

State of
Washington
House of
Representatives



July 7, 2008

Mr. Robert Maruska, Chair
Capital Projects Advisory Review Board
c/o Nancy Deakins, Coordinator for CPARB
Department of General Administration
Post Office Box 45848
Olympia, Washington 98504

Dear Mr. Maruska:

On June 12, 2008, the University of Washington's (UW) Board of Regents approved a rule to establish procedures for using an alternative contracting method to expedite the construction/remodeling of Husky Stadium. (WAC 478-350-010 through 478-350-050, attached). We understand that this proposed alternative contracting method was not brought to the Capital Projects Advisory Review Board for review and approval.

Chapter 39.10 RCW establishes a policy for awarding public works contracts using alternative contracting methods, rather than the traditional design, bid, build method in which the contract is awarded to the responsible bidder who submits the lowest responsive bid. The legislative intent is "to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures" (RCW 39.10.010).

Originally established in 1994, Chapter 39.10 RCW was intended to allow public entities to use alternative contracting procedures under certain circumstances following processes established by law. The contracting procedures authorized by law include a design-build method, a general contractor/construction manager method, and a job order contracting method. In the enabling legislation, the University was specifically listed as a public agency authorized to use these new, alternative works contracting methods.

In 2005, the Capital Projects Advisory Review Board (CPARB) was created to evaluate public capital projects construction processes and to advise the Legislature on policies related to alternative public works delivery methods (ESHB 1830). Specifically, the Board must (1) develop and recommend criteria that may be used to determine effective and feasible use of alternative contracting procedures; (2) develop and recommend policies to enhance the quality, efficiency, and accountability of capital construction projects through

Mr. Robert Maruska
July 7, 2008
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the use of traditional and alternative delivery methods and make recommendations for expansion, continuation, elimination, or modification of alternative public works contracting procedures; and (3) evaluate the potential future use of other alternative contracting procedures.

Pursuant to Chapter 39.10 RCW, we are requesting that CPARB evaluate the UW's proposed alternative contracting method for the construction/remodeling of Husky Stadium, and, if it determines that the method is a feasible and effective procedure, to "prescribe appropriate requirements to ensure that such contacting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures." We also request that you provide us with written comments explaining your conclusions at your earliest convenience.

Sincerely,



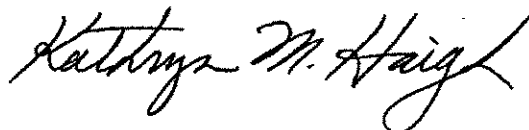
BILL FROMHOLD, Chair
Capital Budget Committee



TIMM ORMSBY, Vice Chair
Capital Budget Committee



SAM HUNT, Chair
State Government & Tribal Affairs Committee



KATHY HAIGH, Chair
Appropriations Subcommittee on Education

Enclosure

Chapter 478-350 WAC

ALTERNATIVE CONTRACTING PROCESS FOR THE UNIVERSITY OF WASHINGTON

NEW SECTION

WAC 478-350-010 Authority. The University of Washington adopts these rules pursuant to RCW 28B.20.140.

NEW SECTION

WAC 478-350-020 Purpose. The purpose of this chapter is to establish a fair, open, and efficient method by which the university may, under certain circumstances, contract for the erection and construction of university buildings or improvements thereto, in lieu of other statutorily authorized contracting methods. These rules are intended to protect the best interests of the university and assure the delivery of quality work and products at a reasonable price under the most advantageous terms.

NEW SECTION

WAC 478-350-030 Applicability. The contracting method set forth in this chapter may be used only when the president of the university finds that all of the following criteria are met:

(1) The buildings or improvements involved are part of the university's intercollegiate athletics facilities, include renovations to Husky Stadium, and have a total project cost in excess of one hundred million dollars;

(2) The design or construction of the building or improvement or its construction schedule may be directly impacted by large construction projects being planned or constructed by other agencies or private developers;

(3) Postponing the building or improvement or delaying it through the use of other contracting methods is likely to have a

significant adverse effect on the operation, mission, or financial interests of the university; and

(4) The building or improvement may benefit from a contracting method that integrates services including but not limited to a developer, designer, construction manager and contractor being on the same team and working collaboratively.

A finding by the university president that a project meets all of the above criteria shall be subject to review by the University of Washington board of regents at their discretion.

