

State of Washington
Joint Legislative Audit & Review Committee (JLARC)



**Alternative Public Works Procedures
Sunset Review: Legislature Should
Continue Authority to Use
Alternative Procedures**

Report 13-2

February 20, 2013

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Committee Approval

On February 20, 2013, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

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STATE OF WASHINGTON

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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.

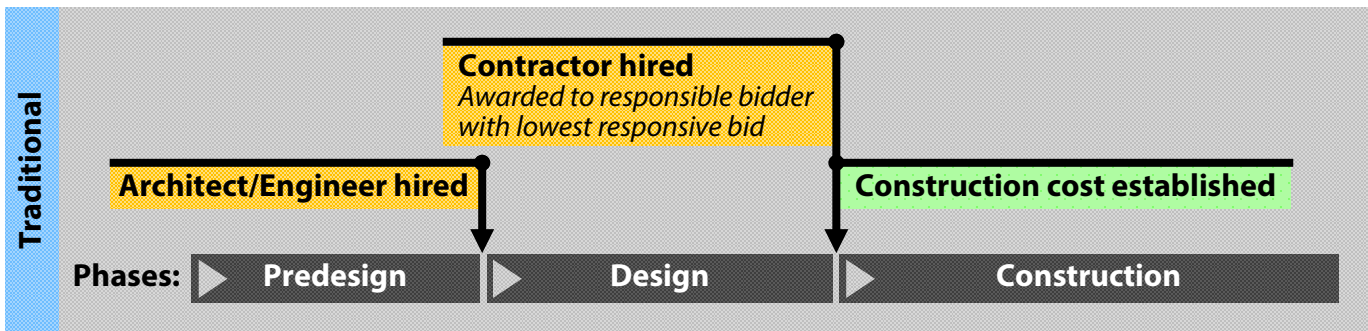
PART ONE – ALTERNATIVE PROCEDURES PROVIDE OPTIONS FOR DELIVERING PUBLIC WORKS PROJECTS

This part of the report provides background information on traditional and alternative approaches to public works contracting as practiced by public bodies. “Public bodies” refers to general or special purpose governments including state agencies, institutions of higher education, counties, cities, towns, ports, and school districts under Chapter 39.10 RCW are scheduled for termination in 2013.¹ “Public works” projects range from multi-million dollar public buildings such as classrooms, office space, and prisons to small projects, such as roof replacement and fence installation, costing less than \$350,000.

Project delivery refers to the way public works projects are designed, constructed and managed. Washington has traditionally used a delivery procedure that separates design and construction and awards construction contracts based on lowest responsible bid. Since 1991, however, Washington has authorized and expanded use of delivery procedures that select construction contractors for certain types of projects based on contractor qualifications rather than solely on price. These alternative procedures have not superseded the traditional contracting procedure, but alternative procedures have become common for delivering complex, high value projects.

Traditional Project Delivery Separates Design and Construction

**Exhibit 1 – Traditional Design-Bid-Build Procedure
Separates Design and Construction**



Source: JLARC analysis of public works contracting procedures.

The traditional method for delivering capital projects in Washington, like most states, is known as **design-bid-build (DBB)**. In DBB delivery, a project owner contracts with an architect/engineer to design a proposed building (see Exhibit 1). The architect/engineer develops a series of increasingly detailed drawings and specifications as the project moves through schematic design and design development phases. These specifications and drawings, known as construction documents, specify the many individual components of the proposed building. Once complete, these documents are put out for bid by prospective construction contractors. In DBB, the construction documents are a

¹ The Washington State Department of Transportation is authorized to use alternative procedures under RCW 47.20.780 which is not subject to the sunset provision and is therefore not addressed in this review.

contractor's first encounter with a project and are the primary basis on which to develop a bid for the project. The quality of the contractor's bid will depend on the quality of the documents provided and the contractor's skill in interpreting them. The selection criterion for this type of project delivery is lowest responsible, responsive bid that falls within the estimated project costs. A responsible bid means that the contractor is capable and qualified to deliver the project. A responsive bid is one that meets the requirements of the bidding documents.

Construction begins shortly after a contract is awarded. If the contractor encounters problems that are not addressed in the design specifications or discovers conflicts within the specifications during construction, the owner, architect/engineer, and contractor must develop a solution which, depending on the nature of the problem, may cause delays and add costs. Determining responsibility for the problem and associated costs may further delay a project as the contractor may not want to add work to the project without additional compensation and the owner may not want to add costs to the project.

The design-bid-build delivery method applies to public works of all sizes. Regardless of size, detailed designs are required to provide prospective contractors with the information needed to develop responsible, responsive bids. As noted above, the design process is separate from construction, with no overlap or contractor input into the design.

Alternative Project Delivery Integrates Design and Construction

Since 1991, the Legislature has authorized use of alternative procedures that select construction contractors during the design process, based on their qualifications rather than selecting contractors based on low bid after the design is completed. Two alternative procedures are available for large construction projects. Job order contract procedures are an alternative for very small projects.

Two Alternative Procedures for Large Projects

For large public works projects, two delivery alternative procedures are available: **general contractor/construction manager (GCCM)** and **design-build (DB)**.² Unlike traditional DBB contracting, these two processes select the construction contractor in the design phase so that the contractor's expertise is available to the designers.

General Contractor/Construction Manager

GCCM contracting is authorized by RCW 39.10.340 for specific uses in public works projects where:

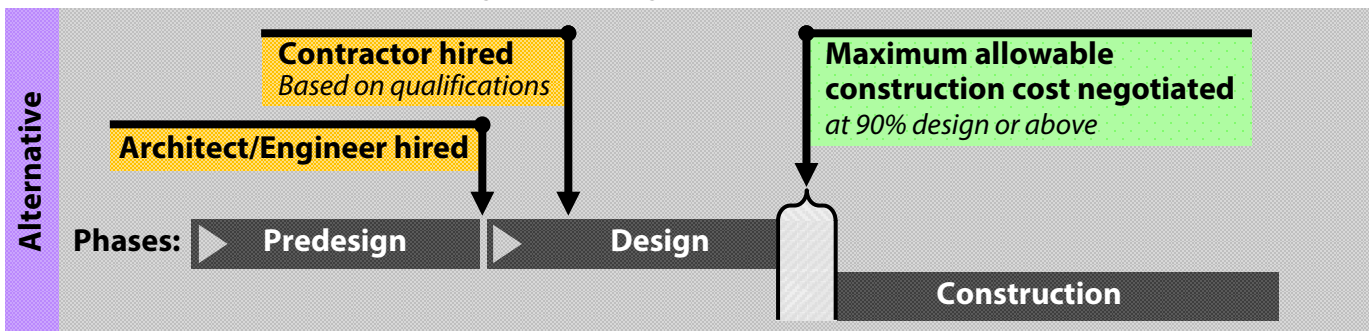
- Implementation of the project involves complex scheduling, phasing, or coordination;
- The project involves construction at an occupied facility which must continue to operate during construction;
- The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
- The project encompasses a complex or technical work environment; or
- The project requires specialized work on a building that has historic significance.

² For this report, large project means \$10 million or more.

Statutes governing certification of public bodies limit GCCM procedures to projects exceeding \$10 million. Public bodies must obtain prior approval to use GCCM procedures for individual projects under \$10 million.

The GCCM contracting procedure is characterized by a high degree of collaboration among the parties involved: the project owner, the architect/engineer, and the contractor. As shown in Exhibit 2, in GCCM contracting, the owner contracts with an architect/engineer for project design and separately selects a contractor based primarily on qualifications and experience as described in a request for qualifications. GCCM contractor selection takes place sufficiently early in design so that the contractor can work with the architect/engineer to identify potential conflicts, provide value engineering services, and offer possible design solutions that may reduce project costs. This early participation also provides the contractor with an ongoing understanding of the project and its risks which, in turn, may contribute to early problem identification or cost-saving suggestions.

