

SB 5032 - H COMM AMD

By Committee on Capital Budget

ADOPTED AND ENGROSSED 4/6/2021

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 39.10.210 and 2019 c 212 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Budget contingencies" means contingencies established by a public body outside of the design-build or general contractor/construction manager contract for payment of project costs that are not the responsibility of the design-builder or general contractor/construction manager under the respective contract.

(4) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

~~((4))~~ (5) "Coefficient" means the job order contractor's competitively bid numerical factor applied to the public body's prices as published in the unit price book.

(6) "Committee," unless otherwise noted, means the project review committee.

~~((5))~~ (7) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

~~((6))~~ (8) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

1 ~~((7))~~ (9) "General contractor/construction manager" means a
2 firm with which a public body has selected to provide services during
3 the design phase and negotiated a maximum allowable construction cost
4 to act as construction manager and general contractor during the
5 construction phase.

6 ~~((8))~~ (10) "Heavy civil construction project" means a civil
7 engineering project, the predominant features of which are
8 infrastructure improvements.

9 ~~((9))~~ (11) "Job order contract" means a contract in which the
10 contractor agrees to a fixed period, indefinite quantity delivery
11 order contract which provides for the use of ~~((negotiated,~~
12 ~~definitive))~~ work orders for public works as defined in RCW
13 39.04.010.

14 ~~((10))~~ (12) "Job order contractor" means a registered or
15 licensed contractor awarded a job order contract.

16 ~~((11))~~ (13) "Maximum allowable construction cost" means the
17 maximum cost of the work to construct the project including a
18 percentage for risk contingency, negotiated support services, and
19 approved change orders.

20 ~~((12))~~ (14) "Negotiated support services" means items a general
21 contractor would normally manage or perform on a construction project
22 including, but not limited to surveying, hoisting, safety
23 enforcement, provision of toilet facilities, temporary heat, cleanup,
24 and trash removal, and that are negotiated as part of the maximum
25 allowable construction cost.

26 ~~((13))~~ (15) "Percent fee" means the percentage amount to be
27 earned by the general contractor/construction manager as overhead and
28 profit.

29 ~~((14))~~ (16) "Price-related factor" means an evaluation factor
30 that impacts costs which may include, but is not limited to overhead
31 and profit, lump sum or guaranteed maximum price for the entire or a
32 portion of the project, operating costs, or other similar factors
33 that may apply to the project.

34 ~~((15))~~ (17) "Public body" means any general or special purpose
35 government in the state of Washington, including but not limited to
36 state agencies, institutions of higher education, counties, cities,
37 towns, ports, school districts, and special purpose districts.

38 ~~((16))~~ (18) "Public works project" means any work for a public
39 body within the definition of "public work" in RCW 39.04.010.

1 ~~((17))~~ (19) "Risk contingency" means a contingency for use as
2 defined in the contract and established as part of the maximum
3 allowable construction cost for unexpected cost of work items that
4 have not otherwise been included or addressed in the maximum
5 allowable construction cost.

6 (20) "Small business entity" means a small business as defined in
7 RCW 39.26.010.

8 ~~((18))~~ (21) "Total contract cost" means the fixed amount for
9 the detailed specified general conditions work, the negotiated
10 maximum allowable construction cost, and the percent fee on the
11 negotiated maximum allowable construction cost.

12 ~~((19))~~ (22) "Total project cost" means the cost of the project
13 less financing and land acquisition costs.

14 ~~((20))~~ (23) "Unit price book" means a book containing specific
15 prices, based on generally accepted industry standards and
16 information, where available, for various items of work to be
17 performed by the job order contractor. ~~((The prices may include: All~~
18 ~~the costs of materials; labor; equipment; overhead, including bonding~~
19 ~~costs; and profit for performing the items of work. The unit prices~~
20 ~~for labor must be at the rates in effect at the time the individual~~
21 ~~work order is issued.~~

22 ~~(21))~~ (24) "Work order" means an order issued for a definite
23 scope of work to be performed pursuant to a job order contract.

24 **Sec. 2.** RCW 39.10.220 and 2013 c 222 s 2 are each amended to
25 read as follows:

26 (1) The board is created in the department of enterprise services
27 to provide an evaluation of public capital projects construction
28 processes, including the impact of contracting methods on project
29 outcomes, and to advise the legislature on policies related to public
30 works delivery methods.

31 (2) Members of the board identified in (a) through (f) of this
32 subsection must be knowledgeable or have experience in public works
33 procurement and contracting, including state and federal laws, rules,
34 and best practices concerning public contracting for minority, women,
35 and veteran-owned businesses and small businesses, and are appointed
36 as follows:

37 (a) Two representatives from construction general contracting;
38 one representative from the architectural profession; one
39 representative from the engineering profession; two representatives

1 from construction specialty subcontracting; two representatives from
2 construction trades labor organizations; one representative from the
3 office of minority and women's business enterprises; one
4 representative from a higher education institution; one
5 representative from the department of enterprise services; one
6 individual representing Washington cities; two representatives from
7 private industry; one individual from the private sector representing
8 the interests of the disadvantaged business enterprises community;
9 and one representative of a domestic insurer authorized to write
10 surety bonds for contractors in Washington state, each appointed by
11 the governor. (~~All appointed members must be knowledgeable about~~
12 ~~public works contracting procedures.~~) The board must reflect the
13 gender, racial, ethnic, and geographic diversity of the state,
14 including the interests of persons with disabilities. If a vacancy
15 occurs, the governor shall fill the vacancy for the unexpired term;

16 (b) One member representing counties, selected by the Washington
17 state association of counties;

18 (c) One member representing public ports, selected by the
19 Washington public ports association;

20 (d) One member representing public hospital districts, selected
21 by the association of Washington public hospital districts;

22 (e) One member representing school districts, selected by the
23 Washington state school directors' association; (~~and~~)

24 (f) One member representing transit, selected by the Washington
25 state transit association; and

26 (g) Two members of the house of representatives, one from each
27 major caucus, appointed by the speaker of the house of
28 representatives, and two members of the senate, one from each major
29 caucus, appointed by the president of the senate. Legislative members
30 are nonvoting.

31 (3) Members selected under subsection (2)(a) of this section
32 shall serve for terms of four years, with the terms expiring on June
33 30th on the fourth year of the term.

34 (4) The board chair is selected from among the appointed members
35 by the majority vote of the voting members.

36 (5) Legislative members of the board shall be reimbursed for
37 travel expenses in accordance with RCW 44.04.120. Nonlegislative
38 members of the board, project review committee members, and committee
39 chairs shall be reimbursed for travel expenses as provided in RCW
40 43.03.050 and 43.03.060.

1 (6) Vacancies are filled in the same manner as appointed. Members
2 of the board may be removed for malfeasance or misfeasance in office,
3 upon specific written charges by the governor, under chapter 34.05
4 RCW.

5 (7) The board shall meet as often as necessary.

6 (8) Board members are expected to consistently attend board
7 meetings. The chair of the board may ask the governor to remove any
8 member who misses more than two meetings in any calendar year without
9 cause.

10 (9) The department of enterprise services shall provide staff
11 support as may be required for the proper discharge of the function
12 of the board.

13 (10) The board may establish committees as it desires and may
14 invite nonmembers of the board to serve as committee members.

15 (11) ~~((The board shall encourage participation from persons and~~
16 ~~entities not represented on the board))~~ The board shall provide
17 opportunities for persons and entities not represented on the board
18 to participate and provide insights on matters of interest to the
19 board, particularly with respect to the experiences of minority,
20 women, and veteran-owned businesses and small businesses.