NEW SECTION

WAC 478-350-040 Contracting method. Upon an approved finding that a project meets the criteria set forth above, the president or the president's designee may proceed to conduct a competitive process that is open, fair, and unbiased and results in one or more contracts with a qualified entity or team on the most advantageous terms. The process must include at least the following elements:

(1) RFQ/RFP. Contracts will be awarded through either a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process or a combination thereof. The RFQ/RFP will include a clear description of what the university believes to be most important about the project as well as the weight of selection criteria.

(2) Public notice. The university shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the project will be constructed, a notice of its RFQ/RFP, and information regarding the availability and location of the RFQ/RFP documents.

(3) Selection criteria. Selection criteria shall include, but are not limited to, qualifications of the project team, technical excellence and competence, experience, capacity to accomplish the work, ability to deliver a quality project, past performance of the team or its constituent members, and price or fee, taking into consideration the estimated cost of construction as well as the long-term performance, operation and maintenance of the building or improvement.

(4) Negotiations. The university shall first attempt to negotiate a contract with the entity deemed to have submitted the best overall response. If such negotiations are not successful, the university may proceed to negotiate with the entity deemed to have submitted the next best response.

NEW SECTION

WAC 478-350-050 Prevailing wages, bonds and retainage. Any contract awarded pursuant to these rules shall require full compliance with applicable sections of chapters 39.08, 39.12, and 60.28 RCW. The selected entity shall also be encouraged to work closely with the university's business diversity program.

RCW 28B.20.140

Powers and duties of regents — Contracts for erection of buildings or improvements.

The board of regents shall enter into such contracts with one or more contractors for the erection and construction of university buildings or improvements thereto as in their judgment shall be deemed for the best interest of the university; such contract or contracts shall be let after public notice and under such regulations as shall be established by said board or as otherwise provided by law to the person or persons able to perform the same on the most advantageous terms: PROVIDED, That in all cases said board shall require from contractors a good and sufficient bond for the faithful performance of the work, and the full protection of the state against mechanics' and other liens: AND PROVIDED FURTHER, That the board shall not have the power to enter into any contract for the erection of any buildings or improvements which shall bind said board to pay out any sum of money in excess of the amount provided for said purpose.

[1969 ex.s. c 223 § 28B.20.140. Prior: 1909 c 97 p 242 § 9; RRS § 4562. Formerly RCW 28.77.137.]

"Issue" Summary

Updated 7/08/08

Subject: Apply prevailing wage laws to all projects that are delivered via public/private partnerships and all projects where public funds are used or where tax incentives or leases have been allowed on public property or where public land has been sold for below market value to encourage economic development.

Objective: Revise 39.12.020 to define projects covered by prevailing wage to include projects that involve tax incentives, loans, sales of public property below market value, leases of public property to private entities.

Strategies: Educate stakeholders on the importance of prevailing wage as a local and state economic investment tool. Craft, Introduce and pass legislation requiring the application of prevailing wage on Public Private partnerships using California statute as a template.

1. Introduce in CPARB and agree that this proposal has an "impact of contracting methods on project outcomes" and is therefore applicable to CPARB.
2. CPARB to support the bill.
3. Introduce in 2009 Legislative Session.

Stakeholders: Public Bodies, Contractors, labor

Why this is a matter under CPARB authority:

1. 39.10.200 "The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe the appropriate requirements to ensure that that such contracting procedure serve the public interest..."
2. 39.10.220. "The board is created.....to provide an evaluation of public capital construction processes, including the impact of contracting methods on project outcomes and to advise the legislature on polices related to public works delivery methods."
3. 39.10.230 "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 modifications of the public alternative public works contracting methods."

Certain Public/ Private partnerships and special incentives granted by public bodies are alternative public works contracting procedures designed to benefit the public by using public money or assets in some form. These alternatives delivery methods "compete" with GCCM and D/B to serve the public and therefore should have many of the same measures and checks and balances to effectively serve the public.

While some of the public/private partnerships are authorized under other statutes, their effectiveness should be enhanced by the conditions that are specified for alternative public works projects.

These are clearly public construction processes for the public interest and CPARB should offer advice to the legislature on policies related to public works delivery methods.

