
SUBSTITUTE HOUSE BILL 1506

State of Washington

60th Legislature

2007 Regular Session

By House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Haigh, Armstrong, Hunt and Ormsby)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to alternative public works; amending RCW
2 39.10.010, 39.10.020, 39.10.800, 39.10.810, 39.10.080, 39.10.070,
3 39.10.130, 39.10.120, 60.28.011, and 70.150.070; reenacting and
4 amending RCW 39.10.051 and 39.10.061; adding new sections to chapter
5 43.131 RCW; adding new sections to chapter 39.10 RCW; recodifying RCW
6 39.10.010, 39.10.020, 39.10.800, 39.10.810, 39.10.051, 39.10.080,
7 39.10.070, 39.10.061, 39.10.130, 39.10.100, 39.10.090, 39.10.120,
8 39.10.900, and 39.10.901; repealing RCW 39.10.902, 39.10.030,
9 39.10.040, 39.10.063, 39.10.065, 39.10.067, 39.10.068, 39.10.115, and
10 39.10.117; providing effective dates; and declaring an emergency.

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

12 **Sec. 1.** RCW 39.10.010 and 1994 c 132 s 1 are each amended to read
13 as follows:

14 The legislature finds that the traditional process of awarding
15 public works contracts in lump sum to the lowest responsible bidder is
16 a fair and objective method of selecting a contractor. However, under
17 certain circumstances, alternative public works contracting procedures
18 may best serve the public interest if such procedures are implemented
19 in an open and fair process based on objective and equitable criteria.

1 The purpose of this chapter is to authorize the use of certain
2 supplemental alternative public works contracting procedures (~~by state~~
3 ~~agencies and large municipalities under limited circumstances~~), to
4 prescribe appropriate requirements to ensure that such contracting
5 procedures serve the public interest, and to establish a process for
6 evaluation of such contracting procedures.

7 **PART 1**

8 **GENERAL PROVISIONS**

9 **Sec. 101.** RCW 39.10.020 and 2005 c 469 s 3 are each amended to
10 read as follows:

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

13 (1) "Alternative public works contracting procedure" means the
14 design-build (~~and the~~), general contractor/construction manager, and
15 job order contracting procedures authorized in RCW 39.10.051 (~~and~~),
16 39.10.061, and 39.10.130 (as recodified by this act), respectively.
17 (~~Public bodies eligible to enter into agreements with service~~
18 ~~providers for the furnishing of services in connection with water~~
19 ~~pollution control facilities under the authority of chapter 70.150 RCW~~
20 ~~may elect to use either RCW 39.10.051 and 39.10.061 or chapter 70.150~~
21 ~~RCW as their method of procurement for such services.~~)

22 (2) (~~"Public body" means the state department of general~~
23 ~~administration; the University of Washington; Washington State~~
24 ~~University; every city with a population greater than seventy thousand~~
25 ~~and any public authority chartered by such city under RCW 35.21.730~~
26 ~~through 35.21.755 and specifically authorized as provided in RCW~~
27 ~~39.10.120(4); every county with a population greater than four hundred~~
28 ~~fifty thousand; every port district with total revenues greater than~~
29 ~~fifteen million dollars per year; every public hospital district with~~
30 ~~total revenues greater than fifteen million dollars per year utilizing~~
31 ~~the design-build procedure authorized by RCW 39.10.051 and every public~~
32 ~~hospital district, regardless of total revenues, proposing projects~~
33 ~~that are considered and approved by the public hospital district~~
34 ~~project review board under RCW 39.10.117; every public utility district~~
35 ~~with revenues from energy sales greater than twenty three million~~
36 ~~dollars per year; those school districts proposing projects that are~~

1 ~~considered and approved by the school district project review board~~
2 ~~under RCW 39.10.115; and the state ferry system.))~~ "Board" means the
3 capital projects advisory review board.

4 (3) (~~"Public works project" means any work for a public body~~
5 ~~within the definition of the term public work in RCW 39.04.010.))~~
6 "Committee" means the project review committee.

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

11 (5) "Total contract cost" means the fixed amount for the detailed
12 specified general conditions work, the negotiated maximum allowable
13 construction cost, and the percent fee on the negotiated maximum
14 allowable construction cost.

15 (6) "General contractor/construction manager" means a firm with
16 which a public body has selected and negotiated a maximum allowable
17 construction cost to provide services during the design phase and to
18 act as construction manager and general contractor during the
19 construction phase.

20 (7) "Job order contract" means a contract (~~between a public body~~
21 ~~or any school district and a registered or licensed contractor)) in
22 which the contractor agrees to a fixed period, indefinite quantity
23 delivery order contract which provides for the use of negotiated,
24 definitive work orders for public works as defined in RCW 39.04.010.~~

25 ((+5)) (8) "Job order contractor" means a registered or licensed
26 contractor awarded a job order contract.

27 ((+6)) (9) "Maximum allowable construction cost" means the maximum
28 cost of the work to construct the project including a percentage for
29 risk contingency, negotiated support services, and approved change
30 orders.

31 (10) "Negotiated support services" means items a general contractor
32 would normally manage or perform on a construction project including,
33 but not limited to surveying, hoisting, safety enforcement, provision
34 of toilet facilities, temporary heat, cleanup, and trash removal.

35 (11) "Percent fee" means the percentage amount to be earned by the
36 general contractor/construction manager as overhead and profit.

37 (12) "Public body" means any general or special purpose government,

1 including but not limited to state agencies, institutions of higher
2 education, counties, cities, towns, ports, school districts, and
3 special purpose districts.

4 (13) "Certified public body" means a public body certified to use
5 design-build or general contractor/construction manager contracting
6 procedures, or both, under section 107 of this act.

7 (14) "Public works project" means any work for a public body within
8 the definition of "public work" in RCW 39.04.010.

9 (15) "Total project cost" means the cost of the project less
10 financing and land acquisition costs.

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

18 ~~((+7))~~ (17) "Work order" means an order issued for a definite
19 scope of work to be performed pursuant to a job order contract.

20 **Sec. 102.** RCW 39.10.800 and 2005 c 377 s 1 are each amended to
21 read as follows:

22 (1) The ~~((capital projects advisory review))~~ board is created in
23 the department of general administration to provide an evaluation of
24 public capital projects construction processes, including the impact of
25 contracting methods on project outcomes, and to advise the legislature
26 on policies related to ~~((alternative))~~ public works delivery methods.

27 (2)(a) The ~~((capital projects advisory review))~~ board shall consist
28 of the following members appointed by the governor: ~~((One))~~ Two
29 representatives from construction general contracting; one
30 representative from the ~~((design industries))~~ architectural profession;
31 one representative from the engineering profession; two representatives
32 from construction specialty subcontracting; ~~((one))~~ two representatives
33 from ~~((a))~~ construction trades labor organizations; one representative
34 from the office of minority and women's business enterprises; one
35 representative from a higher education institution; one representative
36 from the department of general administration; two representatives from
37 private industry; and one representative of a domestic insurer

1 authorized to write surety bonds for contractors in Washington state.
2 All appointed members must be (~~actively engaged in or authorized to~~
3 ~~use alternative~~) knowledgeable about public works contracting
4 procedures.

5 (b) (~~Two~~) Three members shall be (~~at-large~~) positions
6 representing different local public owners(~~. The two at-large~~
7 ~~positions shall serve on a rotating basis to be determined and~~
8 ~~appointed~~), selected by the association of Washington cities, the
9 Washington state association of counties, and the Washington public
10 ports association, respectively.

11 (c) One member shall be a (~~member of~~) representative from the
12 public hospital districts (~~project review board~~), selected by (~~that~~
13 ~~board, who shall be nonvoting~~) the association of Washington public
14 hospital districts.

15 (d) One member shall be a (~~member of the~~) representative from
16 school districts (~~project review board~~), selected by (~~that board,~~
17 ~~who shall be nonvoting~~) the Washington state school directors'
18 association.

19 (e) The (~~advisory review~~) board shall include two members of the
20 house of representatives, one from each major caucus, appointed by the
21 speaker of the house of representatives, and two members of the senate,
22 one from each major caucus, appointed by the president of the senate.
23 Legislative members are nonvoting.