21 **Sec. 3.** RCW 39.10.230 and 2013 c 222 s 3 are each amended to
22 read as follows:

23 The board has the following powers and duties:

24 (1) Develop and recommend to the legislature policies to
25 encourage competition and to further enhance the quality, efficiency,
26 and accountability of and equitable participation by disadvantaged
27 business enterprises in capital construction projects through the use
28 of traditional and alternative delivery methods in Washington, and
29 make recommendations regarding best practices, expansion,
30 continuation, elimination, or modification of the alternative public
31 works contracting methods, including specific recommendations for
32 reducing barriers for and increasing participation by disadvantaged
33 business enterprises;

34 (2) Evaluate the use of existing contracting procedures and the
35 potential future use of other alternative contracting procedures
36 including competitive negotiation contracts;

37 (3) Submit recommendations to the appropriate committees of the
38 legislature evaluating alternative contracting procedures that are
39 not authorized under this chapter;

1 (4) Appoint members of committees; and

2 (5) ~~((Develop and administer questionnaires designed to provide))~~
3 Direct the department of enterprise services to collect quantitative
4 and qualitative data on alternative public works contracting
5 procedures ~~((on which evaluations are based.~~

6 ~~The capital projects advisory review board is directed to review~~
7 ~~current statutes regarding life-cycle cost analysis and energy~~
8 ~~efficiency as related to the design-build procurement method~~
9 ~~performed under chapter 39.10 RCW. Capital projects advisory review~~
10 ~~board shall report to the appropriate committees of the legislature~~
11 ~~by December 31, 2013, with recommendations for statutory changes that~~
12 ~~promote energy efficiency and reduce the total cost to construct,~~
13 ~~operate and maintain public buildings. Recommendation must include~~
14 ~~provisions for postoccupancy validation of estimated energy~~
15 ~~efficiency measures, and operating and maintenance cost estimates.~~
16 ~~Life-cycle estimates of energy use must include estimates of energy~~
17 ~~consumptions for materials used in construction))~~ to support the
18 board's work in meeting the purpose established in RCW 39.10.220(1).

19 **Sec. 4.** RCW 39.10.240 and 2013 c 222 s 4 are each amended to
20 read as follows:

21 (1) The board shall establish a project review committee to
22 review and approve public works projects using the design-build and
23 general contractor/construction manager contracting procedures
24 authorized in RCW 39.10.300 and 39.10.340 and to certify public
25 bodies as provided in RCW 39.10.270.

26 (2) The board shall, by a majority vote of the board, appoint
27 persons to the committee who are knowledgeable in the use of the
28 design-build and general contractor/construction manager contracting
29 procedures. Appointments must represent a balance ~~((among the~~
30 ~~industries and public owners on the board))~~ of public and private
31 sector representatives of the board listed in RCW 39.10.220, and must
32 include at least one member representing the interests of
33 disadvantaged business enterprises.

34 (a) Each member of the committee shall be appointed for a term of
35 three years. However, for initial appointments, the board shall
36 stagger the appointment of committee members so that the first
37 members are appointed to serve terms of one, two, or three years from
38 the date of appointment. Appointees may be reappointed to serve more
39 than one term.

1 (b) The committee shall, by a majority vote, elect a chair and
2 vice chair for the committee.

3 (c) The committee chair may select a person or persons on a
4 temporary basis as a nonvoting member if project specific expertise
5 is needed to assist in a review.

6 (3) The chair of the committee, in consultation with the vice
7 chair, may appoint one or more panels of at least six committee
8 members to carry out the duties of the committee. Each panel shall
9 have balanced representation of the private and public sector
10 representatives serving on the committee, and shall include a member
11 representing the interests of disadvantaged business enterprises.

12 (4) Any member of the committee directly or indirectly affiliated
13 with a submittal before the committee must recuse himself or herself
14 from the committee consideration of that submittal.

15 (5) Any person who sits on the committee or panel is not
16 precluded from subsequently bidding on or participating in projects
17 that have been reviewed by the committee.

18 (6) The committee shall meet as often as necessary to ensure that
19 certification and approvals are completed in a timely manner.

20 **Sec. 5.** RCW 39.10.250 and 2019 c 212 s 2 are each amended to
21 read as follows:

22 The committee shall:

23 (1) Certify, or renew certification for, public bodies to use
24 design-build or general contractor/construction manager contracting
25 procedures, or both;

26 (2) Review and approve the use of the design-build or general
27 contractor/construction manager contracting procedures on a project
28 by project basis for public bodies that are not certified under RCW
29 39.10.270;

30 (3) Review and approve the use of alternative subcontractor
31 selection under RCW 39.10.385 on a project-by-project basis for
32 public bodies that are not certified under RCW 39.10.270, which
33 review and approval may be concurrent with project approval; and

34 (4) Review and approve not more than two design-build
35 demonstration projects that include procurement of operations and
36 maintenance services for a period longer than three years.

37 **Sec. 6.** RCW 39.10.300 and 2019 c 212 s 4 are each amended to
38 read as follows:

1 (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or
2 39.10.280, public bodies may utilize the design-build procedure,
3 including progressive design-build, for public works projects in
4 which the total project cost is over ~~((two million dollars))~~
5 \$2,000,000 and where:

6 (a) The construction activities are highly specialized and a
7 design-build approach is critical in developing the construction
8 methodology; or

9 (b) The projects selected provide opportunity for greater
10 innovation or efficiencies between the designer and the builder; or

11 (c) Significant savings in project delivery time would be
12 realized.

13 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
14 bodies may use the design-build procedure, including progressive
15 design-build, for parking garages and preengineered metal buildings,
16 regardless of cost.

17 (3) The design-build procedure may be used for the construction
18 or erection of portable facilities as defined in WAC 392-343-018,
19 ~~((preengineered metal buildings,))~~ or not more than ~~((ten))~~ 10
20 prefabricated modular buildings per installation site, regardless of
21 cost and is not subject to approval by the committee.

22 (4) Except for utility projects and approved demonstration
23 projects, the design-build procedure may not be used to procure
24 operations and maintenance services for a period longer than three
25 years. State agency projects that propose to use the design-build-
26 operate-maintain procedure shall submit cost estimates for the
27 construction portion of the project consistent with the office of
28 financial management's capital budget requirements. Operations and
29 maintenance costs must be shown separately and must not be included
30 as part of the capital budget request.

31 (5) Subject to the process in RCW 39.10.280, a public body may
32 seek committee approval for a design-build demonstration project that
33 includes procurement of operations and maintenance services for a
34 period longer than three years.

35 (6) Washington State University may perform design-build
36 demonstration projects with a total project cost under \$2,000,000 to
37 develop best practices in encouraging participation of small business
38 entities and of minority, women, and veteran-owned businesses, and in
39 managing capital projects under \$2,000,000. Washington State
40 University shall provide reports to the board every other year,

1 starting with two years after the effective date of this section.
2 Such reports shall include information on the type of projects
3 performed, the initial and final project cost and schedule of the
4 projects, participation of small business entities and of minority,
5 women, and veteran-owned businesses, and the best practices derived
6 from the projects. The report shall include outreach measures
7 developed in concert with the office of minority and women's business
8 enterprises.

9 **Sec. 7.** RCW 39.10.330 and 2019 c 212 s 6 are each amended to
10 read as follows:

11 (1) Contracts for design-build services shall be awarded through
12 a competitive process using public solicitation of proposals for
13 design-build services. ~~((The))~~ At a minimum, the public body shall
14 publish at least once in a legal newspaper of general circulation
15 published in, or as near as possible to, that part of the county in
16 which the public work will be done, a notice of its request for
17 qualifications from proposers for design-build services, and the
18 availability and location of the request for proposal documents. The
19 public body is encouraged to post the design-build opportunity in
20 additional areas, such as websites for business associations or the
21 office of minority and women's business enterprises, to further
22 publicize the opportunity for qualified design-build teams. The
23 request for qualifications documents shall include:

24 (a) A description of the project including the estimated design-
25 build contract value and the intended use of the project;

26 (b) The reasons for using the design-build procedure;

27 (c) A description of the qualifications to be required of the
28 proposer;

29 (d) A description of the process the public body will use to
30 evaluate qualifications and finalists' proposals, including
31 evaluation factors and the relative weight of factors and any
32 specific forms to be used by the proposers;

33 (i) Evaluation factors for qualifications shall include technical
34 qualifications, such as specialized experience and technical
35 competence of the firms and the key design and construction
36 personnel; capacity to perform; the proposer's past performance in
37 utilization of ~~((the office of minority and women's business~~
38 ~~enterprises—certified—businesses))~~ disadvantaged business
39 enterprises, to the extent permitted by law; ability to provide a