Timelines: CPARB July 2008, Legislative Session 2009

Attachments:

1. White paper by WSBCTC
2. SB6938
3. California SB 975 & description of effect of SB 975 in California



WASHINGTON STATE BUILDING & CONSTRUCTION TRADES
COUNCIL, AFL-CIO

AFFILIATED WITH THE BUILDING & CONSTRUCTION TRADES DEPARTMENT, AFL-CIO
MIKE GRUNWALD
DAVID JOHNSON

Application of Prevailing Wage Laws as Public Investments
Re: Public/Private Partnerships
SB 6938 and HB 3337

Federal and state prevailing wage laws are economic policy tools enacted decades ago that have successfully stabilized local contractors, construction-related businesses and skilled workforces by requiring payment of locally established prevailed wages during the construction of public funded projects. As more projects are permitted to be constructed without enforcing prevailing wage laws, a local community's foundation to retain and encourage quality constructors erodes and apprentice opportunities are lost.

Sound investments through public works reach far deeper than requirements to pay area standard wages. Greater consideration must be paid to an increasing practice across governmental entities where valuable public property and future revenues are traded away or sold below market value by granting tax incentives and deferments, no interest or reduced loans, and long-term land and property leases at greatly reduced values in attempts to promote development that may not prove to be in the public's best interest over time.

It is our belief that meaningful economic development begins with construction, as the first shovel of dirt is turned, and not simply at a projects ribbon cutting, or when a lease of a completed structure is transferred to the tenant. SB 6938 and HB 3337 would clarify in statute that if a value of a construction project is publicly contributed, prevailing wage laws apply throughout construction on the project.

Furthermore, the Building Trades endorses SB 6938 and HB 3337 to address an increasingly problematic and short-sighted approach of some public entities entering into agreement with private developers to construct projects that not only side step prevailing wage standards, but reduce the public's authority and long-term value of publicly owned investments.

California implemented such language into law in 2001 that has proven extremely beneficial to state and local entities to provide area standard wages for workers, leveled the playing field for local contractors to acquire local publicly-funded projects to continue providing a greater degree of economic stability for local communities, and to scrutinize public development investments for true value and greatest return to constituent communities.

SENATE BILL 6938

State of Washington

60th Legislature

2008 Regular Session

By Senators Prentice, Kohl-Welles, McAuliffe, and Kline

Read first time 02/07/08. Referred to Committee on Ways & Means.

1 AN ACT Relating to the application of chapter 39.12 RCW to
2 construction projects that involve tax incentives, loans, or public
3 land or property that is sold or leased; and amending RCW 39.12.020.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 39.12.020 and 2007 c 169 s 1 are each amended to read
6 as follows:

7 The hourly wages to be paid to laborers, workers, or mechanics,
8 upon all public works and under all public building service maintenance
9 contracts of the state or any county, municipality or political
10 subdivision created by its laws, shall be not less than the prevailing
11 rate of wage for an hour's work in the same trade or occupation in the
12 locality within the state where such labor is performed. Projects
13 covered by this chapter include, but are not limited to, any work,
14 construction, alteration, repair, or improvement other than ordinary
15 maintenance that involves tax incentives established by the state or
16 any county, municipality, or political subdivision created by its laws;
17 loans provided by the state or any county, municipality, or political
18 subdivision created by its laws; sales of public land or property to a
19 private entity for less than fair market value by the state or any

1 county, municipality, or political subdivision created by its laws; or
2 leases of public land or property to a private entity by the state or
3 any county, municipality, or political subdivision created by its laws.

4 For a contract in excess of ten thousand dollars, a contractor required
5 to pay the prevailing rate of wage shall post in a location readily
6 visible to workers at the job site: PROVIDED, That on road
7 construction, sewer line, pipeline, transmission line, street, or alley
8 improvement projects for which no field office is needed or
9 established, a contractor may post the prevailing rate of wage
10 statement at the contractor's local office, gravel crushing, concrete,
11 or asphalt batch plant as long as the contractor provides a copy of the
12 wage statement to any employee on request:

13 (1) A copy of a statement of intent to pay prevailing wages
14 approved by the industrial statistician of the department of labor and
15 industries under RCW 39.12.040; and

16 (2) The address and telephone number of the industrial statistician
17 of the department of labor and industries where a complaint or inquiry
18 concerning prevailing wages may be made.

19 This chapter shall not apply to workers or other persons regularly
20 employed by the state, or any county, municipality, or political
21 subdivision created by its laws.

--- END ---

Senate Bill No. 975

CHAPTER 938

An act to amend Section 63036 of the Government Code, and to amend Section 1720 of the Labor Code, relating to the California infrastructure and economic development bank.

[Approved by Governor October 14, 2001. Filed
with Secretary of State October 14, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 975, Alarcon. California Infrastructure and Economic Development Bank.