**Exhibit 2 – General Contractor/Construction Manager Procedure
Integrates Design and Construction**



Source: JLARC analysis of public works contracting procedures.

When construction documents are 90 percent complete, the contractor and project owner negotiate the maximum allowable construction cost, including budgets for all major subcontract packages such as electric, mechanical, structures, and site work. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the selected firm, the public body may terminate negotiations with the firm and negotiate with the next highest scored firm.

The maximum allowable construction cost becomes the construction budget for the project. By law, all subcontracts are bid competitively. The GCCM contractor is responsible for managing the bidding process for subcontracts, except for any subcontracts where the GCCM contractor plans to submit bids. Those solicitations are managed by the project owner.

Design-Build

In design-build contracting, a single entity designs and constructs a public works project. Rather than the separate design and construction contracts characteristic of other delivery procedures, DB contracting is a single contract between the project owner and the DB contractor. The DB contractor, which may be a joint venture between an architectural/engineering firm and construction contractor, is fully responsible for designing and constructing a public works project.

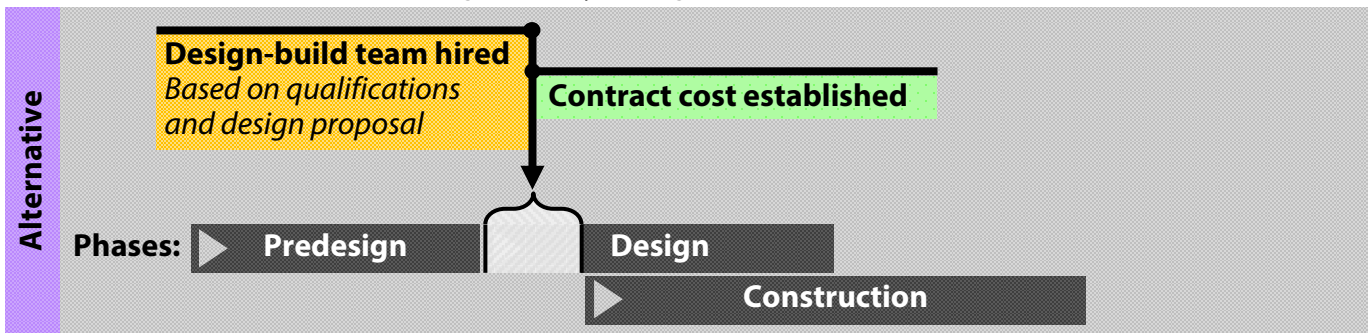
DB project delivery is generally limited to projects costing \$10 million or more although statutes allow for a limited number of demonstration projects below the statutory threshold. RCW 39.10.300 authorizes DB procedures for projects where:

- The design and construction activities, technologies, or schedule to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology;
- The project design is repetitive in nature and is an incidental part of the installation or construction; or
- Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

As shown in Exhibit 3, DB contracting is a two-step procedure that begins with a request for a design-builder. The project owner evaluates prospective firms’ qualifications and experience against the evaluation factors specified in the request to identify finalists who are asked to submit detailed proposals and a firm price for the project. Upon receiving final proposals, the owner evaluates and selects the contractor whose proposal is determined to best meet the project requirements. The successful finalist’s proposal establishes the contract cost for the project.

Because the design-builder is a single entity, it can draw on the construction contractor’s expertise throughout the design phase, in much the same manner as in GCCM contracting. However, because the design-builder is a single entity, it assumes all risk for the quality of the design documents and specifications. Unlike the GCCM procedure, the DB project owner typically has limited input to the project design.

**Exhibit 3 – Design-Build Procedure
Single Entity Designs and Constructs**



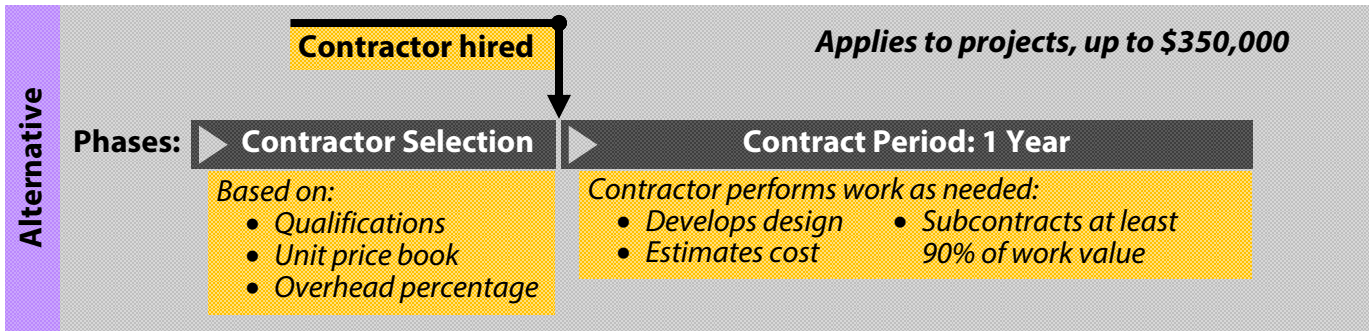
Source: JLARC analysis of public works contracting procedures.

Job Order Contracting for Small Projects

Washington law also provides an alternative procedure for small projects: **job order contracting (JOC)**. The JOC procedure allows specified public bodies (the Department of Enterprise Services, the state research universities, regional universities, and the Evergreen State College, cities and counties above threshold populations, port districts and public utility districts above threshold revenue amounts, school districts, Sound Transit, and the state ferry system) to establish job order contracts with a construction contractor who will be “on call” for a variety of projects during the contract period.

Under the JOC method, a public body selects a contractor based on qualifications in response to a request for qualifications and an identified price book for labor and materials to be supplied under the JOC (Exhibit 4). The public body evaluates contractor qualifications and selects the most qualified finalists who submit final proposals and a percentage bid for managing each project. This bid is known as the contractor’s coefficient and is a markup or markdown of the prices included in the identified price book that the public body plans to use. Once the JOC is in place, the public body can call upon the JOC contractor as needed for small projects, also known as work orders. The JOC contractor develops a scope of work, any plans and specifications needed to meet permit requirements,³ and identifies subcontractors to perform the work. The price for labor, materials and equipment is determined using the price book identified in the request for qualifications, and the contractor’s overhead costs are calculated using the contractor’s coefficient. Each work order is submitted to the owner for review and approval.

**Exhibit 4 – Job Order Contracting Procedure
Contractor Designs and Constructs**



Source: JLARC analysis of public works contracting procedures.

According to project managers, JOC eliminates the time required to develop specifications and drawings needed to bid out projects using the small works roster procedure (RCW 39.04.155 and Chapter 200-330 WAC). The more traditional small works procedure allows state agencies and authorized local governments to maintain a roster of responsible contractors who may be solicited to bid on projects with an estimated cost of \$300,000 or less. In contrast to the small works roster procedure, which uses the DBB approach, project managers believe that JOC speeds small project delivery and reduces price uncertainty. A review of job order contracting at the Los Angeles Unified School district showed that the time required to begin construction using the job order contract procedure was 150 to 223 days shorter than the time needed to bid comparable projects.

³ The public body may also procure these services separately from the job order contractor.

The Legislature’s Approach to Alternative Procedures Has Evolved

As shown in Exhibit 5, below, authority to use alternative procedures has grown steadily since the Legislature first authorized use of GCCM procedures in 1991 for use in Department of Corrections projects.