1 performance and payment bond for the project; and other appropriate
2 factors. Evaluation factors (~~(may)~~) must also include, but are not
3 limited to, the proposer's past performance in utilization of small
4 business entities. Cost or price-related factors are not permitted in
5 the request for qualifications phase;

6 (ii) Evaluation factors for finalists' proposals shall include
7 the management plan to meet time and budget requirements and one or
8 more price-related factors. Evaluation factors must include a
9 proposer's inclusion plan for small business entities and
10 disadvantaged business enterprises as subconsultants, subcontractors,
11 and suppliers for the project, to the extent permitted by law.
12 Evaluation factors may also include, but not be limited to, the
13 technical approach (~~(, design concept, and the outreach plan to~~
14 ~~include small business entities and disadvantaged business~~
15 ~~enterprises as subconsultants, subcontractors, and suppliers for the~~
16 ~~project)) or the design concept;~~

17 (e) Protest procedures including time limits for filing a
18 protest, which in no event may limit the time to file a protest to
19 fewer than four business days from the date the proposer was notified
20 of the selection decision;

21 (f) The proposed contract;

22 (g) The honorarium to be paid to finalists submitting responsive
23 proposals and who are not awarded a design-build contract;

24 (h) The schedule for the procurement process and the project; and

25 (i) Other information relevant to the project.

26 (2) The public body shall establish an evaluation committee to
27 evaluate the responses to the request for qualifications based solely
28 on the factors, weighting, and process identified in the request for
29 qualifications and any addenda issued by the public body. Based on
30 the evaluation committee's findings, the public body shall select not
31 more than five responsive and responsible finalists to submit
32 proposals. The public body may, in its sole discretion, reject all
33 proposals and shall provide its reasons for rejection in writing to
34 all proposers.

35 (3) The public body must notify all proposers of the finalists
36 selected to move to the next phase of the selection process. The
37 process may not proceed to the next phase until two business days
38 after all proposers are notified of the committee's selection
39 decision. At the request of a proposer not selected as a finalist,
40 the public body must provide the requesting proposer with a scoring

1 summary of the evaluation factors for its proposal. Proposers filing
2 a protest on the selection of the finalists must file the protest in
3 accordance with the published protest procedures. The selection
4 process may not advance to the next phase of selection until two
5 business days after the final protest decision is transmitted to the
6 protestor.

7 (4) Upon selection of the finalists, the public body shall issue
8 a request for proposals to the finalists. The request for proposal
9 documents shall include:

10 (a) Any specific forms to be used by the finalists; and

11 (b) Submission of a summary of the finalist's accident prevention
12 program and an overview of its implementation.

13 (5) The public body shall establish an evaluation committee to
14 evaluate the proposals submitted by the finalists. The finalists'
15 proposals shall be evaluated and scored based solely on the factors,
16 weighting, and process identified in the request for qualifications,
17 the request for proposals, and in any addenda published by the public
18 body. Public bodies may request best and final proposals from
19 finalists. The public body may initiate negotiations with the
20 finalist submitting the highest scored proposal. If the public body
21 is unable to execute a contract with the finalist submitting the
22 highest scored proposal, negotiations with that finalist may be
23 suspended or terminated and the public body may proceed to negotiate
24 with the next highest scored finalist. Public bodies shall continue
25 in accordance with this procedure until a contract agreement is
26 reached or the selection process is terminated.

27 (6) The public body shall notify all finalists of the selection
28 decision and make a selection summary of the final proposals
29 available to all proposers within two business days of such
30 notification. If the public body receives a timely written protest
31 from a finalist firm, the public body may not execute a contract
32 until two business days after the final protest decision is
33 transmitted to the protestor. The protestor must submit its protest
34 in accordance with the published protest procedures.

35 (7) The firm awarded the contract shall provide a performance and
36 payment bond for the contracted amount.

37 (8) Any contract must require the firm awarded the contract to
38 track and report to the public body and to the office of minority and
39 women's business enterprises its utilization of the office of

1 minority and women's business enterprises certified businesses and
2 veteran certified businesses.

3 (9) The public body shall provide appropriate honorarium payments
4 to finalists submitting responsive proposals that are not awarded a
5 design-build contract. Honorarium payments shall be sufficient to
6 generate meaningful competition among potential proposers on design-
7 build projects. In determining the amount of the honorarium, the
8 public body shall recognize the level of effort required to meet the
9 selection criteria.

10 **Sec. 8.** RCW 39.10.350 and 2014 c 42 s 4 are each amended to read
11 as follows:

12 (1) A public body using the general contractor/construction
13 manager contracting procedure shall provide for:

14 (a) The preparation of appropriate, complete, and coordinated
15 design documents;

16 (b) Confirmation that a constructability analysis of the design
17 documents has been performed prior to solicitation of a subcontract
18 bid package;

19 (c) Reasonable budget contingencies totaling not less than five
20 percent of the anticipated contract value;

21 (d) To the extent appropriate, on-site architectural or
22 engineering representatives during major construction or installation
23 phases;

24 (e) Employment of staff or consultants with expertise and prior
25 experience in the management of comparable projects, critical path
26 method schedule review and analysis, and the administration, pricing,
27 and negotiation of change orders;

28 (f) Contract documents that include alternative dispute
29 resolution procedures to be attempted before the initiation of
30 litigation;

31 (g) Contract documents that: (i) Obligate the public owner to, in
32 writing, accept, dispute, or reject a request for equitable
33 adjustment, change order request, or claim within a specified time
34 period but no later than ((~~sixty~~)) 30 calendar days after the receipt
35 by the public body of related documentation; ((~~and~~)) (ii) provide
36 that, if the request is disputed or rejected, the public owner shall
37 state in writing why part or all of the request is disputed or
38 rejected; and (iii) provide that if the public owner does not respond
39 in writing to a request for equitable adjustment, change order

1 request, or claim within the specified time period, the (~~request is~~
2 ~~deemed denied~~)) contractor shall not be deemed to have waived any
3 right to the claims process;

4 (h) Submission of project information, as required by the board;
5 and

6 (i) Contract documents that require the contractor,
7 subcontractors, and designers to submit project information required
8 by the board.

9 (2) A public body using the general contractor/construction
10 manager contracting procedure may include an incentive clause for
11 early completion, cost savings, or other performance goals if such
12 incentives are identified in the request for proposals. No incentives
13 granted may exceed five percent of the maximum allowable construction
14 cost. No incentives may be paid from any contingency fund established
15 for coordination of the construction documents or coordination of the
16 work.

17 (3) If the construction is completed for less than the maximum
18 allowable construction cost, any savings not otherwise negotiated as
19 part of an incentive clause shall accrue to the public body. If the
20 construction is completed for more than the maximum allowable
21 construction cost, the additional cost is the responsibility of the
22 general contractor/construction manager.

23 (4) If the public body and the general contractor/construction
24 manager agree, in writing, on a price for additional work, the public
25 body must issue a change order within (~~thirty~~) 30 days of the
26 written agreement. If the public body does not issue a change order
27 within the (~~thirty~~) 30 days, interest shall accrue on the dollar
28 amount of the additional work satisfactorily completed until a change
29 order is issued. The public body shall pay this interest at a rate of
30 one percent per month.

31 (~~(5) For a project procured as a heavy civil construction~~
32 ~~project, an independent audit, paid for by the public body, must be~~
33 ~~conducted to confirm the proper accrual of costs as outlined in the~~
34 ~~contract.))~~

35 **Sec. 9.** RCW 39.10.360 and 2014 c 42 s 5 are each amended to read
36 as follows:

37 (1) Public bodies should select general contractor/construction
38 managers (~~early in the life of public works projects, and in most~~
39 ~~situations no later than the completion of schematic design~~)) at a

1 time in the project when the general contractor/construction
2 manager's participation provides value.