Existing law, the Bergeson-Peace Infrastructure and Economic Development Bank Act, establishes the California Infrastructure and Economic Development Bank in the Trade and Commerce Agency. The act requires public works financed by the bank to comply with certain laws applicable to payment of prevailing wages on public works.

This bill would require any of those public works financed through the use of industrial development bonds under the California Industrial Development Financing Act to comply with those laws relating to payment of prevailing wages.

Existing law generally defines "public works" to include construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds.

This bill would redefine "public works" to include installation and provide that "paid for in whole or in part with public funds" means certain payments, transfers, credits, reductions, waivers, and performances of work, but does not include the construction or rehabilitation of affordable housing units for low- or moderate-income persons, as specified.

This bill would provide that certain private residential housing projects and development projects built on private property are not subject to the prevailing wage, hour, and discrimination laws that govern employment on public works projects.

This bill would also make technical, nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 63036 of the Government Code is amended to read:

63036. It is the intent of the Legislature that the activities of the bank be fully coordinated with any future legislative plan involving growth management strategies designed to protect California's land resource, and ensure its preservation and use it in ways which are economically and socially desirable. Further, all public works financed pursuant to this division, including those projects financed through the use of industrial development bonds under Title 10 (commencing with Section 91500), shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 2. Section 1720 of the Labor Code is amended to read:

1720. (a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(b) For purposes of this section, "paid for in whole or in part out of public funds" means the payment of money or the equivalent of money by a state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer, performance of construction work by the state or political subdivision in execution of the project, transfer of an asset of value for less than fair market price; fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, which are paid, reduced, charged at less than fair market value, waived or forgiven; money to be repaid on a contingent basis; or credits applied against repayment obligations.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter if the projects are not built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) (A) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(B) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(3) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code does not constitute a project that is paid for in whole or in part out of public funds.

(4) "Paid for in whole or in part out of public funds" shall not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code. (d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142 (d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a

portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8369.80) of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Sections 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or an ordinance or regulation, other than an ordinance or regulation adopted pursuant to this section, applies this chapter to a project, the exclusions set forth in subdivision (d) shall not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and shall include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

SENATE RULES COMMITTEE	SB975
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

UNFINISHED BUSINESS

Bill No: SB 975
Author: Alarcon (D)
Amended: 8/30/01
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE : 8-4, 4/24/01
AYES: Vincent, Chesbro, Dunn, Karnette, Machado,
O'Connell, Perata, Soto
NOES: Johnson, Brulte, Johannessen, Knight

SENATE FLOOR : 24-12, 4/26/01
AYES: Alarcon, Alpert, Bowen, Burton, Costa, Dunn,
Escutia, Figueroa, Karnette, Kuehl, Machado, Murray,
O'Connell, Ortiz, Perata, Polanco, Romero, Scott, Sher,
Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Johannessen, Johnson,
Knight, Margett, McClintock, Monteith, Morrow, Oller,
Poochigian

ASSEMBLY FLOOR : 51-29, 9/4/01 - See last page for vote

SUBJECT : California Infrastructure and Economic
Development Bank

SOURCE : State Building and Construction Trades Council

DIGEST : This bill defines "public funds" used in
"public projects" and states legislative intent that projects
financed through Industrial Development Bonds issued by the
California Infrastructure and Economic Development Bank
must comply with existing laws pertaining to prevailing

CONTINUED

wages.

Assembly amendments :

1. Exempt specified types of affordable housing, private residential housing, private development projects, and state manufacturing tax credits from the definition of "paid for in whole or in part out of public funds."
2. Exempt qualified residential projects, low income housing projects, and single family residential projects financed before December 31, 2003, unless another statute, ordinance or regulation applies this chapter to those specific projects.
3. Exempt de minimus subsidies, or reimbursements for costs that would normally be paid by the public, by a state or political subdivision to a private developer.

ANALYSIS : Existing law, the Bergeson-Peace Infrastructure and Economic Development Bank Act, establishes an Infrastructure Bank for the purpose of funding specified types of infrastructure projects by qualified public/private entities. (The Governor and Legislature provided an initial 450 million capitalization to the Bank in 1998 and increased the bank's funding by an additional \$425 million in the 1999-00 budget year.) Pursuant to the act's provisions, the legislative body of a local agency sponsor is required to make specified findings by resolution, prior to submitting a project to the Infrastructure Bank for consideration. The Infrastructure Bank may do the following, in addition to other enumerated duties: (a) issue bonds; (b) make loans; (c) make guarantees, credit enhancements, grants, contributions, or other financial enhancements; and, (d) issue both taxable and tax-exempt revenue bonds. The act requires public works financed by the Infrastructure Bank to comply with certain laws applicable to payment of "prevailing wages" on public works.