Exhibit 5 – Legislature Has Steadily Expanded Authority for Alternative Public Works Procedures

1991	Department of Corrections authorized to use GCCM prison construction
1994	Authority to use GCCM and DB procedures expanded through June 1997 to: <ul style="list-style-type: none"> • Department of General Administration (now the Department of Enterprise Services) • University of Washington • Washington State University • Cities, counties, and port districts meeting specific thresholds <p>Temporary independent oversight committee created</p>
1997	Authority to use alternative procedures and oversight committee extended through June 2001
2000	School districts authorized to use alternative public works procedures
2001	Authority to use alternative procedures extended through June 2007 Minimum population threshold for cities to use alternative public works procedures lowered
2003	Hospital districts and State Ferry System authorized to use alternative procedures Job order contracting authorized for specified public bodies
2005	Capital Projects Advisory Review Board created
2007	Authority to use alternative procedures and Capital Projects Advisory Review Board extended through June 2013 Project Review Committee created to approve use of GCCM and DB procedures by public bodies
2009	Authorized up to 10 DB projects between \$2 and \$10 million and two demonstration DB projects that include operation and maintenance services for more than three years
2010	Alternative procedure for GCCM mechanical and electrical subcontracting established
2012	Expanded use of job order contracting to regional universities and Sound transit; increased work order limits

Source: JLARC review of legislation, 1991-2012.

An important step in the evolution of alternative procedures in Washington has been the creation of the Capital Projects Advisory Review Board (CPARB) to evaluate contracting procedures and the Project Review Committee to review requests to use GCCM and DB procedures. A temporary alternative public works oversight committee was first established in 1994. The Legislature established CPARB in 2005 and re-affirmed its role in the 2007 statutory revisions. CPARB serves as a forum for discussion and review of contracting procedures. CPARB members are appointed by the Governor to represent the construction industry (general contractors, architects, engineers, specialty contractors, construction trades, labor, and minority and women businesses) and public owners including the Department of Enterprise Services and higher education. Other members representing public owners (cities, counties, port districts, school districts, and hospital districts) are appointed by their respective associations. In addition, each caucus of the Legislature appoints one of its members to the board.

CPARB has two primary duties. The Board organizes task forces and work groups to address issues related to public works contracting, collects project data, and makes recommendations on policies and proposed legislation affecting contracting procedures. This role is discussed further in Part Three. CPARB's second primary duty is to appoint members of the Project Review Committee (PRC). The PRC was created in 2007 to review individual requests to use GCCM or DB contracting procedures. The PRC can also certify public bodies to make their own decisions to use alternative procedures if those organizations demonstrate sufficient experience and staff needed to manage projects delivered using alternative procedures.

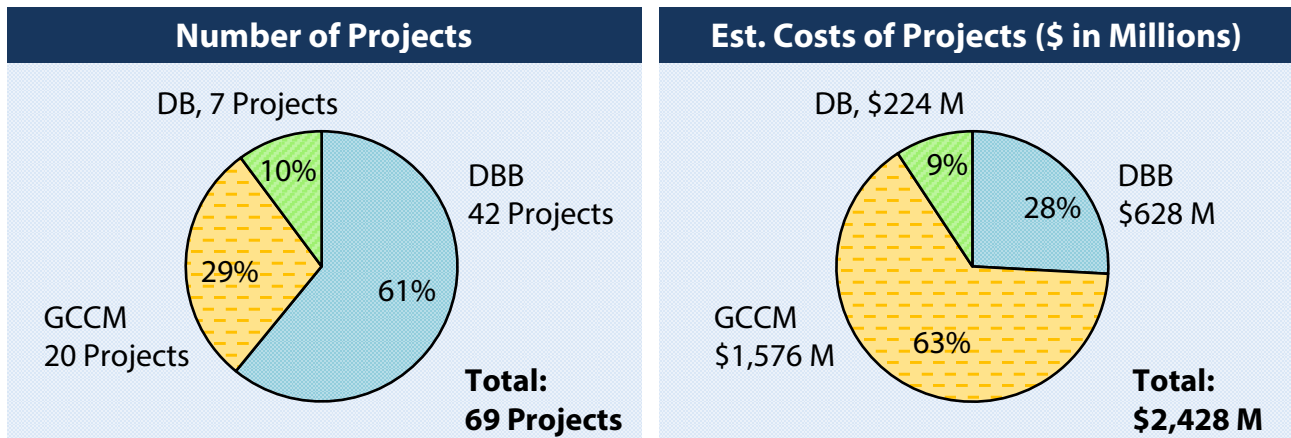
As of July 2012, the PRC has certified four public bodies to use both GCCM and DB procedures: the Department of Enterprise Services, University of Washington, and the cities of Seattle and Tacoma. Washington State University is certified to use the GCCM procedure. In addition, the PRC has approved nine DB and 42 GCCM projects at 39 public bodies.

In contrast to the limited and specific authorization to use alternative procedures enacted prior to 2007, virtually any public body in Washington may now request approval from the PRC to use GCCM or DB to construct major capital projects through June 30, 2013. Use of job order contracting remains limited to specific public bodies identified in statute.

Public Bodies Authorized to Use Alternative Procedures Continue to Use Traditional Procedures

Exhibit 6, on the following page, displays the delivery procedures used for projects under way (design or construction) in the spring of 2012 by the five public bodies certified by the PRC to use alternative procedures. As shown in Exhibit 6, traditional DBB project delivery is used for 61 percent of the projects. Alternative procedures account for the remaining projects, with GCCM accounting for 29 percent of projects and DB for 10 percent of projects.

Exhibit 6 – Current Projects at Public Bodies Authorized to Use Alternative Procedures Reflect a Mix of Delivery Methods



Source: Compiled by JLARC from information about projects in design or construction in the spring of 2012 provided by UW, WSU, DES, City of Tacoma and City of Seattle.

Based on project value, however, GCCM projects account for 63 percent of the project dollars compared to a 28 percent share for traditional DBB projects and 9 percent for DB projects. The difference in dollar and project distribution for these projects reflects the higher median value of GCCM projects, which is more than six times the median value of DBB projects. The median value of DB projects, which account for a relatively small number of projects, is twice the value of the DBB median.

The comparisons indicate that these public bodies continue to use a mix of traditional and alternative contracting procedures after they are approved to use alternative procedures.

PART TWO – THE LEGISLATURE SHOULD CONTINUE ALTERNATIVE PUBLIC WORKS AUTHORITY

JLARC recommends that the Legislature continue the statutory authority for public bodies in Washington to use alternative public works procedures because:

- Alternative procedures provide options for addressing risks inherent to the design-bid-build procedure;
- The alternative procedures authorized by Washington statutes are similar to procedures used widely throughout the United States;
- Public bodies are following the statutory requirements established to ensure alternative procedures are used in the public interest; and
- Project managers describe the alternative procedures as a valuable option for delivering certain types of projects.

The remainder of Part Two elaborates on the rationale for this first recommendation and answers the statutory sunset review questions. It also identifies three specific recommendations for improving transparency in reporting compliance with the statutory requirements.

Alternative Procedures Provide Options for Managing Construction Risk

As noted in Part One, the traditional design-bid-build delivery procedure is a linear process in which major phases are separate, following in sequence, with no overlap between phases and no contractor involvement prior to a contract award. In DBB delivery, the contractor's first opportunity to assess and understand the project occurs when the project specifications and construction documents are made available for review during the bidding process. Contractors' bids are based solely on the information presented in the specifications. Once a contract is awarded, the contractor's price is only guaranteed to the extent that actual construction does not deviate or change from the specifications. While this traditional approach works well for many projects, there are some limitations that can create risks, such as cost and schedule overruns, to projects.

Perceived Design-Bid-Build Risks

According to professional literature and discussions with project managers, perceived weaknesses in the DBB procedure include:

- **Lack of construction expertise during design.** Since contractor selection does not occur until after design is completed, the construction documents do not benefit from practical construction expertise that can identify and offer solutions for potential problems. Nor do designers have the benefit of experience-based alternatives that may offer opportunities for problem solving and cost savings. Small projects, contracted through the small works roster process, also experience similar separation between design and construction.