3 (2) Contracts for the services of a general contractor/
4 construction manager under this section shall be awarded through a
5 competitive process requiring the public solicitation of proposals
6 for general contractor/construction manager services. At a minimum,
7 the public body shall publish at least once in a legal newspaper of
8 general circulation published in, or as near as possible to, that
9 part of the county in which the public work will be performed, a
10 notice of its request for qualifications from proposers for general
11 contractor/construction manager services, and the availability and
12 location of the request for proposal documents. The public body is
13 encouraged to post the general contractor/construction manager
14 opportunity in additional areas, such as websites for business
15 associations or the office of minority and women's business
16 enterprises, to further publicize the opportunity for qualified
17 general contractors/construction managers. The public solicitation of
18 proposals shall include:

19 (a) A description of the project, including programmatic,
20 performance, and technical requirements and specifications when
21 available;

22 (b) The reasons for using the general contractor/construction
23 manager procedure (~~including, if applicable, a clear statement that~~
24 ~~the public body is electing to procure the project as a heavy civil~~
25 ~~construction project, in which case the solicitation must~~
26 ~~additionally:~~

27 ~~(i) Indicate the minimum percentage of the cost of the work to~~
28 ~~construct the project that will constitute the negotiated self-~~
29 ~~perform portion of the project;~~

30 ~~(ii) Indicate whether the public body will allow the price to be~~
31 ~~paid for the negotiated self-perform portion of the project to be~~
32 ~~deemed a cost of the work to which the general contractor/~~
33 ~~construction manager's percent fee applies; and~~

34 ~~(iii) Require proposals to indicate the proposer's fee for the~~
35 ~~negotiated self-perform portion of the project));~~

36 (c) A description of the qualifications to be required of the
37 firm, including submission of the firm's accident prevention program;

38 (d) A description of the process the public body will use to
39 evaluate qualifications and proposals, including evaluation factors,
40 the relative weight of factors, and protest procedures including time

limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3) ~~((a))~~ Evaluation factors for ~~((selection))~~ qualifications of the general contractor/construction manager shall include, but not be limited to:

~~((i) Ability of the firm's professional))~~ (a) Experience and technical competence of key personnel;

~~((ii))~~ (b) The (firm's) proposer's past performance (in) with negotiated (and) or similarly complex projects;

~~((iii))~~ (c) The (firm's ability to meet time and budget requirements) proposer's capacity to perform the work;

~~((iv))~~ (d) The scope of work the firm proposes to self-perform and its (ability to perform) past performance of that scope of work;

~~((v) The firm's proximity to the project location;~~

~~(vi) Recent, current, and projected workloads of the firm; and~~

~~(vii))~~ (e) The (firm's) proposer's approach to executing the project, including ability to meet the project time and budget requirements; and

(f) The proposer's past performance in utilization of disadvantaged business enterprises and small business entities and the inclusion plan for small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project, to the extent permitted by law.

~~((b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.))~~

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, ~~((including))~~ which must include sealed bids for the percent fee on the estimated maximum allowable construction cost and ~~((the fixed amount for the general conditions~~

1 ~~work specified)) which may include other price-related factors~~
2 ~~identified in the request for proposal. In no event shall a price-~~
3 ~~related factor include a request for overall project budget,~~
4 ~~estimate, or bid.~~ The public body shall establish a time and place
5 for the opening of sealed bids (~~((for the percent fee on the estimated~~
6 ~~maximum allowable construction cost and the fixed amount for the~~
7 ~~general conditions work specified in the request for proposal))~~). At
8 the time and place named, these bids must be publicly opened and read
9 and the public body shall make all previous scoring available to the
10 public. The public body shall select the firm submitting the highest
11 scored final proposal using the evaluation factors and the relative
12 weight of factors published in the public solicitation of proposals.
13 A public body shall not evaluate or disqualify a proposal based on
14 the terms of a collective bargaining agreement.

15 (5) The public body shall notify all finalists of the selection
16 decision and make a selection summary of the final proposals
17 available to all proposers within two business days of such
18 notification. If the public body receives a timely written protest
19 from a proposer, the public body may not execute a contract until two
20 business days after the final protest decision is transmitted to the
21 protestor. The protestor must submit its protest in accordance with
22 the published protest procedures.

23 (6) Public bodies may contract with the selected firm to provide
24 services during the design phase that may include life-cycle cost
25 design considerations, value engineering, scheduling, cost
26 estimating, constructability, alternative construction options for
27 cost savings, and sequencing of work, and to act as the construction
28 manager and general contractor during the construction phase.

29 **Sec. 10.** RCW 39.10.370 and 2014 c 42 s 6 are each amended to
30 read as follows:

31 (1) The maximum allowable construction cost shall be used to
32 establish a total contract cost for which the general contractor/
33 construction manager shall provide a performance and payment bond.
34 The maximum allowable construction cost shall be negotiated between
35 the public body and the selected firm when the construction documents
36 and specifications are at least ninety percent complete.

37 (2) Major bid packages may be bid in accordance with RCW
38 39.10.380 before agreement on the maximum allowable construction cost
39 between the public body and the selected general contractor/

1 construction manager. The general contractor/construction manager may
2 issue an intent to award to the responsible bidder submitting the
3 lowest responsive bid.

4 (3) The public body may, at its option, authorize the general
5 contractor/construction manager to proceed with the bidding and award
6 of bid packages and construction before receipt of complete project
7 plans and specifications. Any contracts awarded under this subsection
8 shall be incorporated in the negotiated maximum allowable
9 construction cost.

10 (4) The total contract cost includes the fixed amount for the
11 detailed specified general conditions work, the negotiated maximum
12 allowable construction cost, the negotiated support services, and the
13 percent fee on the negotiated maximum allowable construction cost.
14 ~~((Negotiated support services may be included in the specified
15 general conditions at the discretion of the public body.))~~ Unless
16 portions or all are converted to lump sum, negotiated support
17 services shall be treated as a contractual allowance, subject to
18 reconciliation at the conclusion of work.

19 (5) If the public body is unable to negotiate a satisfactory
20 maximum allowable construction cost with the firm selected that the
21 public body determines to be fair, reasonable, and within the
22 available funds, negotiations with that firm shall be formally
23 terminated and the public body shall negotiate with the next highest
24 scored firm and continue until an agreement is reached or the process
25 is terminated.

26 (6) If the maximum allowable construction cost varies more than
27 ~~((fifteen))~~ 15 percent from the bid estimated maximum allowable
28 construction cost due to requested and approved changes in the scope
29 by the public body, the percent fee shall be renegotiated.

30 ~~((7) As part of the negotiation of the maximum allowable~~
31 ~~construction cost under subsection (1) of this section, on a project~~
32 ~~that the public body has elected to procure as a heavy civil~~
33 ~~construction project:~~

34 ~~(a) The general contractor/construction manager shall submit a~~
35 ~~proposed construction management and contracting plan, which must~~
36 ~~include, at a minimum:~~

37 ~~(i) The scope of work and cost estimates for each bid package;~~
38 ~~(ii) A proposed price and scope of work for the negotiated self-~~
39 ~~perform portion of the project;~~

1 ~~(iii) The bases used by the general contractor/construction~~
2 ~~manager to develop all cost estimates, including the negotiated self-~~
3 ~~perform portion of the project; and~~

4 ~~(iv) The general contractor/construction manager's updated~~
5 ~~outreach plan to include small business entities, disadvantaged~~
6 ~~business entities, and any other disadvantaged or underutilized~~
7 ~~businesses as the public body may designate in the public~~
8 ~~solicitation of proposals, as subcontractors and suppliers for the~~
9 ~~project;~~

10 ~~(b) The public body and general contractor/construction manager~~
11 ~~may negotiate the scopes of work to be procured by bid and the price~~
12 ~~and scope of work for the negotiated self-perform portion of the~~
13 ~~project, if any;~~

14 ~~(c) The negotiated self-perform portion of the project must not~~
15 ~~exceed fifty percent of the cost of the work to construct the~~
16 ~~project;~~

17 ~~(d) Subject to the limitation of RCW 39.10.390(4), the public~~
18 ~~body may additionally negotiate with the general contractor/~~
19 ~~construction manager to determine on which scopes of work the general~~
20 ~~contractor/construction manager will be permitted to bid, if any;~~