Existing law establishes, within the State Treasurer's Office, the California Industrial Development Financing Advisory Commission (CIDFAC) to provide technical assistance to city and county authorities that issue

Industrial Development Bonds (IDBs). CIDFAC independently reviews IDB applications for compliance with federal and state requirements and approves the sale of IDBs by local authorities. The program is intended to benefit economically distressed areas and to provide an alternative method of financing capital outlay that will increase employment or otherwise contribute to economic development.

This bill:

1. Declares the intent of the Legislature that projects financed through CIEDB, including projects financed through IDBs, comply with existing labor law pertaining to prevailing wages.
2. Includes "installation" in the existing definition of "public works."
3. Defines "public funds" used in public works as the following:
 - A. Payment of money or the equivalent of money by a state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
 - B. Construction work performed by a state or political subdivision in execution of a project.
 - C. Transfer of an asset of value for less than fair market price.
 - D. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations normally required in the execution of a contract that are paid, reduced, charged at less than fair market value, waived or forgiven.
 - E. Repayment of money and credits applied on a contingent basis.
1. States that if the state or political subdivision provides a direct or indirect subsidy to a private developer or reimburses a private developer for costs

that would normally be paid by the state or political subdivision, then the project is not subject to the requirements of this chapter if the costs or subsidy are de minimus in the context of the overall project.

2. Exempts the following from the definition of "paid for in whole or in part out of public funds" as proposed in this bill:
 - A. Affordable housing for low- or moderate-income persons either financed solely through the Low- and Moderate-Income Housing Fund established pursuant to current law or financed through a combination of the Fund and private funds.
 - B. Qualified residential projects financed on or before December 31, 2003, that are in whole or in part financed through bonds issued by the California Debt Limit Allocation Committee in the Office of the State Treasurer, unless another statute, ordinance, or regulation, applies this chapter to the qualified residential project.
 - C. Single family residential projects financed on or before December 31, 2003, that are financed in whole or in part through qualified mortgage revenue bonds, qualified veterans' mortgage bonds, and mortgage revenue certificates issued under the Qualified Mortgage Credit Certificate Program in the Office of the State Treasurer, unless another statute, ordinance, or regulation, applies this chapter to the single family residential project.
 - D. Low income housing projects that are allocated federal and state low income housing tax credits on or before December 31, 2003 by the Office of the State Treasurer, unless another statute, ordinance, or regulation, applies this chapter to the low income housing project.
 - E. Private residential housing on private land that is not built pursuant an agreement with a state agency, a redevelopment agency, or a local public housing authority.

F. Private development projects built on private property that are required by a state or political subdivision to construct improvements, if the following two conditions are met:

I. The state or political subdivision contributes no more money, or the equivalent of money, to the overall project than that which is required to perform the public work of improvement.

II. The state or political subdivision maintains no proprietary interest in the overall project.

1. State manufacturers' investment tax credits as allowed under current law for electronic, semiconductor, equipment, commercial space satellite, computer software, specified pharmaceutical, and other manufacturing.

Comments

According to the Assembly Third Reading analysis, this bill closes a loophole in law that exempts projects financed through IDBs issued by CIEDB from prevailing wage provisions of current law. The California Industrial Development Financing Act requires all other state and local agencies that issue IDBs to comply with prevailing wage provisions.

This bill establishes a definition of "public funds" that conforms to several precedential coverage decisions made by the Department of Industrial Relations. These coverage decisions define payment by land, reimbursement plans, installation, grants, waiver of fees, and other types of public subsidy as public funds. The definition of public funds in this bill seeks to remove ambiguity regarding the definition of public subsidy of development projects.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 9/5/01)

State Building and Construction Trades Council (source)
 State Council of Carpenters
 State Treasurer
 International Brotherhood of Electrical Workers Local Union
 340
 Laborers' International Union of North America
 Napa-Solano Counties Building and Construction Trades
 Council
 Santa Clara and San Benito Counties Building and
 Construction Trades Council
 Southern California Pipe Trades District Council 16
 United Association of Plumbers and Pipefitters Local #230

OPPOSITION : (Verified 9/5/01)