- **Price is not established until the bidding process is complete.** Project owners do not know whether bid prices will fall within the maximum allowable construction cost until bids are opened. If all bids exceed the maximum allowable cost, the project will be delayed until specifications can be revised and the project re-bid.
- **Limited ability to consider contractor qualifications and experience in selecting contractors.** Price is the primary criterion in selecting DBB contractors.
- **Limited opportunity to accelerate construction to meet a challenging project schedule.** No work can begin until a contract is awarded. Added costs and possible delays may be due to any change in the project such as unforeseen conditions, design errors, or owner changes in project scope.
- **Potentially adversarial relationship between project owners and contractors due to their differing goals.** Owners may focus on meeting project budgets and view the contractor's bid as a maximum price. Contractors may focus on maintaining their profit margin and view the bid as a minimum price.

Alternative Procedures Attempt to Mitigate Risk

For some projects, public bodies may determine that the inherent risks of DBB delivery may outweigh the benefits of selecting a contractor based on price alone. In those cases, alternative procedures provide options that attempt to mitigate those risks by engaging the construction contractor early in the major project design process. In both the GCCM and DB delivery procedure, contractor selection is based on qualifications and experience rather than solely on price. Once selected, the construction contractor participates in the design process, providing value engineering, constructability review, and practical input to address potential problems.

This early involvement allows the contractor to develop a fuller understanding of the project than is possible from reviewing construction specifications available in a bid package. Early contractor engagement also contributes to developing a collaborative relationship among the project owner, architect/engineer, and contractor. Although alternative procedures do not eliminate the risk of change orders during construction, the collaborative relationship provides basis for sharing the risks among the parties and determining which party will be responsible for the cost of the change order. In DBB projects, the contractor shares none of this risk.

In addition, alternative procedures provide the option of beginning construction before all design specifications are complete. Some construction activities, such as site work and foundations may be designed and initiated before the entire project is fully designed. This early initiation may enable a project to meet a challenging delivery schedule.

Although alternative procedures attempt to mitigate the risks of DBB delivery and are valued by project managers, alternative procedures do not guarantee successful project outcomes, nor are the procedures appropriate for all projects in all circumstances. Owners must assess their projects' unique needs and circumstances to determine which procedure will meet their requirements.

Alternative Procedures Are Widely Used Across the Nation

Washington’s use of Alternative public works procedures is consistent with national trends. JLARC review of state legislation shows that Washington is one of 49 states that allow use of GCCM procedures (known as Construction Manager at Risk in some states). DB procedures are allowed in 42 states, including Washington. Job order contracting is used in 47 other states in addition to Washington.

Like Washington, other states establish criteria for determining when alternative procedures may be used. These criteria are similar to those required in Washington. JLARC did not identify any state that has created a body comparable to the Project Review Committee for approving projects or certifying organizations to use alternative procedures.

Public Bodies Are Following the Statutory Requirements Established to Ensure Alternative Procedures Are Used in the Public Interest

In establishing statutory authorization to use alternative procedures, the Legislature reaffirmed that “the traditional method of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor.” The Legislature, however, noted that “under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria.” Chapter 39.10 RCW prescribes “appropriate requirements” to ensure that such contracting procedures serve the public interest.

These requirements include:

- Criteria to identify projects for which alternative procedures may be used;
- A Project Review Committee (PRC) to review requests to use alternative procedures, either for individual projects or on the basis of an organization’s ability to appropriately determine when to use alternative procedures;
- Public notice for key steps in the contracting process;
- Limits on job order contract and work order amounts; and
- Limits on the percentage of subcontracts that GCCM contractors may perform.

JLARC review of 18 selected projects found that public bodies generally comply with these requirements.⁴ However, compliance with GCCM subcontracting limits could not be verified for some projects.

⁴ JLARC selected 14 projects based on cost and schedule performance data and discussions with project staff at the five public bodies certified to use alternative procedures. JLARC also selected four projects from non-certified public bodies. The sample includes 15 GCCM and three DB projects. The sample illustrates how public bodies use alternative procedures and comply with statutory requirements. Because the sample was selected using non-probability techniques, the results cannot be generalized to the entire population of alternative public works projects.

PRC Procedures and Guidelines Are Consistent with Statutory Requirements

Approximately half of the projects JLARC reviewed were started prior to the creation of the Project Review Committee in 2007. Since that time, the PRC has developed procedures and guidelines to assist public bodies in determining whether alternative delivery is appropriate and beneficial for a specific project. The guidelines also identify the information needed to demonstrate the organizational and management requirements to successfully use alternative procedures.

JLARC review of PRC procedures and guidelines shows that they are consistent with statutory requirements. The PRC has certified five public bodies (DES, UW, WSU, and the cities of Tacoma and Seattle) based on their internal procedures and staff experience. One public body certification request was not approved and one public body certification was overturned by CPARB after an appeal was received. The Committee has also approved 42 individual GCCM and 9 DB projects at 39 public bodies. Nine requests were disapproved, four of which were approved upon resubmission.

Projects Meet Criteria for Use of GCCM and DB

As noted in Part One, public bodies may only use GCCM or DB if a project meets one or more criteria specified in statute. Each of the 18 projects in JLARC's sample met the criteria established by the Legislature for using alternative procedures.

JLARC reviewed the criteria the agencies identified for selecting alternative procedures for 15 GCCM and 3 DB projects. All three DB projects were initiated as projects requiring highly specialized design and construction activities, and technologies. JLARC found appropriate documentation for choosing GCCM delivery for 13 of the 15 projects reviewed. Descriptions of the remaining two GCCM projects provided during field visits were also consistent with statutory requirements for GCCM delivery. Specific detail for each project is shown below in Exhibit 7 on the following page.

**Exhibit 7 – GCCM Projects Reviewed Met Statutory Criteria
for Alternative Procedures**

Agency	Project Name	Complex scheduling	Occupied facility during construction	GCCM critical during design	Complex technical environment	Historic building
Department of Enterprise Services	SPSCC Science Complex Addition	✓		✓	✓	
	Cascadia CC Classroom Bldg #2	✓		✓	✓	
	Bellevue College Science & Technology Bldg	✓		✓	✓	
City of Seattle	King Street Station	✓	✓	✓		✓
University of Washington	Clark Hall	✓		✓	✓	✓
	Savery Hall	✓		✓	✓	✓
	PACCAR Hall	✓	✓	✓		
	Tower Data Center	✓	✓	✓	✓	
City of Tacoma	Green River Filtration Facility	✓	✓	✓		
Washington State University	Applied Technology Bldg				✓	
	Biotechnology Bldg	✓		✓		
	Global Animal Health Bldg	✓		✓	✓	
Skagit Co Public Hospital District # 2	Island Hospital	✓	✓	✓	✓	
Nine Mile Falls School District	Lake Spokane & Nine Mile Elementary renovations	✓	✓	✓	✓	
Othello School District	Lutacaga Elementary & McFarland Middle schools	✓	✓	✓	✓	

Source: JLARC review of selected project files and field visits.

Projects Meet Public Notice Requirements

Projects reviewed by JLARC met nearly all public notice requirements. Current statutes require that public bodies advertise their solicitations for design-build and GCCM contractor qualifications. Prior to the 2007, statutes required a series of notices and a public hearing for GCCM projects. JLARC reviewed public notices for 12 GCCM projects at the five certified public bodies and found all required public notices for ten projects.⁵ The two missing notices for two projects do not necessarily indicate noncompliance; rather it reflects what project managers were able to document from project files made available to JLARC.

⁵ JLARC reviewed three non-certified GCCM projects at public bodies where it did not make site visits. JLARC did not attempt to obtain notice documents for these projects.

All three DB projects met the requirement to issue public notice of their request for qualifications. Public bodies must also publicly advertise requests for job order contracting proposals. Job order contract reports for 2011 and additional information provided by DES show that all 10 contracts were advertised.