21 ~~(e) The public body and general contractor/construction manager~~
22 ~~shall negotiate, to the public body's satisfaction, a fair and~~
23 ~~reasonable outreach plan;~~

24 ~~(f) If the public body is unable to negotiate to its reasonable~~
25 ~~satisfaction a component of this subsection (7), negotiations with~~
26 ~~the firm must be terminated and the public body shall negotiate with~~
27 ~~the next highest scored firm and continue until an agreement is~~
28 ~~reached or the process is terminated.))~~

29 **Sec. 11.** RCW 39.10.380 and 2013 c 222 s 14 are each amended to
30 read as follows:

31 (1) All subcontract work and equipment and material purchases
32 shall be competitively bid with public bid openings and require the
33 public solicitation of the bid documents. At a minimum, the general
34 contractor/construction manager shall publish at least once in a
35 legal newspaper of general circulation published in, or as near as
36 possible to, that part of the county in which the subcontract work
37 will be performed, a notice of its request for bid, and the
38 availability and location of the bid documents. The general
39 contractor/construction manager is encouraged to post the subcontract

opportunity in additional areas beyond the legal newspaper as required by this subsection, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the opportunity for qualified subcontractors. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement. Individual bid packages are to be prepared with trades separated in the manner consistent with industry practice to maximize participation and competition across all trades. Bundling of trades not normally combined into one bid package is not allowed without justification and specific approval by the public body. Bid packages must be prepared to reduce barriers for and increase participation by disadvantaged business enterprises.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over ~~((three hundred thousand dollars))~~ \$300,000 shall post a bid bond. All subcontractors who are awarded a contract over ~~((three hundred thousand dollars))~~ \$300,000 shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall

1 not execute a contract for the subcontract bid package or equipment
2 or material purchase order with anyone other than the protesting
3 bidder without first providing at least two full business days'
4 written notice to all bidders of the intent to execute a contract for
5 the subcontract bid package. The protesting bidder must submit
6 written notice of its protest no later than two full business days
7 following the bid opening. Intermediate Saturdays, Sundays, and legal
8 holidays are not counted.

9 (5) A low bidder who claims error and fails to enter into a
10 contract is prohibited from bidding on the same project if a second
11 or subsequent call for bids is made for the project.

12 (6) The general contractor/construction manager may negotiate
13 with the lowest responsible and responsive bidder to negotiate an
14 adjustment to the lowest bid or proposal price to reduce cost based
15 upon agreed changes to the contract plans and specifications under
16 the following conditions:

17 (a) All responsive bids or proposal prices exceed the ((available
18 funds)) published bid package estimates; and

19 (b) The apparent low responsive bid or proposal does not exceed
20 the ((available funds by the greater of one hundred twenty-five
21 thousand dollars or two percent for projects valued over ten million
22 dollars; and

23 ~~(c) The negotiated adjustment will bring the bid or proposal~~
24 ~~price within the amount of available funds))~~ published bid package
25 estimates by more than 10 percent.

26 (7) If the negotiation is unsuccessful, the subcontract work or
27 equipment or material purchases must be rebid.

28 (8) The general contractor/construction manager must provide a
29 written explanation to the public body if all bids are rejected.

30 **Sec. 12.** RCW 39.10.385 and 2013 c 222 s 15 are each amended to
31 read as follows:

32 The selection process in this section may be used by public
33 bodies certified under RCW 39.10.270. It may also be used by
34 noncertified public bodies if this selection process has been
35 approved for the project by the project review committee. As an
36 alternative to the subcontractor selection process outlined in RCW
37 39.10.380, a general contractor/construction manager may, with the
38 approval of the public body, select ((~~mechanical subcontractors,~~

39 ~~electrical~~)) one or more subcontractors((~~, or both,~~)) using the

process outlined in this section. This alternative selection process may only be used when the anticipated value of the subcontract will exceed three million dollars. When using the alternative selection process, the general contractor/construction manager should select the subcontractor early in the life of the public works project.

(1) In order to use this alternative selection process, the general contractor/construction manager and the public body must determine that it is in the best interest of the public. In making this determination the general contractor/construction manager and the public body must:

(a) Publish a notice of intent to use this alternative selection process in ((a)) the same legal newspaper where the public solicitation of proposals is published ((in or as near as possible to that part of the county where the public work will be constructed)). The general contractor/construction manager and public body are encouraged to post the notice in additional areas beyond the legal newspaper as required under this subsection, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the intent to use this alternative selection process. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; how interested parties may, prior to the hearing, obtain the following: (i) The evaluation criteria and applicable weight given to each criteria that will be used for evaluation, including clear definitions of what should be considered specified general conditions work and what should be considered the fee; and (ii) protest procedures including time limits for filing a protest, which may, in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision. The evaluation criteria, weights assigned to each criteria, and justification for using this selection process must be made available upon request at least seven calendar days before the public hearing;

(b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for using this selection process, the evaluation criteria, weights for each criteria, and protest procedures;

1 (c) After the public hearing, consider the written and verbal
2 comments received and determine if using this alternative selection
3 process is in the best interests of the public; and

4 (d) Issue a written final determination to all interested
5 parties. (~~All protests of the decision to use the alternative~~
6 ~~selection process must be in writing and submitted to the public body~~
7 ~~within seven calendar days of the final determination.~~) The final
8 determination shall state the reasons the alternative selection
9 process is determined to be in the best interests of the public and
10 shall reasonably address the comments received regarding the criteria
11 and weights for each criterion. Any modifications to the criteria,
12 weights, and protest procedures based on comments received during the
13 public hearing process must be included in the final determination.
14 All protests of the decision to use the alternative selection process
15 must be in writing and submitted to the public body within seven
16 calendar days of the final determination. The public body shall not
17 proceed with the selection process until after responding in writing
18 to the protest.

19 (2) Contracts for the services of a subcontractor under this
20 section must be awarded through a competitive process requiring a
21 public solicitation of proposals. Notice of the public solicitation
22 of proposals must be provided to the office of minority and women's
23 business enterprises. The public solicitation of proposals must
24 include:

25 (a) A description of the project, including programmatic,
26 performance, and technical requirements and specifications when
27 available, along with a description of the project's unique aspects,
28 complexities, and challenges;

29 (b) The reasons for using the alternative selection process;

30 (c) A description of the minimum qualifications required of the
31 firm;

32 (d) A description of the process used to evaluate qualifications
33 and proposals, including evaluation factors and the relative weight
34 of factors;

35 (e) Protest procedures;

36 (f) The form of the contract, including any contract for
37 preconstruction services, to be awarded;

38 (g) The estimated maximum allowable subcontract cost; and

39 (h) The bid instructions to be used by the finalists.

1 (3) Evaluation factors for selection of the subcontractor must
2 include, but not be limited to:

3 (a) Ability of the firm's professional personnel to deliver
4 projects similar in size, scope, or complexity;

5 (b) The firm's past performance on ~~((similar))~~ projects similar
6 in size, scope, or complexity;

7 (c) The firm's ability to meet time and budget requirements on
8 projects similar in size, scope, or complexity;

9 (d) The scope of work the firm proposes to perform with its own
10 forces and its ability to perform that work;

11 (e) The firm's plan for ~~((outreach to minority and women-owned~~
12 ~~businesses))~~ inclusion of disadvantaged business enterprises, to the
13 extent permitted by law;

14 (f) The firm's proximity to the project location;

15 (g) ~~((The firm's capacity to successfully complete the project;~~

16 ~~-h-))~~ The firm's approach to executing the project based on its
17 delivery of other projects similar in size, scope, or complexity;

18 ~~((i-))~~ (h) The firm's approach to safety on the project;

19 ~~((j-))~~ (i) The firm's safety history;

20 (j) If interviews are part of the selection process, the
21 solicitation shall describe how interviews will be scored or
22 evaluated, and evaluations shall be included in the written selection
23 summary; and

24 (k) If the firm is selected as one of the most qualified
25 finalists, the firm's fee and cost proposal.

26 (4) The general contractor/construction manager shall establish a
27 committee to evaluate the proposals. At least one representative from
28 the public body shall serve on the committee. Final proposals,
29 including sealed bids for the percent fee on the estimated maximum
30 allowable subcontract cost, and the fixed amount for the subcontract
31 general conditions work specified in the request for proposal, will
32 be requested from the most qualified firms.