24 (3) Members selected under subsection (2)(a) of this section shall
25 serve for terms of four years, with the terms expiring on June 30th on
26 the fourth year of the term. (~~However, in the case of the initial~~
27 ~~members, four members shall serve four-year terms, four members shall~~
28 ~~serve three-year terms, and three members shall serve a two-year term,~~
29 ~~with each of the terms expiring on June 30th of the applicable year.~~
30 ~~Appointees may be reappointed to serve more than one term.~~)

31 (4) The (~~capital projects advisory review~~) board chair is
32 selected from among the appointed members by the majority vote of the
33 voting members.

34 (5) Legislative members of the (~~capital projects advisory review~~)
35 board shall be reimbursed for travel expenses in accordance with RCW
36 44.04.120. Nonlegislative members of the (~~capital projects advisory~~
37 ~~review~~) board, (~~including any subcommittee members, except those~~

1 ~~representing an employer or organization,~~) project review committee
2 members, and subcommittee chairs shall be reimbursed for travel
3 expenses as provided in RCW 43.03.050 and 43.03.060.

4 (6) If a vacancy occurs of the appointive members of the board, the
5 governor shall fill the vacancy for the unexpired term. Members of the
6 board may be removed for malfeasance or misfeasance in office, upon
7 specific written charges by the governor, under chapter 34.05 RCW.

8 (7) The ~~((capital projects advisory review))~~ board shall ~~((convene~~
9 ~~as soon as practical after July 1, 2005, and may))~~ meet as often as
10 necessary ~~((thereafter))~~.

11 (8) ~~((Capital projects advisory review))~~ Board members are expected
12 to consistently attend ~~((review))~~ board meetings. The chair of the
13 ~~((capital projects advisory review))~~ board may ask the governor to
14 remove any member who misses more than two meetings in any calendar
15 year without cause.

16 (9) The department of general administration shall provide staff
17 support as may be required for the proper discharge of the function of
18 the ~~((capital projects advisory review))~~ board.

19 (10) The ~~((capital projects advisory review))~~ board may establish
20 subcommittees as it desires and may invite nonmembers of the ~~((capital~~
21 ~~projects advisory review))~~ board to serve as committee members.

22 (11) The board shall encourage participation from persons and
23 entities not represented on the ~~((capital projects advisory review))~~
24 board.

25 **Sec. 103.** RCW 39.10.810 and 2005 c 377 s 2 are each amended to
26 read as follows:

27 The ~~((capital projects advisory review))~~ board has the following
28 powers and duties:

29 (1) ~~((Develop and recommend to the legislature criteria that may be~~
30 ~~used to determine effective and feasible use of alternative contracting~~
31 ~~procedures;~~

32 ~~(2) Develop and recommend to the legislature qualification~~
33 ~~standards for general contractors bidding on alternative public works~~
34 ~~projects;~~

35 ~~(3))~~ Develop and recommend to the legislature policies to further
36 enhance the quality, efficiency, and accountability of capital
37 construction projects through the use of traditional and alternative

1 delivery methods in Washington, and make recommendations regarding
2 expansion, continuation, elimination, or modification of the
3 alternative public works contracting methods;

4 ~~((4))~~ (2) Evaluate the use of existing contracting procedures and
5 potential future use of other alternative contracting procedures
6 including competitive negotiation contracts;

7 (3) Appoint members of the committee; and

8 (4) Develop and administer questionnaires designed to provide
9 quantitative and qualitative data on alternative public works
10 contracting procedures on which evaluations are based.

11 NEW SECTION. Sec. 104. PROJECT REVIEW COMMITTEE--CREATED. (1)

12 The board shall establish a project review committee to review and
13 approve public works projects using the design-build and general
14 contractor/construction manager contracting procedures authorized in
15 RCW 39.10.051 and 39.10.061 (as recodified by this act) and to certify
16 public bodies as provided in section 107 of this act.

17 (2) The board shall, by a majority vote of the board, appoint
18 persons to the committee who are knowledgeable in the use of the
19 design-build and general contractor/construction manager contracting
20 procedures. Appointments must represent a balance among the industries
21 and public owners on the board listed in RCW 39.10.800 (as recodified
22 by this act).

23 (a) When making initial appointments to the committee, the board
24 shall consider for appointment former members of the school district
25 project review board and the public hospital district project review
26 board.

27 (b) Each member of the committee shall be appointed for a term of
28 three years. However, for initial appointments, the board shall
29 stagger the appointment of committee members so that the first members
30 are appointed to serve terms of one, two, or three years from the date
31 of appointment. Appointees may be reappointed to serve more than one
32 term.

33 (c) The committee shall, by a majority vote, elect a chair and
34 vice-chair for the committee.

35 (d) The committee chair may select a person or persons on a
36 temporary basis as a nonvoting member if project specific expertise is
37 needed to assist in a review.

1 (3) The chair of the committee, in consultation with the vice-
2 chair, may appoint one or more panels of at least six committee members
3 to carry out the duties of the committee. Each panel shall have
4 balanced representation of the private and public sector
5 representatives serving on the committee.

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

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

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

14 NEW SECTION. **Sec. 105.** PROJECT REVIEW COMMITTEE DUTIES. The
15 committee shall:

16 (1) Certify, or recertify, public bodies for a period of three
17 years to use the design-build or general contractor/construction
18 manager, or both, contracting procedures for projects with a total
19 project cost of ten million dollars or more;

20 (2) Review and approve the use of the design-build or general
21 contractor/construction manager contracting procedures on a project by
22 project basis for public bodies that are not certified under section
23 107 of this act; and

24 (3) Review and approve the use of the general
25 contractor/construction manager contracting procedure by certified
26 public bodies for projects with a total project cost under ten million
27 dollars.

28 NEW SECTION. **Sec. 106.** PROJECT REVIEW COMMITTEE MEETINGS--OPEN
29 AND PUBLIC. (1) The committee shall hold regular public meetings to
30 carry out its duties as described in section 105 of this act.
31 Committee meetings are subject to chapter 42.30 RCW.

32 (2) The committee shall publish notice of its public meetings at
33 least twenty days before the meeting in a legal newspaper circulated in
34 the area where the public body seeking certification is located, or
35 where each of the proposed projects under consideration will be

1 constructed. All meeting notices must be posted on the committee's web
2 site.

3 (3) The meeting notice must identify the public body that is
4 seeking certification or project approval, and where applicable, a
5 description of projects to be considered at the meeting. The notice
6 must indicate when, where, and how the public may present comments
7 regarding the committee's certification of a public body or approval of
8 a project. Information submitted by a public body to be reviewed at
9 the meeting shall be available on the committee's web site at the time
10 the notice is published.

11 (4) The committee must allow for public comment on the
12 appropriateness of certification of a public body or on the
13 appropriateness of the use of the proposed contracting procedure and
14 the qualifications of a public body to use the contracting procedure.
15 The committee shall receive and record both written and oral comments
16 at the public hearing.

17 NEW SECTION. **Sec. 107.** PROJECT REVIEW COMMITTEE--CERTIFICATION OF
18 PUBLIC BODIES. (1) A public body may apply for certification to use
19 the design-build or general contractor/construction manager contracting
20 procedure, or both. Once certified, a public body may use the
21 contracting procedure for which it is certified on individual projects
22 with a total project cost over ten million dollars without seeking
23 committee approval. The certification period is three years. A public
24 body seeking certification must submit to the committee an application
25 in a format and manner as prescribed by the committee. The application
26 must include a description of the public body's qualifications, its
27 capital plan during the certification period, and its intended use of
28 alternative contracting procedures.

29 (2) To certify a public body, the committee shall determine that
30 the public body:

31 (a) Has the necessary experience and qualifications to determine
32 which projects are appropriate for using alternative contracting
33 procedures;

34 (b) Has the necessary experience and qualifications to carry out
35 the alternative contracting procedure including, but not limited to:

36 (i) Project delivery knowledge and experience; (ii) personnel with
37 appropriate construction experience; (iii) a management plan and

1 rationale for its alternative public works projects; (iv) demonstrated
2 success in managing public works projects; (v) demonstrated success in
3 managing at least one general contractor/construction manager or
4 design-build project within the previous five years; (vi) the ability
5 to properly manage its capital facilities plan including, but not
6 limited to, appropriate project planning and budgeting experience; and
7 (vii) the ability to meet requirements of this chapter; and

8 (c) Has resolved any audit findings on previous public works
9 projects in a manner satisfactory to the committee.