Job Order Contracts Meet Statutory Limits

State law limits the number of job order contracts a public body may have in place (DES is allowed four contracts, all others two), the total contract amount (\$4 million), and individual work order amounts (\$350,000). Review of the 2011 JOC reports to CPARB shows that all contracts met statutory limits. No public body had more than two contracts in effect at one time except DES. DES is authorized to have four contracts at any one time and did not exceed that limit. No contract exceeded the \$4 million limit nor did any contract exceed the dollar limits on individual work orders. In addition, all job order contracts reported for 2011 met the requirement to subcontract at least 90 percent of the work.

However, because contract periods do not correspond to the July 1-June 30 reporting period, the JOC report can create the impression of noncompliance. For example, DES had five contracts in effect during the 2011 reporting period. However, review of the contract dates shows that no more than four contracts were in place at any one time. Similarly, UW reported \$4.6 million in JOC costs during 2011. However, that amount includes \$705,000 for projects initiated under a prior year's contract and completed during the reporting period. Projects initiated under a second contract with the same contractor during the reporting period totaled just under \$3.9 million. Although both DES and UW complied with statutory requirements, the reporting format is misleading.

To help avoid an appearance of noncompliance, JLARC's second recommendation is that CPARB revise JOC reporting to more accurately identify individual contracts in place during the specified reporting period.

GCCM Subcontract Limits Could Not Be Verified for Some Projects

Under GCCM procedures, all subcontract packages are competitively bid. The GCCM contractor may compete for subcontracts but is limited by law to a maximum of 30 percent of the subcontracts. JLARC's review of 15 GCCM projects found evidence that 10 projects complied with this requirement, but information to verify compliance with the subcontract limits is not always available.

The GCCM contractor, in collaboration with the owner's representative, organizes construction work into discrete subcontract packages. The GCCM contractor manages the subcontract bid process except for subcontracts where the GCCM firm competes for a subcontract package. As a result, documentation for subcontracting is maintained by the contractor, although most project owners in the JLARC sample had that information as well.

For the 10 projects where information was available from project owners, JLARC verified compliance with the 30 percent limit. The lack of documentation for the remaining five projects does not clearly establish noncompliance. During field visits to one organization, JLARC staff viewed project documents that indicate that project managers have information that enables them

to monitor GCCM subcontracting. However, the information was not in a format that enabled JLARC to verify compliance with the GCCM subcontracting limits for five of the projects reviewed.

Some agencies maintain information that facilitates verifying compliance with subcontract limits. For example, the City of Seattle’s routine internal project management report for GCCM projects clearly identifies the amount and percentage of subcontract work performed by the GCCM contractor. JLARC found a second example at the University of Washington where the project control officer maintains a schedule of subcontract awards. Although the schedule does not specifically identify GCCM subcontract awards and percentages, that information can be readily determined from the information available on the schedule.

Because GCCM contracting was sufficiently important for the Legislature to specify limits on subcontracts awarded to the GCCM contractor, JLARC’s third recommendation is that project owners should obtain information on GCCM project subcontract awards and payments and provide a final report on GCCM contracting to CPARB. CPARB could provide guidance and instructions to public bodies for how to document GCCM subcontracting.

Competition for GCCM Contracts Is Comparable to DBB Contracts, but GCCM Contracts Are Awarded to Fewer Companies

The Legislature found that alternative procedures are in the public interest if “implemented in an open and fair process.” Because of concerns that use of alternative procedures could limit competition, JLARC reviewed project data collected by CPARP to compare competition between GCCM and traditional DBB procedures. As shown in Exhibit 8, the average number of firms competing for GCCM contracts since 1990 is slightly higher than, but comparable to, the number of firms competing for DBB contracts. The data also show no difference in the robustness of competition (three or more firms) between the two procedures.

Exhibit 8 – Competition for GCCM and DBB Contracts is Similar

	GCCM	DBB
Average number of firms competing	5.0	4.5
Percent of projects, fewer than 3 firms competing	12.2%	12.8%
Contracts awarded	74	94
Number of firms awarded contracts	25	57
Average contracts per firm	3.0	1.6

Source: JLARC analysis of CPARB project data, 1990-2010.

GCCM contracts are concentrated among fewer companies than are DBB contracts. The average number of GCCM contracts awarded per company is 3.0 compared to the 1.6 average per company for DBB contracts. This concentration is also reflected in the distribution of contracts. Two construction firms account for 37 percent of all GCCM contracts awarded. Among DBB contracts, eight firms account for 37 percent of contracts awarded.

Project Managers Describe Alternative Procedures as a Valuable Option for Delivering Certain Types of Projects

JLARC staff reviewed selected projects with staff at the five public bodies certified to use alternative procedures and also reviewed selected projects at non-certified organizations. During those site visits and telephone interviews, project managers strongly supported the availability of alternative public works procedures. Although managers do not believe that alternative procedures are appropriate for all public works projects, they maintain that alternative procedures provide opportunities for successful collaborative working relationships among project owners, architects/engineers, and construction contractors. Project managers indicated that this collaboration contributes to project quality by enabling the designer and contractor to identify and solve problems before construction begins and is especially important on large, complex projects that involve significant risk.

Examples of this collaboration provided by project managers include:

- ***University of Washington—UW Tower Data Center Renovation:*** UW obtained this building from SafeCo with limited documentation about the structure and its operating systems. As a result, university staff had little information about building systems or likely problems when planning a \$20 million renovation. The project manager reported that GCCM delivery allowed the contractor to employ laser scanning technology to document building data which identified potential conflicts and contributed to problem solving during design.
- ***Washington State University—Veterinary Medical Research Building:*** WSU is constructing this \$96 million project in three phases using GCCM delivery. During design for the first phase (site work) the project manager said that GCCM contractor recommended including specifications for the building elevator shaft because the shaft was integral to the building structure. According to the project manager, the shaft would not normally have been included in a DBB project site work design and would have resulted in delays while the existing site work was modified during construction to include the elevator shaft.
- ***City of Seattle—King Street Station Renovation:*** City staff said that they chose GCCM delivery due to the fragile conditions in this historic building which would continue to serve as a major transportation center for Seattle during renovation. The project manager said that having the contractor available to work with project architects allowed the project team to thoroughly evaluate the building's conditions and develop realistic construction plans to address those conditions while maintaining the facility in operation.
- ***Skagit County Public Hospital District No. 2—Island Hospital Medical Arts Pavilion:*** The project manager indicated that the hospital chose GCCM delivery because construction would take place in a tight space adjacent to an existing hospital that would remain fully operational during construction. The hospital was especially concerned about impact on patients and hospital operations during construction. According to the project manager, GCCM provided opportunity to ensure that the contractor had the necessary experience for working in a hospital environment where infection control and impact abatement are

critical. The manager added that the project was complicated and having contractor input during construction was highly desirable.

- **City of Tacoma—Cheney Stadium Renovation:** Tacoma staff report that the city chose DB delivery for this stadium project in order to meet an accelerated and complex schedule that would accommodate both the Tacoma Rainiers' baseball schedule and other year-round events held at the stadium. Information provided by the contractor shows that DB delivery allowed the city and the contractor to reduce initial project estimates by almost one-quarter in order to meet the city's advertised \$23 million budget, achieve savings by repairing rather than replacing a key structural element, use savings and contingency funds to add features such as additional seating canopies, and complete construction in seven months, in time for the 2011 season opening game.

Answering the Sunset Review Questions

The 2007 revisions to Washington's alternative public works procedures included a requirement for a sunset review. The Washington Sunset Act (Chapter 43.131 RCW) establishes the process for conducting sunset reviews and directs JLARC to answer four questions.

Question One: Has use of alternative public works procedures complied with legislative intent?

