

RCW 39.10.380 General contractor/construction manager procedure

—Subcontract bidding procedure. (Effective until July 1, 2024.) (1)

All subcontract work and equipment and material purchases shall be competitively bid with public bid openings and require the public solicitation of the bid documents. At a minimum, the general contractor/construction manager shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the subcontract work will be performed, a notice of its request for bid, and the availability and location of the bid documents. The general 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 \$300,000 shall post a bid bond. All subcontractors who are awarded a contract over \$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 not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following

the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

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

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

(b) The apparent low responsive bid or proposal does not exceed the published bid package estimates by more than 10 percent.

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

(8) The general contractor/construction manager must provide a written explanation to the public body if all bids are rejected. [2021 c 230 § 11; 2013 c 222 § 14; 2007 c 494 § 305.]

Sunset Act application: See note following chapter digest.

Effective date—2021 c 230: See note following RCW 39.10.210.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.380 General contractor/construction manager procedure—Subcontract bidding procedure. (Effective July 1, 2024.) (1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings and require the public solicitation of the bid documents. At a minimum, the general contractor/construction manager shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the subcontract work will be performed, a notice of its request for bid, and the availability and location of the bid documents. The general 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 business entities certified with the office of minority and women's business enterprises, including small businesses and business entities certified with the department of veterans affairs.

(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.

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[2023 c 395 § 11; 2021 c 230 § 11; 2013 c 222 § 14; 2007 c 494 § 305.]

Sunset Act application: See note following chapter digest.

Effective date—2023 c 395 §§ 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

Effective date—2021 c 230: See note following RCW 39.10.210.

Effective date—2013 c 222: See note following RCW 39.10.210.