10 (3) The committee shall, if practicable, make its determination at
11 the public meeting during which an application for certification is
12 reviewed. Public comments must be considered before a determination is
13 made. Within ten business days of the public meeting, the committee
14 shall provide a written determination to the public body, and make its
15 determination available to the public on the committee's web site.

16 (4) The committee may revoke any public body's certification upon
17 a finding, after a public hearing, that its use of design-build or
18 general contractor/construction manager contracting procedures no
19 longer serves the public interest.

20 (5) The committee may renew the certification of a public body for
21 one additional three-year period. The public body must submit an
22 application for recertification at least three months before the
23 initial certification expires. The application shall include updated
24 information on the public body's capital plan for the next three years,
25 its intended use of the procedures, and any other information requested
26 by the committee. The committee must review the application for
27 recertification at a meeting held before expiration of the applicant's
28 initial certification period. A public body must reapply for
29 certification under the process described in subsection (1) of this
30 section once the period of recertification expires.

31 (6) Certified public bodies must submit project data information as
32 required in RCW 39.10.070 (as recodified by this act) and section 302
33 of this act.

34 NEW SECTION. **Sec. 108.** PROJECT REVIEW COMMITTEE--PROJECT APPROVAL
35 PROCESS. (1) A public body not certified under section 107 of this act
36 must apply for approval from the committee to use the design-build or
37 general contractor/construction manager contracting procedure on a

1 project. A public body seeking approval must submit to the committee
2 an application in a format and manner as prescribed by the committee.
3 The application must include a description of the public body's
4 qualifications, a description of the project, and its intended use of
5 alternative contracting procedures.

6 (2) To approve a proposed project, the committee shall determine
7 that:

8 (a) The alternative contracting procedure will provide a
9 substantial fiscal benefit or the use of the traditional method of
10 awarding contracts in lump sum to the low responsive bidder is not
11 practical for meeting desired quality standards or delivery schedules;

12 (b) The proposed project meets the requirements for using the
13 alternative contracting procedure as described in section 201 or 301 of
14 this act;

15 (c) The public body has the necessary experience or qualified team
16 to carry out the alternative contracting procedure including, but not
17 limited to: (i) Project delivery knowledge and experience; (ii)
18 sufficient personnel with construction experience to administer the
19 contract; (iii) a written management plan that shows clear and logical
20 lines of authority; (iv) the necessary and appropriate funding and time
21 to properly manage the job and complete the project; (v) continuity of
22 project management team, including personnel with experience managing
23 projects of similar scope and size to the project being proposed; and
24 (vi) necessary and appropriate construction budget;

25 (d) For design-build projects, construction personnel independent
26 of the design-build team are knowledgeable in the design-build process
27 and are able to oversee and administer the contract; and

28 (e) The public body has resolved any audit findings related to
29 previous public works projects in a manner satisfactory to the
30 committee.

31 (3) The committee shall, if practicable, make its determination at
32 the public meeting during which a submittal is reviewed. Public
33 comments must be considered before a determination is made.

34 (4) Within ten business days after the public meeting, the
35 committee shall provide a written determination to the public body, and
36 make its determination available to the public on the committee's web
37 site. If the committee fails to make a written determination within

1 ten business days of the public meeting, the request of the public body
2 to use the alternative contracting procedure on the requested project
3 shall be deemed approved.

4 (5) The requirements of subsection (1) of this section also apply
5 to certified public bodies seeking to use the general
6 contractor/construction manager contracting procedure on projects with
7 a total project cost of less than ten million dollars.

8 (6) Failure of the committee to meet within sixty calendar days of
9 a public body's application to use an alternative contracting procedure
10 on a project shall be deemed an approval of the application.

11 NEW SECTION. **Sec. 109.** APPEAL PROCESS. Final determinations by
12 the committee may be appealed to the board within seven days by the
13 public body or by an interested party. A written notice of an appeal
14 must be provided to the committee and, as applicable, to the public
15 body. The board shall resolve an appeal within forty-five days of
16 receipt of the appeal and shall send a written determination of its
17 decision to the party making the appeal and to the appropriate public
18 body, as applicable. The public body shall comply with the
19 determination of the board.

20 **PART 2**
21 **DESIGN-BUILD**

22 **Sec. 201.** RCW 39.10.051 and 2003 c 352 s 2 and 2003 c 300 s 4 are
23 each reenacted and amended to read as follows:

24 (1) ~~((Notwithstanding any other provision of law, and after~~
25 ~~complying with RCW 39.10.030, the following public bodies may utilize~~
26 ~~the design build procedure of public works contracting for public works~~
27 ~~projects authorized under this section: The state department of~~
28 ~~general administration; the state ferry system; the University of~~
29 ~~Washington; Washington State University; every city with a population~~
30 ~~greater than seventy thousand and any public authority chartered by~~
31 ~~such city under RCW 35.21.730 through 35.21.755 and specifically~~
32 ~~authorized as provided in RCW 39.10.120(4); every county with a~~
33 ~~population greater than four hundred fifty thousand; every public~~
34 ~~utility district with revenues from energy sales greater than twenty-~~
35 ~~three million dollars per year; every public hospital district with~~

1 ~~total revenues greater than fifteen million dollars per year; and every~~
2 ~~port district with total revenues greater than fifteen million dollars~~
3 ~~per year. The authority granted to port districts in this section is~~
4 ~~in addition to and does not affect existing contracting authority under~~
5 ~~RCW 53.08.120 and 53.08.130. For the purposes of this section,~~
6 ~~"design build procedure" means a contract between a public body and~~
7 ~~another party in which the party agrees to both design and build the~~
8 ~~facility, portion of the facility, or other item specified in the~~
9 ~~contract.~~

10 ~~(2) Public bodies authorized under this section))~~ Subject to the
11 process in section 107 or 108 of this act, public bodies may utilize
12 the design-build procedure for public works projects ~~((valued))~~ in
13 which the total project cost is over ten million dollars and where:

14 (a) The design and construction activities ~~((or))~~ technologies, or
15 schedule to be used are highly specialized and a design-build approach
16 is critical in developing the construction methodology or implementing
17 the proposed technology; or

18 (b) The project design is repetitive in nature and is an incidental
19 part of the installation or construction; or

20 (c) Regular interaction with and feedback from facilities users and
21 operators during design is not critical to an effective facility
22 design.

23 (2) Subject to the process in section 107 or 108 of this act,
24 public bodies may use the design-build procedure for parking garages,
25 regardless of cost.

26 ~~(3) ((Public bodies authorized under this section may also use))~~
27 The design-build procedure also may be used for the ~~((following~~
28 ~~projects that meet the criteria in subsection (2)(b) and (c) of this~~
29 ~~section:~~

30 ~~(a) The))~~ construction or erection of preengineered metal buildings
31 or prefabricated modular buildings, regardless of cost ~~((; or~~

32 ~~(b) The construction of new student housing projects valued over~~
33 ~~five million dollars.~~

34 ~~(4) Contracts for design build services shall be awarded through a~~
35 ~~competitive process utilizing public solicitation of proposals for~~
36 ~~design build services. The public body shall publish at least once in~~
37 ~~a legal newspaper of general circulation published in or as near as~~
38 ~~possible to that part of the county in which the public work will be~~

1 done, a notice of its request for proposals for design build services
2 and the availability and location of the request for proposal
3 documents. The request for proposal documents shall include:

4 (a) A detailed description of the project including programmatic,
5 performance, and technical requirements and specifications, functional
6 and operational elements, minimum and maximum net and gross areas of
7 any building, and, at the discretion of the public body, preliminary
8 engineering and architectural drawings;

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

10 (c) A description of the qualifications to be required of the
11 proposer including, but not limited to, submission of the proposer's
12 accident prevention program;

13 (d) A description of the process the public body will use to
14 evaluate qualifications and proposals, including evaluation factors and
15 the relative weight of factors. Evaluation factors shall include, but
16 not be limited to: Proposal price; ability of professional personnel;
17 past performance on similar projects; ability to meet time and budget
18 requirements; ability to provide a performance and payment bond for the
19 project; recent, current, and projected work loads of the firm;
20 location; and the concept of the proposal;

21 (e) The form of the contract to be awarded;

22 (f) The amount to be paid to finalists submitting best and final
23 proposals who are not awarded a design build contract; and

24 (g) Other information relevant to the project.