Yes. However, documentation of GCCM subcontractor compliance is not readily available for all projects. RCW 39.10.200 states that it is the intent of the Legislature to establish that, unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in Chapter 39.10 RCW, subject to the requirements of that chapter. JLARC found that procedures for selecting projects for alternative delivery and for using job order contracting are consistent with the requirements of Chapter 39.10 RCW. Although our review of selected projects found no evidence of noncompliance with statutory requirements, we were unable to verify compliance with GCCM subcontracting requirements for some projects due to lack of readily available documentation.

Question Two: Do alternative procedures provide for efficient and economical public works construction, with adequate cost controls in place?

Yes. Alternative procedures such as GCCM and design-build provide opportunities to incorporate construction expertise early in the life of major projects. This provides a tool to help minimize the risk of design errors and unforeseen conditions. Job order contracting allows public bodies to reduce the time needed to initiate small projects. Cost controls for alternative procedures are largely the same as for traditional projects, although controls for alternative procedures may be more complex due to the various procedural requirements of alternative delivery.

Question Three: Have projects constructed using alternative procedures achieved expected performance goals and targets?

Qualified Yes. Ninety-five percent of managers for projects delivered using GCCM procedures report that their projects met cost and schedule expectations, results that are slightly higher but

largely comparable to results for traditional DBB projects (88 percent met cost expectations, 91 percent met schedule expectations). Discussions with project managers at public bodies reveal strong support for using alternative procedures for certain types of projects.

Data submitted by CPARB shows that the Board has addressed the performance measures established in compliance with RCW 43.141.061(3). Since 2007, the Board has recommended 15 bills for introduction, of which nine were enacted, evaluated a variety of emerging contracting methods, and established task forces to address specific contracting issues. In addition, CPARB has reduced its operating costs in response to the state's declining revenue. The Board has reduced its meetings from 12 per year to five in 2011 and members have forgone travel reimbursements.

CPARB has also collected data for use in evaluating contracting methods in Washington. However, as discussed in Part Three, CPARB's public works data collection effort has not produced accurate and reliable data for comparing actual project performance achieved to expected goals and targets.

Question Four: Do alternative procedures duplicate the activities of another agency or the private sector?

No. Public works contracting procedures engage, rather than duplicate, the services of private sector contractors.

PART THREE – CPARB NEEDS TO RETHINK ITS APPROACH TO COLLECTING PROJECT INFORMATION

The Capital Projects Advisory Review Board (CPARB) should rethink its approach to fulfilling its statutory duty to collect information for use in advising the Legislature on public works delivery methods. The Board collects project information in a variety of ways, including building a database of project information. However, the project database is not sufficiently accurate or reliable for evaluating project performance.

CPARB Evaluates Contracting Procedures and Makes Recommendations to the Legislature

RCW 39.10.230 directs CPARB to “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.” An important aspect of this responsibility is collecting quantitative and qualitative data for evaluating contracting procedures.

CPARB carries out this responsibility in several ways. Since 2007, the Board has convened task forces and subcommittees to address contracting and public works issues. Current and recent task forces have addressed issues such as defining bidder responsibility and eligibility to compete for public works contracts, and increasing and encouraging small business contracting opportunities. The Board has also appointed subcommittees on job order contracting and K-12 performance-based contracts. In September 2010, CPARB convened a meeting to solicit input from industry stakeholders on the alternative public works process and how it is practiced. These efforts provide qualitative information to the Board for use in assessing policy and making recommendations to the Legislature.

In 2008, CPARB began developing the Public Works Data Collection Effort to assemble quantitative data on capital projects for use in developing standardized project performance indicators and benchmarks for all major public works projects. Actual data collection began in 2010. This effort responded to a 2005 JLARC report on general contractor/construction manager contracting procedures. In that report JLARC noted that the lack of consistent, reliable project data, including data on local government projects, limited the ability to determine whether contracting methods met legislative goals.

CPARB’s Public Works Data Collection Effort solicits project level quantitative data on:

- Schedule Performance
- Cost Performance
- Contract Changes
- Contractor Selection Process
- Subcontractor Diversity

- Certified/Formal Claims
- Value Performance

In addition, the survey solicits subjective input from the project team—owners, designers, and prime contractors—and from subcontractors. The Board received its first analysis of survey results in May 2011. The analysis, prepared by an adjunct professor from the UW Department of Construction Management, showed no significant performance differences between GCCM and DBB projects.⁶

CPARB also collects data on job order contracting. Job order contracting data includes total contract amounts, individual work order amounts, change orders, percent of work contracted, and percent of work performed by minority and women-owned business. This information is summarized and presented to the Board annually.

Project Database Is Not Accurate or Reliable

JLARC reviewed the project database for use in assessing the performance of the various delivery methods. This review shows that the information in the CPARB database of major projects is not complete, contains inaccurate data, and is unlikely to provide a reliable basis for assessing and comparing project performance.

Data Problems Create Potential for Inaccurate Results

The project database is incomplete. The database is missing complete data for approximately 40 percent of projects scheduled for completion by June 30, 2011. In addition, data that has been reported includes numerous errors, either due to incorrect data entry or inconsistency in defining data items. For example, the instructions for reporting planned project budgets do not define which of several budgets developed during a project's gestation should be reported. One project reported a planned budget of \$51.7 million; JLARC's review of budget estimates for that project found no estimate less than \$58.8 million and a high estimate of \$72.7 million. Schedule data does not allow for delays caused by lack of funding, which can sometimes postpone construction for several years after design is completed.

Data collection has been hampered by problems with the data collection instrument. CPARB and Project Review Committee minutes include statements from project personnel about problems entering and correcting data. Project managers interviewed by JLARC expressed similar concerns.

CPARB relies on the Department of Enterprise Services (DES) for staff support. Since the data collection effort was launched, DES and the Board have experienced budget reductions that have limited their ability to follow up on missing data or to ensure the quality of data reported.

JLARC's review identified a number of data problems. As a result, JLARC cannot attest to the accuracy of the data. For that reason, this sunset review does not use the data to evaluate project performance and relies instead on case studies of selected projects and follow up interviews. The CPARB analysis noted above also acknowledged data errors as a limitation to the results.

⁶ The analysis did not analyze DB performance due to an insufficient number of completed projects, nor did it include analysis of the team and subcontractor survey results due to the small number of surveys returned.

Corrected Data May Not Produce Meaningful Results

Even if the data was complete and accurate, the database may not be reliable for evaluating project performance or establishing benchmarks. A complete database would include more than 300 projects representing the three different project delivery methods. Each delivery type would also exhibit a wide variety of characteristics such as renovation versus new construction, building type, size, complexity, location, and economic climate. Aggregate results based on such diversity would likely have little meaning and require further analysis based on the different subpopulation characteristics. However, obtaining sufficient numbers of projects for the various subpopulations in each delivery method may be difficult. The 2011 CPARB analysis recommended at least 40 projects as a valid sample size.

Completing and correcting the database is also unlikely to provide meaningful results about current contracting practices. Approximately two-thirds of projects in the database were initiated prior to the 2007 statutory revisions to the alternative public works procedures. Since then, the Legislature has further modified GCCM statutes. A 2010 change in GCCM contracting statutes created a procedure that allows for qualification-based subcontracting with mechanical and electrical subcontractors during design rather than subcontracting on the basis of price at the start of construction. The differing statutory requirements further limit the usefulness of project data for providing meaningful analyses that inform contracting policy.

CPARB Has Options for Obtaining More Useful Information About Contracting Procedures

Alternative procedures are no longer unusual in public works construction. Washington has over 20 years' experience using alternative procedures, which are also widely used in other states. The widespread use of alternative procedures indicates that the issue is no longer whether to allow the procedures, but rather when and how to best use them in the public interest.

