaluating public works contracting has not produced an accurate and reliable database. Even if data problems are corrected, differences among project characteristics limit the comparability of any quantitative results based on this data. For these reasons, this sunset review does not use the CPARB data to evaluate project performance and relies instead on case studies of selected projects and follow up interviews.

In addition to collecting project data, CPARB has used task forces, subcommittees, and other methods for obtaining information needed to fulfill its statutory responsibility to evaluate contracting procedures and recommend policies to the Legislature. These methods are more likely to provide timely, accurate, and reliable information needed to develop recommendations about public works contracting.

Recommendations

| | |
|---|--|
| 1 | The Legislature should reauthorize the alternative public works, Chapter 39.10 RCW. |
| 2 | CPARB should revise job order contract reporting to clearly identify separate contracts with the same contractor during the annual July 1-June 30 reporting period. |
| 3 | Public bodies using GCCM should obtain information on project subcontract awards and payments and provide a final project report on their GCCM subcontracting to CPARB. |
| 4 | CPARB should refocus its efforts and limited resources on collecting information that will more readily assist the Board in developing recommendations to improve public works delivery methods. |