25 (5) The public body shall establish a committee to evaluate the
26 proposals based on the factors, weighting, and process identified in
27 the request for proposals. Based on its evaluation, the public body
28 shall select not fewer than three nor more than five finalists to
29 submit best and final proposals. The public body may, in its sole
30 discretion, reject all proposals. Design build contracts shall be
31 awarded using the procedures in (a) or (b) of this subsection.

32 (a) Best and final proposals shall be evaluated and scored based on
33 the factors, weighting, and process identified in the initial request
34 for proposals. The public body may score the proposals using a system
35 that measures the quality and technical merits of the proposal on a
36 unit price basis. Final proposals may not be considered if the
37 proposal cost is greater than the maximum allowable construction cost
38 identified in the initial request for proposals. The public body shall

1 initiate negotiations with the firm submitting the highest scored best
2 and final proposal. If the public body is unable to execute a contract
3 with the firm submitting the highest scored best and final proposal,
4 negotiations with that firm may be suspended or terminated and the
5 public body may proceed to negotiate with the next highest scored firm.
6 Public bodies shall continue in accordance with this procedure until a
7 contract agreement is reached or the selection process is terminated.

8 (b) If the public body determines that all finalists are capable of
9 producing plans and specifications that adequately meet project
10 requirements, the public body may award the contract to the firm that
11 submits the responsive best and final proposal with the lowest price.

12 (6) The firm awarded the contract shall provide a performance and
13 payment bond for the contracted amount. The public body shall provide
14 appropriate honorarium payments to finalists submitting best and final
15 proposals who are not awarded a design build contract. Honorarium
16 payments shall be sufficient to generate meaningful competition among
17 potential proposers on design build projects.

18 (7) The authority provided to the state ferry system in this
19 section is limited to projects concerning construction, renovation,
20 preservation, demolition, and reconstruction of ferry terminals and
21 associated land based facilities)) and is not subject to approval by
22 the committee.

23 (4) Except for utility projects, the design-build procedure may not
24 be used to procure operations and maintenance services for a period
25 longer than three years.

26 **Sec. 202.** RCW 39.10.080 and 1994 c 132 s 8 are each amended to
27 read as follows:

28 Notwithstanding the provisions of RCW 39.04.015, a public body
29 using the design-build contracting procedure is authorized to negotiate
30 an adjustment to the lowest bid or proposal price for a public works
31 project ((awarded under RCW 39.10.050 and 39.10.060)) based upon agreed
32 changes to the contract plans and specifications under the following
33 conditions:

34 (1) All responsive bids or proposal prices exceed the available
35 funds, as certified by an appropriate fiscal officer;

36 (2) The apparent low-responsive bid or proposal does not exceed the

1 available funds by the greater of one hundred twenty-five thousand
2 dollars or two percent for projects valued over ten million dollars;
3 and

4 (3) The negotiated adjustment will bring the bid or proposal price
5 within the amount of available funds.

6 **Sec. 203.** RCW 39.10.070 and 1994 c 132 s 7 are each amended to
7 read as follows:

8 (1) A public body utilizing the ~~((alternative public works))~~
9 design-build contracting procedure~~((s authorized under RCW 39.10.050~~
10 ~~and 39.10.060))~~ shall provide for:

11 ~~(a) ((The preparation of appropriate, complete, and coordinated~~
12 ~~design documents consistent with the procedure utilized;~~

13 ~~(b) To the extent appropriate, an independent review of the~~
14 ~~contract documents through value engineering or constructability~~
15 ~~studies prior to bid or proposal solicitation;~~

16 ~~(e))~~ Reasonable budget contingencies totaling not less than five
17 percent of the anticipated contract value;

18 ~~((d) To the extent appropriate, on site architectural or~~
19 ~~engineering representatives during major construction or installation~~
20 ~~phases;~~

21 ~~(e))~~ (b) Employment of staff or consultants with expertise and
22 prior experience in the management of comparable projects; ~~((and~~

23 ~~(f))~~ (c) Contract documents that include alternative dispute
24 resolution procedures to be attempted prior to the initiation of
25 litigation;

26 (d) Submission of project information, as required by the board;
27 and

28 (e) Contract documents that require the contractor, subcontractors,
29 and designers to submit project information required by the board.

30 (2) A public body utilizing the ~~((alternative public works))~~
31 design-build contracting procedure~~((s under RCW 39.10.050 and~~
32 ~~39.10.060))~~ may provide incentive payments to contractors for early
33 completion, cost savings, or other goals if such payments are
34 identified in the request for proposals.

35 NEW SECTION. **Sec. 204.** DESIGN-BUILD CONTRACT AWARD. (1)
36 Contracts for design-build services shall be awarded through a

1 competitive process using public solicitation of proposals for design-
2 build services. The public body shall publish at least once in a legal
3 newspaper of general circulation published in, or as near as possible
4 to, that part of the county in which the public work will be done, a
5 notice of its request for qualifications from proposers for design-
6 build services, and the availability and location of the request for
7 proposal documents. The request for qualifications documents shall
8 include:

9 (a) A general description of the project that provides sufficient
10 information for proposers to submit qualifications;

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

12 (c) A description of the qualifications to be required of the
13 proposer including, but not limited to, submission of the proposer's
14 accident prevention program;

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

19 (i) Evaluation factors for request for qualifications shall
20 include, but not be limited to, technical qualifications, such as
21 specialized experience and technical competence; capability to perform;
22 past performance of the proposers' team, including the architect-
23 engineer and construction members; and other appropriate factors. Cost
24 or price-related factors are not permitted in the request for
25 qualifications phase;

26 (ii) Evaluation factors for finalists' proposals shall include, but
27 not be limited to, the factors listed in (d)(i) of this subsection, as
28 well as technical approach design concept; proposal price; ability of
29 professional personnel; past performance on similar projects; ability
30 to meet time and budget requirements; ability to provide a performance
31 and payment bond for the project; recent, current, and projected work
32 loads of the firm; and location. Alternatively, if the public body
33 determines that all finalists will be capable of producing a design
34 that adequately meets project requirements, the public body may award
35 the contract to the firm that submits the responsive proposal with the
36 lowest price;

37 (e) The form of the contract to be awarded;

1 (f) The amount to be paid to finalists submitting responsive
2 proposals and who are not awarded a design-build contract;

3 (g) The schedule for the procurement process and the project; and

4 (h) Other information relevant to the project.

5 (2) The public body shall establish an evaluation committee to
6 evaluate the responses to the request for qualifications based on the
7 factors, weighting, and process identified in the request for
8 qualifications. Based on the evaluation committee's findings, the
9 public body shall select not more than five responsive and responsible
10 finalists to submit proposals. The public body may, in its sole
11 discretion, reject all proposals and shall provide its reasons for
12 rejection in writing to all proposers.

13 (3) Upon selection of the finalists, the public body shall issue a
14 request for proposals to the finalists, which shall provide the
15 following information:

16 (a) A detailed description of the project including programmatic,
17 performance, and technical requirements and specifications; functional
18 and operational elements; minimum and maximum net and gross areas of
19 any building; and, at the discretion of the public body, preliminary
20 engineering and architectural drawings; and

21 (b) The target budget for the design-build portion of the project.

22 (4) The public body shall establish an evaluation committee to
23 evaluate the proposals submitted by the finalists. Design-build
24 contracts shall be awarded using the procedures in (a) or (b) of this
25 subsection. The public body must identify in the request for
26 qualifications which procedure will be used.

27 (a) The finalists' proposals shall be evaluated and scored based on
28 the factors, weighting, and process identified in the initial request
29 for qualifications and in any addenda published by the public body.
30 Public bodies may request best and final proposals from finalists. The
31 public body shall initiate negotiations with the firm submitting the
32 highest scored proposal. If the public body is unable to execute a
33 contract with the firm submitting the highest scored proposal,
34 negotiations with that firm may be suspended or terminated and the
35 public body may proceed to negotiate with the next highest scored firm.
36 Public bodies shall continue in accordance with this procedure until a
37 contract agreement is reached or the selection process is terminated.

1 (b) If the public body determines that all finalists are capable of
2 producing a design that adequately meets project requirements, the
3 public body may award the contract to the firm that submits the
4 responsive proposal with the lowest price.