33 (5) The general contractor/construction manager must notify all
34 proposers of the most qualified firms that will move to the next
35 phase of the selection process. The process may not proceed to the
36 next phase until two business days after all proposers are notified
37 of the committee's selection decision. At the request of a proposer,
38 the general contractor/construction manager must provide the
39 requesting proposer with a scoring summary of the evaluation factors
40 for its proposal. Proposers filing a protest on the selection of the

1 most qualified finalists must file the protest with the public body
2 in accordance with the published protest procedures. The selection
3 process may not advance to the next phase of selection until two
4 business days after the final protest decision issued by the public
5 body is transmitted to the protestor.

6 (6) The general contractor/construction manager and the public
7 body shall select the firm submitting the highest scored final
8 proposal using the evaluation factors and the relative weight of
9 factors identified in the solicitation of proposals. Scoring of the
10 nonprice factors shall be added to the scoring of the fee and cost
11 proposals to determine the highest scored firm. The scoring of the
12 nonprice factors must be made available at the public opening of the
13 fee and cost proposals. The general contractor/construction manager
14 shall notify all proposers of the selection decision and make a
15 selection summary of the final proposals, which shall be available to
16 all proposers within two business days of such notification. The
17 general contractor/construction manager may not evaluate or
18 disqualify a proposal based on the terms of a collective bargaining
19 agreement.

20 (7) If the public body receives a timely written protest from a
21 "most qualified firm," the general contractor/construction manager
22 may not execute a contract for the protested subcontract work until
23 two business days after the final protest decision issued by the
24 public body is transmitted to the protestor. The protestor must
25 submit its protest in accordance with the published protest
26 procedures.

27 (8) If the general contractor/construction manager is unable to
28 negotiate a satisfactory maximum allowable subcontract cost with the
29 firm selected deemed by public body and the general contractor/
30 construction manager to be fair, reasonable, and within the available
31 funds, negotiations with that firm must be formally terminated and
32 the general contractor/construction manager may negotiate with the
33 next highest scored firm until an agreement is reached or the process
34 is terminated.

35 (9) With the approval of the public body, the general contractor/
36 construction manager may contract with the selected firm to provide
37 preconstruction services during the design phase that may include
38 life-cycle cost design considerations, value engineering, scheduling,
39 cost estimating, constructability, alternative construction options
40 for cost savings, and sequencing of work; and to act as the

1 ((~~mechanical or electrical~~)) subcontractor during the construction
2 phase.

3 (10) The maximum allowable subcontract cost must be used to
4 establish a total subcontract cost for purposes of a performance and
5 payment bond. Total subcontract cost means the fixed amount for the
6 detailed specified general conditions work, the negotiated maximum
7 allowable subcontract cost, and the percent fee on the negotiated
8 maximum allowable subcontract cost. Maximum allowable subcontract
9 cost means the maximum cost to complete the work specified for the
10 subcontract, including the estimated cost of work to be performed by
11 the subcontractor's own forces, a percentage for risk contingency,
12 negotiated support services, and approved change orders. The maximum
13 allowable subcontract cost must be negotiated between the general
14 contractor/construction manager and the selected firm when the
15 construction documents and specifications are at least ninety percent
16 complete. Final agreement on the maximum allowable subcontract cost
17 is subject to the approval of the public body.

18 (11) If the work of the ((~~mechanical contractor or electrical~~
19 ~~contractor~~)) subcontractor is completed for less than the maximum
20 allowable subcontract cost, any savings not otherwise negotiated as
21 part of an incentive clause becomes part of the risk contingency
22 included in the general contractor/construction manager's maximum
23 allowable construction cost. If the work of the ((~~mechanical~~
24 ~~contractor or the electrical contractor~~)) subcontractor is completed
25 for more than the maximum allowable subcontract cost, the additional
26 cost is the responsibility of that subcontractor. An independent
27 audit, paid for by the public body, must be conducted to confirm the
28 proper accrual of costs ((~~as outlined in the contract~~)). The public
29 body or general contractor/construction manager shall define the
30 scope of the audit in the contract.

31 (12) A ((~~mechanical or electrical contractor~~)) subcontractor
32 selected under this section may perform work with its own forces. In
33 the event it elects to subcontract some of its work, it must select a
34 subcontractor utilizing the procedure outlined in RCW 39.10.380.

35 **Sec. 13.** RCW 39.10.390 and 2014 c 42 s 7 are each amended to
36 read as follows:

37 (1) Except as provided in this section, bidding on subcontract
38 work or for the supply of equipment or materials by the general
39 contractor/construction manager or its subsidiaries is prohibited.

1 (2) The general contractor/construction manager, or its
2 subsidiaries, may bid on subcontract work or for the supply of
3 equipment or materials if:

4 (a) The work within the subcontract bid package or equipment or
5 materials is customarily performed or supplied by the general
6 contractor/construction manager;

7 (b) The bid opening is managed by the public body and is in
8 compliance with RCW 39.10.380; and

9 (c) Notification of the general contractor/construction manager's
10 intention to bid is included in the public solicitation of bids for
11 the bid package or for the equipment or materials.

12 (3) In no event may the general contractor/construction manager
13 or its subsidiaries assign warranty responsibility or the terms of
14 its contract or purchase order with vendors for equipment or material
15 purchases to subcontract bid package bidders or subcontractors who
16 have been awarded a contract. The value of subcontract work performed
17 and equipment and materials supplied by the general contractor/
18 construction manager may not exceed ((thirty)) 30 percent of the
19 negotiated maximum allowable construction cost, unless procured as a
20 heavy civil construction project under this chapter. Negotiated
21 support services performed by the general contractor/construction
22 manager shall not be considered subcontract work for purposes of this
23 subsection.

24 ~~((4) Notwithstanding any contrary provision of this chapter, for~~
25 ~~a project that a public body has elected to procure as a heavy civil~~
26 ~~construction project under this chapter, at least thirty percent of~~
27 ~~the cost of the work to construct the project included in the~~
28 ~~negotiated maximum allowable construction cost must be procured~~
29 ~~through competitive sealed bidding in which bidding by the general~~
30 ~~contractor/construction manager or its subsidiaries is prohibited.))~~

31 **Sec. 14.** RCW 39.10.400 and 2013 c 222 s 17 are each amended to
32 read as follows:

33 (1) If determination of subcontractor eligibility prior to
34 seeking bids is in the best interest of the project and critical to
35 the successful completion of a subcontract bid package, the general
36 contractor/construction manager and the public body may determine
37 subcontractor eligibility to bid. The general contractor/construction
38 manager and the public body must:

1 (a) Conduct a hearing and provide an opportunity for any
2 interested party to submit written and verbal comments regarding the
3 justification for conducting bidder eligibility, the evaluation
4 criteria, and weights for each criteria and subcriteria;

5 (b) Publish a notice of intent to evaluate and determine bidder
6 eligibility in a legal newspaper published in or as near as possible
7 to that part of the county where the public work will be constructed
8 at least (~~fourteen~~) 14 calendar days before conducting a public
9 hearing. The general contractor/construction manager and public body
10 are encouraged to post the notice in additional areas beyond the
11 legal newspaper as required under this subsection, such as websites
12 for business associations, the office of minority and women's
13 business enterprises, and other locations and mediums that will
14 further publicize the intent to use subcontractor eligibility prior
15 to seeking bids;

16 (c) Ensure the public hearing notice includes the date, time, and
17 location of the hearing, a statement justifying the basis and need
18 for performing eligibility analysis before bid opening, and how
19 interested parties may, at least five days before the hearing, obtain
20 the specific eligibility criteria and applicable weights given to
21 each criteria and subcriteria that will be used during evaluation;

22 (d) After the public hearing, consider written and verbal
23 comments received and determine if establishing bidder eligibility in
24 advance of seeking bids is in the best interests of the project and
25 critical to the successful completion of a subcontract bid package;
26 and

27 (e) Issue a written final determination to all interested
28 parties. All protests of the decision to establish bidder eligibility
29 before issuing a subcontractor bid package must be filed with the
30 superior court within seven calendar days of the final determination.
31 Any modifications to the eligibility criteria and weights shall be
32 based on comments received during the public hearing process and
33 shall be included in the final determination.