CPARB's experience using task forces and subcommittees to address issues of concern in public works contracting provides a model for strengthening its ability to provide timely, informed recommendations. As noted previously, the Board has initiated a variety of task forces and subcommittees to address issues of concern in public works contracting. These task forces draw on the experience and expertise of the construction industry and public owners to develop recommendations for statutory and policy changes that enhance public works contracting. In addition, CPARB has been active in educating public owners and contractors about the use and requirements of alternative procedures. Since 2007, CPARB has participated in annual workshops to educate contractors and public owners about GCCM contracting. CPARB participated in a 2012 workshop to assist public owners in developing criteria for determining bidder responsibility and eligibility.

The Board could further assist project owners and contractors by soliciting "lessons learned" information about completed projects and disseminating that information to the various stakeholders. Although this information is not quantitative, it could promote greater understanding about the experience of using alternative procedures in Washington.

Recognizing both the limitations of the existing project database and the role that CPARB plays, JLARC's fourth recommendation is that CPARB 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.

PART FOUR – CONCLUSIONS AND RECOMMENDATIONS

JLARC’s sunset review of alternative public work procedures shows that the procedures are used in a manner consistent with the Legislature’s intent and should be continued.

Recommendation 1

The Legislature should reauthorize the alternative public works procedures, Chapter 39.10 RCW.

Since the 2007 revisions to Washington’s alternative public works procedures, these procedures have been used in a manner consistent with the public interest. Alternative procedures such as GCCM and DB provide options for collaboration and creative problem-solving on large projects, while job order contracting procedures speed work on projects under \$350,000.

Legislation Required:	Yes. Absent specific action by the Legislature, Chapter 39.10 RCW will expire on June 30, 2013.
Fiscal Impact:	None.
Implementation Date:	2013 Legislative Session.

Recommendation 2

CPARB should revise job order contract reporting to clearly identify separate contracts with and payments to the same contractor during the July 1-June 30 reporting period.

Because job order contract periods do not correspond to the fiscal year reporting period, the information reported may appear to exceed statutory limits when a contract is renewed during the period. Clearly identifying separate contracts with the same contractor during the reporting period will ensure that the information reported correctly documents compliance with statutory requirements.

Legislation Required:	No.
Fiscal Impact:	None.
Implementation Date:	June 30, 2013.

Recommendation 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.

Review of selected GCCM project files shows that information to verify the limit on GCCM contractors performing subcontract work is not readily available without access to contractor project files. Although public bodies have procedures in place to ensure compliance with this requirement, the information needed to verify compliance is often dispersed and unorganized. The public bodies using GCCM should maintain a complete record of a project’s subcontract awards and payments and report this information to CPARB. CPARB can provide guidance and instructions to the public bodies on how best to consistently report this information.

Legislation Required: No.
Fiscal Impact: None.
Implementation Date: June 30, 2013.

Recommendation 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.

Review of the CPARB public works project indicates that it is unlikely to provide accurate and reliable information for evaluating public works contracting procedures. However, CPARB has demonstrated through use of task forces, subcommittees, and stakeholder meetings that other options are available for obtaining information needed to develop and recommend policies to further enhance the quality, efficiency, and accountability of capital construction projects.

Legislation Required: No.
Fiscal Impact: None.
Implementation Date: June 30, 2013.

APPENDIX 1 – SCOPE AND OBJECTIVES

ALTERNATIVE PUBLIC WORKS SUNSET REVIEW

SCOPE AND OBJECTIVES

DECEMBER 1, 2011



STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM

Mark Fleming
Eric Thomas

PROJECT SUPERVISOR

Valerie Whitener

LEGISLATIVE AUDITOR

Keenan Konopaski

Joint Legislative Audit & Review
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What are Alternative Public Works Procedures?

Alternative public works procedures allow public entities to design and construct public facilities without following the traditional procedure of first completing the facility design and then awarding construction contracts to the lowest responsible bidder to that design. Instead, these alternative procedures allow public entities to engage construction contractors during the design process so that their expertise will assist the design team in anticipating problems that may arise during construction.

Development of Alternative Public Works Procedures in Washington

The Legislature first authorized alternative procedures on a limited basis in the 1990s. JLARC reviewed the use of the general contractor/construction manager (GC/CM) alternative procedure in 2005. That procedure enables agencies to contract with a general contractor who participates in the project design and also serves as the construction manager during construction. The 2005 audit found evidence suggesting that state agencies benefited from using the GC/CM procedure. The audit recommended improved oversight through the Capital Projects Advisory Review Board (CPARB) for GC/CM procedures and development of a database for evaluating project performance.

The 2007 Legislature enacted 2SHB 1506, which expanded the use of alternative public works procedures to also include design-build and job order contracting procedures. The design-build procedure awards a contract to a single firm to both design and construct a facility. Job order contracting allows public agencies to contract for an indefinite quantity of construction services for a fixed period based on negotiated unit prices.

The 2007 legislation also strengthened oversight by directing CPARB to appoint a Project Review Committee (PRC) to review and approve public agencies' qualifications to use alternative public works procedures. Agencies may seek either blanket authority to determine when to use alternative procedures, or they may seek authority to use a specific procedure on an individual project. Since 2007 the PRC has granted five public agencies blanket authority to use alternative procedures and authorized another 35 public agencies to use alternative procedures on individual projects.

What is a Sunset Review?

The Washington Sunset Act (Chapter 43.131 RCW) establishes the process for conducting sunset reviews. When a program is subject to a sunset review, the program terminates unless the Legislature acts to reauthorize the program’s existence. In the year prior to the termination date, JLARC conducts a sunset review of the program. The review looks at issues including the extent to which the program has complied with legislative intent and whether the program has met its performance targets.

The Legislature included a June 30, 2013, Sunset Act termination date for alternative public works procedures. This requires JLARC to complete a sunset review of these procedures prior to the 2013 Legislative Session.

Sunset Review Objectives

Statute specifies the objectives for a sunset review, which include addressing the following questions:

- 1) To what extent has use of alternative public works procedures complied with legislative intent?
- 2) To what extent do alternative procedures provide for efficient and economical public works construction, with adequate cost controls in place?
- 3) To what extent have projects constructed using alternative procedures achieved expected performance goals and targets?
- 4) To what extent do alternative procedures duplicate the activities of another agency or the private sector?

The review will include a recommendation of whether to terminate, modify, or continue alternative public works procedures without modification.

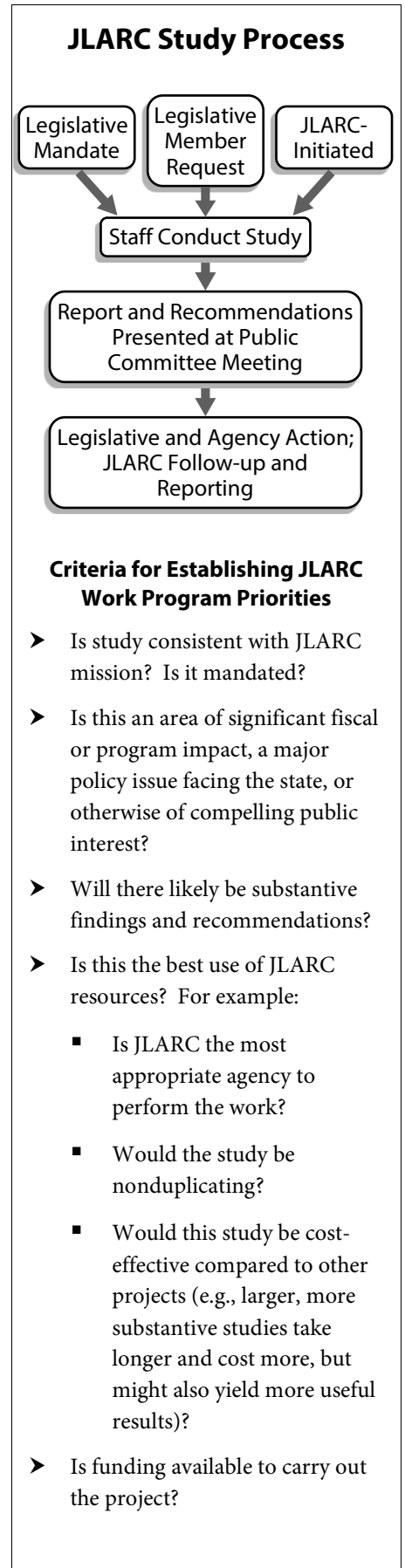
The review will also include evaluation of CPARB’s implementation of JLARC’s 2007 recommendation to strengthen executive level oversight of alternative procedures and develop the project database required by law.