5 (5) The firm awarded the contract shall provide a performance and
6 payment bond for the contracted amount. The public body shall provide
7 appropriate honorarium payments to finalists submitting best and final
8 proposals that are not awarded a design-build contract. Honorarium
9 payments shall be sufficient to generate meaningful competition among
10 potential proposers on design-build projects. In determining the
11 amount of the honorarium, the public body shall consider the level of
12 effort required to meet the selection criteria.

13 **PART 3**

14 **GENERAL CONTRACTOR/CONSTRUCTION MANAGER**

15 **Sec. 301.** RCW 39.10.061 and 2003 c 352 s 3 and 2003 c 300 s 5 are
16 each reenacted and amended to read as follows:

17 ~~((1) Notwithstanding any other provision of law, and after
18 complying with RCW 39.10.030, a public body may utilize the general
19 contractor/construction manager procedure of public works contracting
20 for public works projects authorized under subsection (2) of this
21 section. For the purposes of this section, "general
22 contractor/construction manager" means a firm with which a public body
23 has selected and negotiated a maximum allowable construction cost to be
24 guaranteed by the firm, after competitive selection through formal
25 advertisement and competitive bids, to provide services during the
26 design phase that may include life cycle cost design considerations,
27 value engineering, scheduling, cost estimating, constructability,
28 alternative construction options for cost savings, and sequencing of
29 work, and to act as the construction manager and general contractor
30 during the construction phase.~~

31 ~~(2) Except those school districts proposing projects that are
32 considered and approved by the school district project review board and
33 those public hospital districts proposing projects that are considered
34 and approved by the public hospital district project review board))
35 Subject to the process in section 107 or 108 of this act, public bodies~~

1 ((~~authorized under this section~~)) may utilize the general
2 contractor/construction manager procedure for public works projects
3 (~~valued over ten million dollars~~) where:

4 ((~~(a)~~)) (1) Implementation of the project involves complex
5 scheduling (~~requirements~~), phasing, or coordination; (~~or~~

6 ~~(b)~~) (2) The project involves construction at an (~~existing~~)
7 occupied facility which must continue to operate during construction;
8 (~~or~~

9 ~~(c)~~) (3) The involvement of the general contractor/construction
10 manager during the design stage is critical to the success of the
11 project(~~-~~

12 ~~(3) Public bodies should select general contractor/construction~~
13 ~~managers early in the life of public works projects, and in most~~
14 ~~situations no later than the completion of schematic design.~~

15 ~~(4) Contracts for the services of a general contractor/construction~~
16 ~~manager under this section shall be awarded through a competitive~~
17 ~~process requiring the public solicitation of proposals for general~~
18 ~~contractor/construction manager services. The public solicitation of~~
19 ~~proposals shall include: A description of the project, including~~
20 ~~programmatic, performance, and technical requirements and~~
21 ~~specifications when available; the reasons for using the general~~
22 ~~contractor/construction manager procedure; a description of the~~
23 ~~qualifications to be required of the proposer, including submission of~~
24 ~~the proposer's accident prevention program; a description of the~~
25 ~~process the public body will use to evaluate qualifications and~~
26 ~~proposals, including evaluation factors and the relative weight of~~
27 ~~factors; the form of the contract to be awarded; the estimated maximum~~
28 ~~allowable construction cost; and the bid instructions to be used by the~~
29 ~~general contractor/construction manager finalists. Evaluation factors~~
30 ~~shall include, but not be limited to: Ability of professional~~
31 ~~personnel, past performance in negotiated and complex projects, and~~
32 ~~ability to meet time and budget requirements; the scope of work the~~
33 ~~general contractor/construction manager proposes to self perform and~~
34 ~~its ability to perform it; location; recent, current, and projected~~
35 ~~work loads of the firm; and the concept of their proposal. A public~~
36 ~~body shall establish a committee to evaluate the proposals. After the~~
37 ~~committee has selected the most qualified finalists, these finalists~~
38 ~~shall submit final proposals, including sealed bids for the percent~~

1 fee, which is the percentage amount to be earned by the general
2 contractor/construction manager as overhead and profit, on the
3 estimated maximum allowable construction cost and the fixed amount for
4 the detailed specified general conditions work. The public body shall
5 select the firm submitting the highest scored final proposal using the
6 evaluation factors and the relative weight of factors published in the
7 public solicitation of proposals.

8 (5) The maximum allowable construction cost may be negotiated
9 between the public body and the selected firm after the scope of the
10 project is adequately determined to establish a guaranteed contract
11 cost for which the general contractor/construction manager will provide
12 a performance and payment bond. The guaranteed contract cost includes
13 the fixed amount for the detailed specified general conditions work,
14 the negotiated maximum allowable construction cost, the percent fee on
15 the negotiated maximum allowable construction cost, and sales tax. If
16 the public body is unable to negotiate a satisfactory maximum allowable
17 construction cost with the firm selected that the public body
18 determines to be fair, reasonable, and within the available funds,
19 negotiations with that firm shall be formally terminated and the public
20 body shall negotiate with the next highest scored firm and continue
21 until an agreement is reached or the process is terminated. If the
22 maximum allowable construction cost varies more than fifteen percent
23 from the bid estimated maximum allowable construction cost due to
24 requested and approved changes in the scope by the public body, the
25 percent fee shall be renegotiated.

26 (6) All subcontract work shall be competitively bid with public bid
27 openings. When critical to the successful completion of a
28 subcontractor bid package and after publication of notice of intent to
29 determine bidder eligibility in a legal newspaper of general
30 circulation published in or as near as possible to that part of the
31 county in which the public work will be done at least twenty days
32 before requesting qualifications from interested subcontract bidders,
33 the owner and general contractor/construction manager may determine
34 subcontractor bidding eligibility using the following evaluation
35 criteria:

36 (a) Adequate financial resources or the ability to secure such
37 resources;

1 ~~(b) History of successful completion of a contract of similar type~~
2 ~~and scope;~~

3 ~~(c) Project management and project supervision personnel with~~
4 ~~experience on similar projects and the availability of such personnel~~
5 ~~for the project;~~

6 ~~(d) Current and projected workload and the impact the project will~~
7 ~~have on the subcontractor's current and projected workload;~~

8 ~~(e) Ability to accurately estimate the subcontract bid package~~
9 ~~scope of work;~~

10 ~~(f) Ability to meet subcontract bid package shop drawing and other~~
11 ~~coordination procedures;~~

12 ~~(g) Eligibility to receive an award under applicable laws and~~
13 ~~regulations; and~~

14 ~~(h) Ability to meet subcontract bid package scheduling~~
15 ~~requirements.~~

16 ~~The owner and general contractor/construction manager shall weigh~~
17 ~~the evaluation criteria and determine a minimum acceptable score to be~~
18 ~~considered an eligible subcontract bidder.~~

19 ~~After publication of notice of intent to determine bidder~~
20 ~~eligibility, subcontractors requesting eligibility shall be provided~~
21 ~~the evaluation criteria and weighting to be used by the owner and~~
22 ~~general contractor/construction manager to determine eligible~~
23 ~~subcontract bidders. After the owner and general~~
24 ~~contractor/construction manager determine eligible subcontract bidders,~~
25 ~~subcontractors requesting eligibility shall be provided the results and~~
26 ~~scoring of the subcontract bidder eligibility determination.~~

27 ~~Subcontract bid packages shall be awarded to the responsible bidder~~
28 ~~submitting the low responsive bid. The requirements of RCW 39.30.060~~
29 ~~apply to each subcontract bid package. All subcontractors who bid work~~
30 ~~over three hundred thousand dollars shall post a bid bond and all~~
31 ~~subcontractors who are awarded a contract over three hundred thousand~~
32 ~~dollars shall provide a performance and payment bond for their contract~~
33 ~~amount. All other subcontractors shall provide a performance and~~
34 ~~payment bond if required by the general contractor/construction~~
35 ~~manager. If a general contractor/construction manager receives a~~
36 ~~written protest from a subcontractor bidder, the general~~
37 ~~contractor/construction manager shall not execute a contract for the~~
38 ~~subcontract bid package with anyone other than the protesting bidder~~

1 without first providing at least two full business days' written notice
2 of the general contractor/construction manager's intent to execute a
3 contract for the subcontract bid package; provided that the protesting
4 bidder submits notice in writing of its protest no later than two full
5 business days following bid opening. Intermediate Saturdays, Sundays,
6 and legal holidays are not counted. A low bidder who claims error and
7 fails to enter into a contract is prohibited from bidding on the same
8 project if a second or subsequent call for bids is made for the
9 project. Except as provided for under subsection (7) of this section,
10 bidding on subcontract work by the general contractor/construction
11 manager or its subsidiaries is prohibited. The general
12 contractor/construction manager may negotiate with the low responsive
13 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such
14 negotiations, rebid.