34 (2) Determinations of bidder eligibility shall be in accordance
35 with the evaluation criteria and weights for each criteria
36 established in the final determination and shall be provided to
37 interested persons upon request. Any potential bidder determined not
38 to meet eligibility criteria must be afforded one opportunity to
39 establish its eligibility. Protests concerning bidder eligibility

determinations shall be in accordance with subsection (1) of this section.

Sec. 15. RCW 39.10.430 and 2019 c 212 s 8 are each amended to read as follows:

(1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

(2) The public body shall (~~make an effort~~) prioritize efforts to solicit proposals from certified minority or certified woman-owned contractors to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(3) The public body shall publish, at least once in a statewide publication and legal newspaper of general circulation published in every county in which the public works project is anticipated, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body is encouraged to post the request for proposals for job order contracts and the availability and location of the request for proposal documents in other areas, such as websites for business associations, the office of minority and women's business enterprises, and other locations and mediums that will further publicize the opportunities. The public body shall ensure that the request for proposal documents at a minimum includes:

(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;

(b) The reasons for using job order contracts;

(c) A description of the qualifications required of the proposer;

(d) The identity of the specific unit price book to be used and a description of which elements shall be included in the coefficient as necessary to establish a firm fixed price on work orders to be awarded under the job order contract;

(e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, (~~proposal~~

1 ~~price))~~ the coefficient and the ability of the proposer to perform
2 the job order contract. In evaluating the ability of the proposer to
3 perform the job order contract, the public body may consider: The
4 ability of the professional personnel who will work on the job order
5 contract; past performance on similar contracts; ability to meet time
6 and budget requirements; past performance on approved subcontractor
7 inclusion plans; ability to provide a performance and payment bond
8 for the job order contract; recent, current, and projected workloads
9 of the proposer; location; and the concept of the proposal;

10 (g) The form of the contract to be awarded;

11 (h) The method for pricing renewals of or extensions to the job
12 order contract;

13 (i) A notice that the proposals are subject to RCW 39.10.470; and

14 (j) Other relevant information (~~((relevant to the project))~~).

15 (4) A public body shall establish a committee, including a member
16 with knowledge and experience in state and federal laws, rules, and
17 best practices concerning public contracting for minority, women, and
18 veteran-owned businesses and small businesses, to evaluate the
19 proposals. After the committee has selected the most qualified
20 finalists, the finalists shall submit (~~((final proposals, including~~
21 ~~sealed bids based upon the identified unit price book))~~ a sealed bid
22 including, but not limited to, coefficient(s). Such bids may be in
23 the form of coefficient (~~((markups from))~~ adjustments to the listed
24 unit price book ((costs))). The public body shall award the contract
25 to the firm submitting the highest scored final proposal using the
26 evaluation factors and the relative weight of factors published in
27 the public request for proposals and will notify the board of the
28 award of the contract.

29 (5) The public body shall provide a protest period of at least
30 ten business days following the day of the announcement of the
31 apparent successful proposal to allow a protester to file a detailed
32 statement of the grounds of the protest. The public body shall
33 promptly make a determination on the merits of the protest and
34 provide to all proposers a written decision of denial or acceptance
35 of the protest. The public body shall not execute the contract until
36 two business days following the public body's decision on the
37 protest.

38 (6) The requirements of RCW 39.30.060 do not apply to requests
39 for proposals for job order contracts.

1 **Sec. 16.** RCW 39.10.440 and 2019 c 212 s 9 are each amended to
2 read as follows:

3 (1) The maximum total dollar amount that may be awarded under a
4 job order contract is (~~((four million dollars))~~) \$4,000,000 per year
5 for a maximum of three years. Any unused capacity from the previous
6 year may be carried over for one year and added to the immediate
7 following year's limit. The maximum annual volume including unused
8 capacity shall not exceed the limit of two years. The maximum total
9 dollar amount that may be awarded under a job order contract for the
10 department of enterprise services, counties with a population of more
11 than (~~((one million))~~) 1,000,000, and cities with a population of more
12 than (~~((four hundred thousand))~~) 400,000 is (~~((six million dollars))~~)
13 \$6,000,000 per year for a maximum of three years. The maximum total
14 dollar amounts are exclusive of Washington state sales and use tax.

15 (2) Job order contracts may be executed for an initial contract
16 term of not to exceed two years, with the option of extending or
17 renewing the job order contract for one year. All extensions or
18 renewals must be priced as provided in the request for proposals. The
19 extension or renewal must be mutually agreed to by the public body
20 and the job order contractor.

21 (3) A public body may have no more than three job order contracts
22 in effect at any one time, with the exception of the department of
23 enterprise services, which may have six job order contracts in effect
24 at any one time.

25 (4) At least (~~((ninety))~~) 90 percent of work contained in a job
26 order contract must be subcontracted to entities other than the job
27 order contractor. The job order contractor must distribute contracts
28 as equitably as possible among qualified and available subcontractors
29 including certified minority and woman-owned subcontractors to the
30 extent permitted by law as demonstrated on the subcontractor and
31 supplier project submission, and shall limit subcontractor bonding
32 requirements to the greatest extent possible.

33 (5) The job order contractor shall publish notification of intent
34 to perform public works projects at the beginning of each contract
35 year in a statewide publication and in a legal newspaper of general
36 circulation in every county in which the public works projects are
37 anticipated. The job order contractor is encouraged to post the
38 notification of intent to perform public works projects in other
39 areas, such as websites for business associations, the office of

1 minority and women's business enterprises, and other locations and
2 mediums that will further publicize subcontractor opportunities.

3 (6) Job order contractors shall pay prevailing wages for all work
4 that would otherwise be subject to the requirements of chapter 39.12
5 RCW. Prevailing wages for all work performed pursuant to each work
6 order must be the rates in effect at the time the individual work
7 order is issued.

8 (7) If, in the initial contract term, the public body, at no
9 fault of the job order contractor, fails to issue the minimum amount
10 of work orders stated in the public request for proposals, the public
11 body shall pay the contractor an amount equal to the difference
12 between the minimum work order amount and the actual total of the
13 work orders issued multiplied by an appropriate percentage for
14 overhead and profit contained in the contract award coefficient for
15 services as specified in the request for proposals. This is the
16 contractor's sole remedy.

17 (8) All job order contracts awarded under this section must be
18 signed before July 1, ~~((2021))~~ 2031; however the job order contract
19 may be extended or renewed as provided for in this section.

20 ~~((9) Public bodies may amend job order contracts awarded prior~~
21 ~~to July 1, 2007, in accordance with this chapter.))~~

22 **Sec. 17.** RCW 39.10.460 and 2012 c 102 s 3 are each amended to
23 read as follows:

24 Each ~~((year, a))~~ public body shall ~~((provide to the board))~~
25 maintain and make available the following information for each job
26 order contract ~~((for the period July 1st through June 30th))~~:

27 (1) A list of work orders issued;

28 (2) The cost of each work order;

29 (3) A list of subcontractors hired under each work order,
30 including whether those subcontractors were certified small,
31 minority, women, or veteran-owned businesses; and

32 (4) ~~((If requested by the board, a))~~ A copy of the intent to pay
33 prevailing wage and the affidavit of wages paid for each work order
34 subcontract ~~((; and~~

35 ~~(5) Any other information requested by the board))~~.

36 **Sec. 18.** RCW 39.10.490 and 2013 c 222 s 20 are each amended to
37 read as follows:

1 The alternative public works contracting procedures authorized
2 under this chapter are limited to public works contracts signed
3 before July 1, ((2021)) 2031. Methods of public works contracting
4 authorized under this chapter shall remain in full force and effect
5 until completion of contracts signed before July 1, ((2021)) 2031.