GioSoils Consultants, Inc.
 The Lee Group, Inc.
 California Association of Enterprise Zones
 California Association for Local Economic Development
 California Association of Sanitation Agencies
 California Chamber of Commerce
 California Coalition for Rural Housing
 California Housing Partnership Corporation
 California Municipal Utilities Association
 California State Association of Counties
 California Taxpayers' Association
 Cities of Bakersfield, Barstow, Blythe, Burbank, Chula
 Vista, Concord, Emeryville, Eureka, Fountain Valley,
 Fremont, Fullerton - Office of the City Council, Grover
 Beach, Hemet, Hesperia, Huntington Beach, Lakewood, La
 Quinta, Lawndale, Loma Linda, Lompoc, Moreno Valley,
 Norwalk, Rancho Mirage, Redding, Rosemead, San Clemente,
 Signal Hill, Thousand Oaks, Tulare, Visalia
 County of San Bernardino
 Coachella Valley Housing Coalition
 Del Webb's Sun City Palm Desert
 Economic Development Corporation
 Innovative Resort Communities
 League of California Cities
 Longs Drug Stores
 Non-Profit Housing Association of Northern California
 Rural Communities Housing Development Corporation
 San Diego Housing Federation

San Joaquin Housing Authority
Self-Help Enterprises
71 private Businesses
21 individuals

ARGUMENTS IN SUPPORT : Supporters of this bill note, for example, the discrepancy under existing law between a monetary transfer of funds to a developer that would trigger prevailing wage requirements and tax forgiveness or a fee waiver for an equivalent amount of funds that would not trigger prevailing wage requirements.

ARGUMENTS IN OPPOSITION : Opposition to this bill cites potential increased costs to public works projects financed with public funds as defined by this bill.

ASSEMBLY FLOOR :

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Horton, Jackson, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Maddox, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wesson, Wiggins, Wright, Hertzberg

NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Dickerson, Harman, Hollingsworth, Kelley, La Suer, Leach, Leonard, Leslie, Maldonado, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyland, Wyman, Zettel

TSM:sl 9/5/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Issue Summary
6/19/08

Subject: Include "housing authorities" in the definition of "Public Body" in RCW 39.10.210 (12)

Objective: Apparently, in RCW 35.82.070(10), housing authorities are exempt from 39.10 unless they are specifically included.

Strategies: Ask CPARB to approve the change in at the July meeting and include in recommended legislation for the 2009 session.

Stakeholders: Housing Authorities, Contractors, labor, Washington State Association of Housing Authority

Measures: N/A

Timelines:

Supporting Documents:
CPARB minutes 11/8/2007.

Issue Summary
7/1/08

Subject: Prefabricated Modular Buildings in Design Build (39.10.300 (3))

Objective: Clarify the definition of "prefabricated modular buildings".

The current design build statute provides an exemption to the Project Review process for "prefabricated modular buildings". This exemption was intended to apply to single modular buildings like a school district "portable".

There may be a potential that a public body could procure a large scale project using multiple "prefabricated modular buildings" and avoid the Project Review Committee process. The project would not benefit from the input and review provided by the PRC.

Strategies:

1. Revise the statute to clarify that the exemption is limited to the procurement of up to 3 modular buildings per site per public body and with the a limit of 750 square feet per modular building.
2. Provide a definition for prefabricated modular buildings . i.e. "Single portable units limited to 750 square foot each. "
3. Revise the statute to remove the plural from prefabricated modular buildings.

Stakeholders:

Public Bodies, Labor, Architects, General Contractors, Subcontractors

Measures: (Action Steps)

Discuss the issue at July CPARB

If there is a consensus, direct legislative staff to confirm language.

Timelines:

CPARB meeting July of 2008

2009 Legislation

Notwithstanding the provisions of RCW 39.04.010, a state contracting authority or municipality is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract plans and specifications, with a low responsive bidder under the following conditions:

- (1) All bids for ~~((a state))~~ the public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;
- (2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and
- (3) The negotiated adjustment will bring the bid price within the amount of available funds.



SMALL WORKS BID LIMIT REVISIONS

Sec. 1 RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and 2007 c 133 s 4 are each reenacted and amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of ~~two~~ five hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster

or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the

invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from ~~one hundred two hundred fifty thousand~~ dollars to ~~two~~ five hundred thousand dollars, a state agency or local government (~~(, other than a port district,)~~) that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government

may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than ~~thirty-five~~ one hundred thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material suppliers, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the

right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