15 (7) The general contractor/construction manager, or its
16 subsidiaries, may bid on subcontract work if:

17 (a) The work within the subcontract bid package is customarily
18 performed by the general contractor/construction manager;

19 (b) The bid opening is managed by the public body; and

20 (c) Notification of the general contractor/construction manager's
21 intention to bid is included in the public solicitation of bids for the
22 bid package.

23 In no event may the value of subcontract work performed by the
24 general contractor/construction manager exceed thirty percent of the
25 negotiated maximum allowable construction cost.

26 (8) A public body may include an incentive clause in any contract
27 awarded under this section for savings of either time or cost or both
28 from that originally negotiated. No incentives granted may exceed five
29 percent of the maximum allowable construction cost. If the project is
30 completed for less than the agreed upon maximum allowable construction
31 cost, any savings not otherwise negotiated as part of an incentive
32 clause shall accrue to the public body. If the project is completed
33 for more than the agreed upon maximum allowable construction cost,
34 excepting increases due to any contract change orders approved by the
35 public body, the additional cost shall be the responsibility of the
36 general contractor/construction manager.

37 (9) The authority provided to the state ferry system in this

1 ~~section is limited to projects concerning construction, renovation,~~
2 ~~preservation, demolition, and reconstruction of ferry terminals and~~
3 ~~associated land based facilities));~~

4 (4) The project encompasses a complex or technical work
5 environment; or

6 (5) The project requires specialized work on a building that has
7 historic significance.

8 NEW SECTION. Sec. 302. PROJECT MANAGEMENT AND CONTRACTING
9 REQUIREMENTS. (1) A public body using the general

10 contractor/construction manager contracting procedure shall provide
11 for:

12 (a) The preparation of appropriate, complete, and coordinated
13 design documents;

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

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

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

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

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

27 (g) Contract documents that: (i) Obligate the public owner to
28 accept or reject a request for equitable adjustment, change order, or
29 claim within a specified time period but no later than sixty calendar
30 days after the receipt by the public body of related documentation; and
31 (ii) provide that if the public owner does not respond in writing to a
32 request for equitable adjustment, change order, or claim within the
33 specified time period, the request is deemed denied;

34 (h) Submission of project information, as required by the board;
35 and

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

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

8 (3) If the construction is completed for less than the maximum
9 allowable construction cost, any savings not otherwise negotiated as
10 part of an incentive clause shall accrue to the public body. If the
11 construction is completed for more than the maximum allowable
12 construction cost, the additional cost is the responsibility of the
13 general contractor/construction manager.

14 (4) If the public body and the general contractor/construction
15 manager agree, in writing, on a price for additional work, the public
16 body must issue a change order within thirty days of the written
17 agreement. If the public body does not issue a change order within the
18 thirty days, interest shall accrue on the dollar amount of the
19 additional work satisfactorily completed until a change order is
20 issued. The public body shall pay this interest at a rate of one
21 percent per month.

22 NEW SECTION. Sec. 303. CONTRACT AWARD. (1) Public bodies should
23 select general contractor/construction managers early in the life of
24 public works projects, and in most situations no later than the
25 completion of schematic design.

26 (2) Contracts for the services of a general contractor/
27 construction manager under this section shall be awarded through a
28 competitive process requiring the public solicitation of proposals for
29 general contractor/construction manager services. The public
30 solicitation of proposals shall include:

31 (a) A description of the project, including programmatic,
32 performance, and technical requirements and specifications when
33 available;

34 (b) The reasons for using the general contractor/construction
35 manager procedure;

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

1 (d) A description of the process the public body will use to
2 evaluate qualifications and proposals, including evaluation factors and
3 the relative weight of factors;

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

6 (f) The estimated maximum allowable construction cost; and

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

9 (3) Evaluation factors for selection of the general
10 contractor/construction shall include, but not be limited to:

11 (a) Ability of the firm's professional personnel;

12 (b) The firm's past performance in negotiated and complex projects;

13 (c) The firm's ability to meet time and budget requirements;

14 (d) The scope of work the firm proposes to self-perform and its
15 ability to perform that work;

16 (e) The firm's proximity to the project location;

17 (f) Recent, current, and projected work loads of the firm; and

18 (g) The firm's approach to executing the project.

19 (4) A public body shall establish a committee to evaluate the
20 proposals. After the committee has selected the most qualified
21 finalists, these finalists shall submit final proposals, including
22 sealed bids for the percent fee on the estimated maximum allowable
23 construction cost and the fixed amount for the general conditions work
24 specified in the request for proposal. The public body shall select
25 the firm submitting the highest scored final proposal using the
26 evaluation factors and the relative weight of factors published in the
27 public solicitation of proposals. A public body shall not evaluate or
28 disqualify a proposal based on the terms of a collective bargaining
29 agreement.

30 (5) Public bodies may contract with the selected firm to provide
31 services during the design phase that may include life-cycle cost
32 design considerations, value engineering, scheduling, cost estimating,
33 constructability, alternative construction options for cost savings,
34 and sequencing of work, and to act as the construction manager and
35 general contractor during the construction phase.

36 NEW SECTION. **Sec. 304.** MAXIMUM ALLOWABLE CONSTRUCTION COST. (1)
37 The maximum allowable construction cost shall be used to establish a

1 total contract cost for which the general contractor/construction
2 manager shall provide a performance and payment bond. The maximum
3 allowable construction cost shall be negotiated between the public body
4 and the selected firm when the construction documents and
5 specifications are at least ninety percent complete.

6 (2) Major bid packages may be bid in accordance with section 305 of
7 this act before agreement on the maximum allowable construction cost
8 between the public body and the selected general
9 contractor/construction manager. The general contractor/construction
10 manager may issue an intent to award to the responsible bidder
11 submitting the lowest responsive bid.

12 (3) The public body may, at its option, authorize the general
13 contractor/construction manager to proceed with the bidding and award
14 of bid packages before receipt of complete plans and specifications.
15 Any contracts awarded under this subsection shall be incorporated in
16 the negotiated maximum allowable construction cost.

17 (4) The total contract cost includes the fixed amount for the
18 detailed specified general conditions work, the negotiated maximum
19 allowable construction cost, the negotiated support services, the
20 percent fee on the negotiated maximum allowable construction cost, and
21 sales tax. Negotiated support services may be included in the
22 specified general conditions at the discretion of the public body.

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

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

33 NEW SECTION. **Sec. 305.** SUBCONTRACT BIDDING PROCEDURE. (1) All
34 subcontract work and equipment and material purchases shall be
35 competitively bid with public bid openings. Subcontract bid packages
36 and equipment and materials purchases shall be awarded to the
37 responsible bidder submitting the lowest responsive bid. In preparing

1 subcontract bid packages, the general contractor/construction manager
2 shall not be required to violate or waive terms of a collective
3 bargaining agreement.

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

18 (3) All subcontractors who bid work over three hundred thousand
19 dollars shall post a bid bond. All subcontractors who are awarded a
20 contract over three hundred thousand dollars shall provide a
21 performance and payment bond for the contract amount. All other
22 subcontractors shall provide a performance and payment bond if required
23 by the general contractor/construction manager.

24 (4) If the general contractor/construction manager receives a
25 written protest from a subcontractor bidder or an equipment or material
26 supplier, the general contractor/construction manager shall not execute
27 a contract for the subcontract bid package or equipment or material
28 purchase order with anyone other than the protesting bidder without
29 first providing at least two full business days' written notice to all
30 bidders of the intent to execute a contract for the subcontract bid
31 package. The protesting bidder must submit written notice of its
32 protest no later than two full business days following the bid opening.
33 Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

37 (6) The general contractor/construction manager may negotiate with

1 the lowest responsible and responsive bidder to negotiate an adjustment
2 to the lowest bid or proposal price based upon agreed changes to the
3 contract plans and specifications under the following conditions:

4 (a) All responsive bids or proposal prices exceed the available
5 funds, as certified by an appropriate fiscal officer;

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

10 (c) The negotiated adjustment will bring the bid or proposal price
11 within the amount of available funds.