6 NEW SECTION. **Sec. 19.** A new section is added to chapter 39.10
7 RCW to read as follows:

8 In addition to the general contractor/construction manager
9 requirements established in this chapter, public bodies utilizing the
10 general contractor/construction manager method for a heavy civil
11 construction project must also comply with the following
12 requirements:

13 (1) The heavy civil construction general contractor/construction
14 manager contract solicitation must:

15 (a) Provide the reasons for using the general contractor/
16 construction manager procedure, including a clear statement that the
17 public body is electing to procure the project as a heavy civil
18 construction project;

19 (b) Indicate the minimum percentage of the cost of the work to
20 construct the project that will constitute the negotiated self-
21 perform portion of the project;

22 (c) Indicate whether the public body will allow the price to be
23 paid for the negotiated self-perform portion of the project to be
24 deemed a cost of the work to which the general contractor/
25 construction manager's percent fee applies; and

26 (d) Require proposals to indicate the proposer's fee for the
27 negotiated self-perform portion of the project;

28 (2) As part of the negotiation of the maximum allowable
29 construction cost established in RCW 39.10.370(1), the general
30 contractor/construction manager shall submit a proposed construction
31 management and contracting plan, which must include, at a minimum:

32 (a) The scope of work and cost estimates for each bid package;

33 (b) A proposed price and scope of work for the negotiated self-
34 perform portion of the project;

35 (c) The bases used by the general contractor/construction manager
36 to develop all cost estimates, including the negotiated self-perform
37 portion of the project; and

38 (d) The general contractor/construction manager's updated
39 inclusion plan for small business entities, disadvantaged business

enterprises, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

(3) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self-perform portion of the project, if any;

(4) The negotiated self-perform portion of the project must not exceed 50 percent of the cost of the work to construct the project;

(5) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least 30 percent of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited;

(6) Subject to the limitation of subsection (5) of this section, the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

(7) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable inclusion plan;

(8) If the public body is unable to negotiate to its reasonable satisfaction a component of this section, negotiations with the firm must be terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated; and

(9) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract. The public body shall define the scope of the audit in the contract.

NEW SECTION. **Sec. 20.** (1) The capital projects advisory review board shall coordinate and consult with the office of minority and women's business enterprises, the department of enterprise services, the office of equity, community stakeholders and advocates, and subject matter experts to create best practices guidelines for increasing and sustaining access to contracting opportunities in

1 alternative public works for minority, women, and veteran-owned
2 businesses, and small businesses. In creating the guidelines, the
3 board shall take into consideration the barriers to participation
4 identified in the local government contracting report produced
5 pursuant to section 16, chapter 434, Laws of 2019, information and
6 recommendations from the 2019 Washington state disparity study and
7 disparity studies of any other public body in Washington state, and
8 successful diversity and inclusion policies being implemented by
9 state and local governmental agencies. The best practices shall
10 address, at a minimum, guidelines for use of race-neutral and race-
11 conscious programs, elements of successful inclusion plans, the use
12 of aspirational inclusion goals, evaluation of inclusion plans in the
13 contract award process, and the evaluation of inclusion plans and
14 past performance in public body certification and project approval
15 processes under RCW 39.10.270 and 39.10.280. The board shall make the
16 best practices guidelines available on its website by June 30, 2022,
17 and should have a plan to update the practices to keep them relevant
18 for use. Additionally, by June 30, 2022, the board shall report to
19 the appropriate committees of the legislature regarding any
20 recommendations for changes to state law that are advisable based
21 upon the best practices guidelines.

22 (2) This section expires July 1, 2023.

23 **Sec. 21.** RCW 43.131.407 and 2013 c 222 s 21 are each amended to
24 read as follows:

25 The alternative public works contracting procedures under chapter
26 39.10 RCW shall be terminated June 30, ((2021)) 2031, as provided in
27 RCW 43.131.408.

28 **Sec. 22.** RCW 43.131.408 and 2019 c 212 s 13 are each amended to
29 read as follows:

30 The following acts or parts of acts, as now existing or hereafter
31 amended, are each repealed, effective June 30, ((2022)) 2032:

32 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
33 1994 c 132 s 1;

34 (2) RCW 39.10.210 and 2021 c ... s 1 (section 1 of this act),
35 2019 c 212 s 1, 2014 c 42 s 1, & 2013 c 222 s 1;

36 (3) RCW 39.10.220 and 2021 c ... s 2 (section 2 of this act),
37 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

1 (4) RCW 39.10.230 and 2021 c ... s 3 (section 3 of this act),
2 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s
3 103, & 2005 c 377 s 2;
4 (5) RCW 39.10.240 and 2021 c ... s 4 (section 4 of this act),
5 2013 c 222 s 4, & 2007 c 494 s 104;
6 (6) RCW 39.10.250 and 2021 c ... s 5 (section 5 of this act),
7 2019 c 212 s 2, 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;
8 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;
9 (8) RCW 39.10.270 and 2019 c 212 s 3, 2017 c 211 s 1, 2013 c 222
10 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;
11 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494
12 s 108;
13 (10) RCW 39.10.290 and 2007 c 494 s 109;
14 (11) RCW 39.10.300 and 2021 c ... s 6 (section 6 of this act),
15 2019 c 212 s 4, 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;
16 (12) RCW 39.10.320 and 2019 c 212 s 5, 2013 c 222 s 10, 2007 c
17 494 s 203, & 1994 c 132 s 7;
18 (13) RCW 39.10.330 and 2021 c ... s 7 (section 7 of this act),
19 2019 c 212 s 6, 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007
20 c 494 s 204;
21 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c
22 494 s 301;
23 (15) RCW 39.10.350 and 2021 c ... s 8 (section 8 of this act),
24 2014 c 42 s 4, & 2007 c 494 s 302;
25 (16) RCW 39.10.360 and 2021 c ... s 9 (section 9 of this act),
26 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;
27 (17) RCW 39.10.370 and 2021 c ... s 10 (section 10 of this act),
28 2014 c 42 s 6, & 2007 c 494 s 304;
29 (18) RCW 39.10.380 and 2021 c ... s 11 (section 11 of this act),
30 2013 c 222 s 14, & 2007 c 494 s 305;
31 (19) RCW 39.10.385 and 2021 c ... s 12 (section 12 of this act),
32 2013 c 222 s 15, & 2010 c 163 s 1;
33 (20) RCW 39.10.390 and 2021 c ... s 13 (section 13 of this act),
34 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;
35 (21) RCW 39.10.400 and 2021 c ... s 14 (section 14 of this act),
36 2013 c 222 s 17, & 2007 c 494 s 307;
37 (22) RCW 39.10.410 and 2007 c 494 s 308;
38 (23) RCW 39.10.420 and 2019 c 212 s 7, 2017 c 136 s 1, & 2016 c
39 52 s 1;

1 (24) RCW 39.10.430 and 2021 c ... s 15 (section 15 of this act),
2 2019 c 212 s 8, & 2007 c 494 s 402;

3 (25) RCW 39.10.440 and 2021 c ... s 16 (section 16 of this act),
4 2019 c 212 s 9, 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;

5 (26) RCW 39.10.450 and 2019 c 212 s 10, 2012 c 102 s 2, & 2007 c
6 494 s 404;

7 (27) RCW 39.10.460 and 2021 c ... s 17 (section 17 of this act),
8 2012 c 102 s 3, & 2007 c 494 s 405;

9 (28) RCW 39.10.470 and 2019 c 212 s 11, 2014 c 19 s 2, 2005 c 274
10 s 275, & 1994 c 132 s 10;

11 (29) RCW 39.10.480 and 1994 c 132 s 9;

12 (30) RCW 39.10.490 and 2021 c ... s 18 (section 18 of this act),
13 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

14 (31) RCW 39.10.900 and 1994 c 132 s 13;

15 (32) RCW 39.10.901 and 1994 c 132 s 14;

16 (33) RCW 39.10.903 and 2007 c 494 s 510;

17 (34) RCW 39.10.904 and 2007 c 494 s 512; ((and))

18 (35) RCW 39.10.905 and 2007 c 494 s 513; and

19 (36) RCW 39.10.--- and 2021 c ... s 19 (section 19 of this act).

20 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately."

24 Correct the title.

--- END ---