Timeframe for the Study

Staff will present the preliminary report in September 2012, and a proposed final report in November 2012.

JLARC Staff Contacts for the Study

Mark Fleming (360) 786-5181 mark.fleming@leg.wa.gov
 Eric Thomas (360) 786-5182 eric.thomas@leg.wa.gov



APPENDIX 2 – AGENCY RESPONSES

- Capital Projects Advisory Review Board
- Department of Enterprise Services
- Office of Financial Management



**STATE OF WASHINGTON
Capital Projects Advisory Review Board**

November 8, 2012

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
PO Box 40910
Olympia, WA 98504

Dear Mr. Konopaski:

The members of the Capital Projects Advisory Review Board (CPARB) want to thank the Joint Legislative Audit and Review Committee (JLARC) for the opportunity to review JLARC's Preliminary Report, "Alternative Public Works Procedures Sunset Review: Legislature Should Continue Authority to Use Alternative Procedures."

At the November 8, 2012 CPARB meeting the Board approved the following position on the JLARC Recommendations:

1 The Legislature should reauthorize the Alternative Public Works procedures, Chapter 39.10 RCW.

CPARB concurs. Chapter 39.10 continues to provide public owners and the construction industry with important tools to effectively execute public works projects. The Board strongly supports the continuation of the Capital Projects Advisory Review Board and Project Review Committee to provide oversight and successful implementation of alternative public works procurements in the State of Washington.

2 CPARB should revise Job Order Contracting (JOC) reporting to clearly identify separate contracts with the same contractor during the July 1 through June 30 reporting periods.

CPARB concurs. CPARB is evaluating alternatives for JOC data collection systems which would provide better tracking of separate contract year data. EHB 2328 which became effective on June 7, 2012 clarified and changed the statutory reporting requirement from the end of each contract year to July 1 through June 30. This change will aid in reporting consistency and data collection efforts. JOC data collection and analysis requires support resources and CPARB will continue to manage data collection efforts within the funding level provided by the Legislature.

Kennan Konopaski
November 8, 2012
Page 2

- 3 Public bodies using General Contractor/Construction Manager (GC/CM) should obtain information on project subcontract awards and payments and provide a final project report on their GC/CM subcontracting to CPARB.**

CPARB concurs. CPARB will work with stakeholder groups to determine the appropriate information to collect from public owners, including the consideration of information in a final project report and GCCM subcontract information.

- 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 work delivery methods.**

CPARB concurs. CPARB will work with stakeholder groups to determine the appropriate information to collect from public owners, to support transparency that is in the public interest. Because no two projects are the same, careful consideration is needed in determining the relevant information required to evaluate the effectiveness of alternative public works procurement procedures. In order to provide proper analysis of this information, CPARB will continue to request appropriate funding for this and other Board activities.

We also would like to note that CPARB's report to JLARC is located on the [CPARB website: Alternative Public Works Procedures Sunset Review Performance Summary to the Joint Legislative Audit Review Committee](#). This report contains additional information about CPARB performance that may be useful in understanding the collaborative efforts that support the alternative public works procurement process.

Thank you again for the opportunity to comment. If you have any questions, please contact Lead Staff for CPARB, Nancy Deakins at (360) 902-8161 or me at (206) 787-3146.

Sincerely,



Robert T. Maruska, P.E.
Chair

cc: CPARB Members
Joyce Turner, Director, Department of Enterprise Services
Tim Gugerty, Government Relations, Department of Enterprise Services
Tom Henderson, Assistant Director of Facilities, Department of Enterprise Services
Bill Phillips, Department of Enterprise Services
Nancy Deakins, Department of Enterprise Services



STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
1500 Jefferson Street SE, Olympia, WA 98501

November 2, 2012

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
PO Box 40910
Olympia, WA 98504

Dear Mr. Konopaski:

Thank you for the opportunity to comment on the Joint Legislative Review Committee's (JLARC) Preliminary Report "Alternative Public Works Procedures Sunset Review: Legislature Should Continue Authority to Use Alternative Procedures".

The following represents the Agency's position on the JLARC recommendations:

1 The Legislature should reauthorize the Alternative Public Works procedures, Chapter 39.10RCW.

DES agrees. Chapter 39.10 provides valuable tools in the delivery of public works projects. The Department of Enterprise Services (DES) is committed to continuing the refinement of use and practices with all alternative public works processes.

DES has utilized alternative public works procedures since the early 1990s, first under the title of General Administration. Both GC/CM and Design Build have proven to be very effective in accelerating work as well as mitigating risk on very complex projects. Not every project is well suited, but those which have significant risk, complexity, and time constraints benefit from advanced methods such as GC/CM and Design Build.

The addition of Job Order Contracting (JOC) has provided public owners the ability to advance competition and selection to the beginning of a series of projects and place in practice a proven means of ensuring value to the owner. As with General Contractor/Construction Maintenance (GC/CM) and Design Build, JOC has a place for use.

Keenan Konopaski
November 2, 2012
Page 2

- 2 The Capitol Projects Advisory Review Board (CPARB) should revise JOC reporting to clearly identify separate contracts with the same contractor during the July 1 through June 30 reporting periods.**

DES agrees. This is an administrative and reporting issue only, and we will work to add clarity to what is recorded and reported.

- 3 Public bodies using GC/CM should obtain information on project subcontract awards and payments and provide a final project report on their GC/CM subcontracting to CPARB.**

DES agrees. Capturing cumulative cost broken down by GC/CM (self performance) and subcontracted work will provide an available source to document compliance to statutory requirements. Owner training can address this item as well as other control applied to projects.

- 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.**

DES agrees. However, the data and information processed for decision making requires agreement as to what is collected and reviewed. Data collection has a cost and as the recommendation states, resources should be channeled where it facilitates effective decision making. DES will be asking the CPARB to work in concert with DES staff to identify specifically what is meaningful and useful information.

I would like to thank the JLARC for all their work put forward in creating the preliminary report and for the opportunity to comment. If you have any questions please contact Nancy Deakins, Lead Staff for CPARB, at 360-902-8161.

Sincerely



Joyce Turner
Director

cc: Bob Maruska, CPARB Chair
Tim Gugerty, Government Relations, Department of Enterprise Services
Tom Henderson, Assistant Director of Facilities, Department of Enterprise Services
Bill Phillips, Department of Enterprise Services
Nancy Deakins, Department of Social and Health Services



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

October 30, 2012

TO: Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Stan Marshburn
Director

**SUBJECT: ALTERNATIVE PUBLIC WORKS PROCEDURES SUNSET REVIEW:
LEGISLATURE SHOULD CONTINUE AUTHORITY TO USE ALTERNATIVE
PROCEDURES - PRELIMINARY REPORT**

Thank you for the opportunity to respond to your preliminary report titled: “Alternative Public Works Procedures Sunset Review: Legislature Should Continue Authority to Use Alternative Procedures.”

Recommendation	Agency Position	Comments
1. The Legislature should reauthorize the alternative public works, Chapter 39.10 RCW.	Concur	No additional comments at this time.
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.	Concur	No additional comments at this time.
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.	Concur	No additional comments at this time.
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.	Concur	No additional comments at this time.

Again, thank you for the opportunity to comment. Please contact Sandi Triggs at 902-0562 with any questions.

cc: Marc Baldwin, Deputy Director, OFM
Sandi Triggs, Senior Budget Assistant, OFM