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

14 (8) The general contractor/construction manager must provide a
15 written explanation if all bids are rejected.

16 NEW SECTION. **Sec. 306.** GENERAL CONTRACTOR/CONSTRUCTION MANAGER
17 SELF PERFORMANCE OF SUBCONTRACT WORK. (1) Except as provided in this
18 section, bidding on subcontract work or for the supply of equipment or
19 materials by the general contractor/construction manager or its
20 subsidiaries is prohibited.

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

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

27 (b) The bid opening is managed by the public body and is in
28 compliance with section 305 of this act; and

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

32 (3) In no event may the general contractor/construction manager or
33 its subsidiaries purchase equipment or materials for assignment to
34 subcontract bid package bidders for installation or warranty. The
35 value of subcontract work performed and equipment and materials
36 supplied by the general contractor/construction manager may not exceed
37 thirty percent of the negotiated maximum allowable construction cost.

1 Negotiated support services performed by the general
2 contractor/construction manager shall not be considered subcontract
3 work for purposes of this subsection.

4 NEW SECTION. **Sec. 307.** PREBID DETERMINATION OF SUBCONTRACTOR
5 ELIGIBILITY. (1) If determination of subcontractor eligibility prior
6 to seeking bids is in the best interest of the project and critical to
7 the successful completion of a subcontract bid package, the general
8 contractor/construction manager and the public body may determine
9 subcontractor eligibility to bid. The general contractor/construction
10 manager and the public body must:

11 (a) Conduct a hearing and provide an opportunity for any interested
12 party to submit written and verbal comments regarding the justification
13 for conducting bidder eligibility, the evaluation criteria, and weights
14 for each criteria and subcriteria;

15 (b) Publish a notice of intent to evaluate and determine bidder
16 eligibility in a legal newspaper published in or as near as possible to
17 that part of the county where the public work will be constructed at
18 least fourteen calendar days before conducting a public hearing;

19 (c) Ensure the public hearing notice includes the date, time, and
20 location of the hearing, a statement justifying the basis and need for
21 performing eligibility analysis before bid opening, and specific
22 eligibility criteria and applicable weights given to each criteria and
23 subcriteria that will be used during evaluation;

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

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

35 (2) Determinations of bidder eligibility shall be in accordance
36 with the evaluation criteria and weights for each criteria established
37 in the final determination and shall be provided to interested persons

1 upon request. Any potential bidder determined not to meet eligibility
2 criteria must be afforded the opportunity to establish its eligibility.
3 Protests concerning bidder eligibility determinations shall be in
4 accordance with subsection (1) of this section.

5 NEW SECTION. **Sec. 308.** SUBCONTRACT AGREEMENTS. Subcontract
6 agreements used by the general contractor/construction manager shall
7 not:

8 (1) Delegate, restrict, or assign the general
9 contractor/construction manager's implied duty not to hinder or delay
10 the subcontractor. Nothing in this subsection (1) prohibits the
11 general contractor/construction manager from requiring subcontractors
12 not to hinder or delay the work of the general contractor/construction
13 manager or other subcontractors and to hold subcontractors responsible
14 for such damages;

15 (2) Delegate, restrict, or assign the general
16 contractor/construction manager's authority to resolve subcontractor
17 conflicts. The general contractor/construction manager may delegate or
18 assign coordination of specific elements of the work, including: (a)
19 The coordination of shop drawings among subcontractors; (b) the
20 coordination among subcontractors in ceiling spaces and mechanical
21 rooms; and (c) the coordination of a subcontractor's lower tier
22 subcontractors. Nothing in this subsection prohibits the general
23 contractor/construction manager from imposing a duty on its
24 subcontractors to cooperate with the general contractor/construction
25 manager and other subcontractors in the coordination of the work;

26 (3) Restrict the subcontractor's right to damages for changes to
27 the construction schedule or work to the extent that the delay or
28 disruption is caused by the general contractor/construction manager or
29 entities acting for it. The general contractor/construction manager
30 may require the subcontractor to provide notice that rescheduling or
31 resequencing will result in delays or additional costs;

32 (4) Require the subcontractor to bear the cost of trade damage
33 repair except to the extent the subcontractor is responsible for the
34 damage. Nothing in this subsection (4) precludes the general
35 contractor/construction manager from requiring the subcontractor to
36 take reasonable steps to protect the subcontractor's work from trade
37 damage; or

1 (5) Require the subcontractor to execute progress payment
2 applications that waive claims for additional time or compensation or
3 bond or retainage rights as a condition of receipt of progress payment,
4 except to the extent the subcontractor has received or will receive
5 payment. Nothing in this section precludes the general
6 contractor/construction manager from requiring the subcontractor to
7 provide notice of claims for additional time or compensation as a
8 condition precedent to right of recovery or to execute a full and final
9 release, including a waiver of bond and retainage rights, as a
10 condition of final payment.

11 **PART 4**
12 **JOB ORDER CONTRACTING**

13 **Sec. 401.** RCW 39.10.130 and 2003 c 301 s 1 are each amended to
14 read as follows:

15 (1) The following public bodies are authorized to use the job order
16 contracting procedure:

- 17 (a) The department of general administration;
- 18 (b) The University of Washington;
- 19 (c) Washington State University;
- 20 (d) Every city with a population greater than seventy thousand and
21 any public authority chartered by such city under RCW 35.21.730 through
22 35.21.755;
- 23 (e) Every county with a population greater than four hundred fifty
24 thousand;
- 25 (f) Every port district with total revenues greater than fifteen
26 million dollars per year;
- 27 (g) Every public utility district with revenues from energy sales
28 greater than twenty-three million dollars per year;
- 29 (h) Every school district; and
- 30 (i) The state ferry system.

31 (2) Public bodies may use a job order contract for public works
32 projects when(+

33 ~~(a) A public body has made~~) a determination is made that the use
34 of job order contracts will benefit the public by providing an
35 effective means of reducing the total lead-time and cost for the
36 construction of public works projects (~~(or)~~) for repair and renovation

1 required at public facilities through the use of unit price books and
2 work orders by eliminating time-consuming, costly aspects of the
3 traditional public works process, which require separate contracting
4 actions for each small project(†

5 ~~(b) The work order to be issued for a particular project does not
6 exceed two hundred thousand dollars;~~

7 ~~(c) Less than twenty percent of the dollar value of the work order
8 consists of items of work not contained in the unit price book; and~~

9 ~~(d) At least eighty percent of the job order contract must be
10 subcontracted to entities other than the job order contractor.~~

11 ~~(2) Public bodies shall award job order contracts through a
12 competitive process utilizing public requests for proposals. Public
13 bodies shall make an effort to solicit proposals from a certified
14 minority or certified woman owned contractor to the extent permitted by
15 the Washington state civil rights act, RCW 49.60.400. The public body
16 shall publish, at least once in a legal newspaper of general
17 circulation published in or as near as possible to that part of the
18 county in which the public works will be done, a request for proposals
19 for job order contracts and the availability and location of the
20 request for proposal documents. The public body shall ensure that the
21 request for proposal documents at a minimum includes:~~

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

27 ~~(b) The reasons for using job order contracts;~~

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

29 ~~(d) The identity of the specific unit price book to be used;~~

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

32 ~~(f) A description of the process the public body will use to
33 evaluate qualifications and proposals, including evaluation factors and
34 the relative weight of factors. The public body shall ensure that
35 evaluation factors include, but are not limited to, proposal price and
36 the ability of the proposer to perform the job order contract. In
37 evaluating the ability of the proposer to perform the job order
38 contract, the public body may consider: The ability of the~~

1 professional personnel who will work on the job order contract; past
2 performance on similar contracts; ability to meet time and budget
3 requirements; ability to provide a performance and payment bond for the
4 job order contract; recent, current, and projected work loads of the
5 proposer; location; and the concept of the proposal;

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

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

9 (i) A notice that the proposals are subject to the provisions of
10 RCW 39.10.100; and

11 (j) Other information relevant to the project.

12 (3) A public body shall establish a committee to evaluate the
13 proposals. After the committee has selected the most qualified
14 finalists, the finalists shall submit final proposals, including sealed
15 bids based upon the identified unit price book. Such bids may be in
16 the form of coefficient markups from listed price book costs. The
17 public body shall award the contract to the firm submitting the highest
18 scored final proposal using the evaluation factors and the relative
19 weight of factors published in the public request for proposals.

20 (4) The public body shall provide a protest period of at least ten
21 business days following the day of the announcement of the apparent
22 successful proposal to allow a protester to file a detailed statement
23 of the grounds of the protest. The public body shall promptly make a
24 determination on the merits of the protest and provide to all proposers
25 a written decision of denial or acceptance of the protest. The public
26 body shall not execute the contract until two business days following
27 the public body's decision on the protest.

28 (5) The public body shall issue no work orders until it has
29 approved, in consultation with the office of minority and women's
30 business enterprises or the equivalent local agency, a plan prepared by
31 the job order contractor that equitably spreads certified women and
32 minority business enterprise subcontracting opportunities, to the
33 extent permitted by the Washington state civil rights act, RCW
34 49.60.400, among the various subcontract disciplines.

35 (6) Job order contracts may be executed for an initial contract
36 term of not to exceed two years, with the option of extending or
37 renewing the job order contract for one year. All extensions or

1 renewals must be priced as provided in the request for proposals. The
2 extension or renewal must be mutually agreed to by the public body and
3 the job order contractor.

4 (7) The maximum total dollar amount that may be awarded under a job
5 order contract shall not exceed three million dollars in the first year
6 of the job order contract, five million dollars over the first two
7 years of the job order contract, and, if extended or renewed, eight
8 million dollars over the three years of the job order contract.

9 (8) For each job order contract, public bodies shall not issue more
10 than two work orders equal to or greater than one hundred fifty
11 thousand dollars in a twelve-month contract performance period.

12 (9) All work orders issued for the same project shall be treated as
13 a single work order for purposes of the one hundred fifty thousand
14 dollar limit on work orders in subsection (8) of this section and the
15 two hundred thousand dollar limit on work orders in subsection (1)(b)
16 of this section.

17 (10) Any new permanent, enclosed building space constructed under
18 a work order shall not exceed two thousand gross square feet.

19 (11) Each public body may have no more than two job order contracts
20 in effect at any one time.

21 (12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
22 each work order issued shall be treated as a separate contract. The
23 alternate filing provisions of RCW 39.12.040(2) shall apply to each
24 work order that otherwise meets the eligibility requirements of RCW
25 39.12.040(2).

26 (13) The requirements of RCW 39.30.060 do not apply to requests for
27 proposals for job order contracts.

28 (14) Job order contractors shall pay prevailing wages for all work
29 that would otherwise be subject to the requirements of chapter 39.12
30 RCW. Prevailing wages for all work performed pursuant to each work
31 order must be the rates in effect at the time the individual work order
32 is issued.

33 (15) If, in the initial contract term, the public body, at no fault
34 of the job order contractor, fails to issue the minimum amount of work
35 orders stated in the public request for proposals, the public body
36 shall pay the contractor an amount equal to the difference between the
37 minimum work order amount and the actual total of the work orders

1 ~~issued multiplied by an appropriate percentage for overhead and profit~~
2 ~~contained in the general conditions for Washington state facility~~
3 ~~construction. This will be the contractor's sole remedy.~~

4 ~~(16) All job order contracts awarded under this section must be~~
5 ~~executed before July 1, 2007, however the job order contract may be~~
6 ~~extended or renewed as provided for in this section.~~

7 ~~(17) For purposes of this section, "public body" includes any~~
8 ~~school district)).~~

9 NEW SECTION. **Sec. 402.** CONTRACT AWARD. (1) Job order contracts
10 shall be awarded through a competitive process using public requests
11 for proposals.

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

15 (3) The public body shall publish, at least once in a statewide
16 publication and legal newspaper of general circulation published in
17 every county in which the public works project is anticipated, a
18 request for proposals for job order contracts and the availability and
19 location of the request for proposal documents. The public body shall
20 ensure that the request for proposal documents at a minimum includes:

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

26 (b) The reasons for using job order contracts;

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

28 (d) The identity of the specific unit price book to be used;

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

31 (f) A description of the process the public body will use to
32 evaluate qualifications and proposals, including evaluation factors and
33 the relative weight of factors. The public body shall ensure that
34 evaluation factors include, but are not limited to, proposal price and
35 the ability of the proposer to perform the job order contract. In
36 evaluating the ability of the proposer to perform the job order
37 contract, the public body may consider: The ability of the

1 professional personnel who will work on the job order contract; past
2 performance on similar contracts; ability to meet time and budget
3 requirements; ability to provide a performance and payment bond for the
4 job order contract; recent, current, and projected work loads of the
5 proposer; location; and the concept of the proposal;

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

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

9 (i) A notice that the proposals are subject to RCW 39.10.100 (as
10 recodified by this act); and

11 (j) Other information relevant to the project.

12 (4) A public body shall establish a committee to evaluate the
13 proposals. After the committee has selected the most qualified
14 finalists, the finalists shall submit final proposals, including sealed
15 bids based upon the identified unit price book. Such bids may be in
16 the form of coefficient markups from listed price book costs. The
17 public body shall award the contract to the firm submitting the highest
18 scored final proposal using the evaluation factors and the relative
19 weight of factors published in the public request for proposals and
20 will notify the board of the award of the contract.

21 (5) The public body shall provide a protest period of at least ten
22 business days following the day of the announcement of the apparent
23 successful proposal to allow a protester to file a detailed statement
24 of the grounds of the protest. The public body shall promptly make a
25 determination on the merits of the protest and provide to all proposers
26 a written decision of denial or acceptance of the protest. The public
27 body shall not execute the contract until two business days following
28 the public body's decision on the protest.

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

31 NEW SECTION. **Sec. 403.** JOB ORDER CONTRACT REQUIREMENTS. (1) The
32 maximum total dollar amount that may be awarded under a job order
33 contract is four million dollars per year for a maximum of three years.

34 (2) Job order contracts may be executed for an initial contract
35 term of not to exceed two years, with the option of extending or
36 renewing the job order contract for one year. All extensions or

1 renewals must be priced as provided in the request for proposals. The
2 extension or renewal must be mutually agreed to by the public body and
3 the job order contractor.

4 (3) A public body may have no more than two job order contracts in
5 effect at any one time, with the exception of the department of general
6 administration, which may have four job order contracts in effect at
7 any one time.

8 (4) At least ninety percent of work contained in a job order
9 contract must be subcontracted to entities other than the job order
10 contractor. The job order contractor must distribute contracts as
11 equitably as possible among qualified and available subcontractors
12 including minority and woman-owned subcontractors to the extent
13 permitted by law.

14 (5) The job order contractor shall publish notification of intent
15 to perform public works projects at the beginning of each contract year
16 in a statewide publication and in a legal newspaper of general
17 circulation in every county in which the public works projects are
18 anticipated.

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

24 (7) If, in the initial contract term, the public body, at no fault
25 of the job order contractor, fails to issue the minimum amount of work
26 orders stated in the public request for proposals, the public body
27 shall pay the contractor an amount equal to the difference between the
28 minimum work order amount and the actual total of the work orders
29 issued multiplied by an appropriate percentage for overhead and profit
30 contained in the contract award coefficient for services as specified
31 in the request for proposals. This is the contractor's sole remedy.

32 (8) All job order contracts awarded under this section must be
33 signed before July 1, 2013; however the job order contract may be
34 extended or renewed as provided for in this section.

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

1 NEW SECTION. **Sec. 404.** WORK ORDERS. (1) The maximum dollar
2 amount for a work order is three hundred fifty thousand dollars. For
3 each job order contract, public bodies shall not issue more than two
4 work orders equal to or greater than three hundred thousand dollars in
5 a twelve-month contract period.

6 (2) All work orders issued for the same project shall be treated as
7 a single work order for purposes of the dollar limit on work orders.

8 (3) No more than twenty percent of the dollar value of a work order
9 may consist of items of work not contained in the unit price book.

10 (4) Any new permanent, enclosed building space constructed under a
11 work order shall not exceed two thousand gross square feet.

12 (5) A public body may issue no work orders under a job order
13 contract until it has approved, in consultation with the office of
14 minority and women's business enterprises or the equivalent local
15 agency, a plan prepared by the job order contractor that equitably
16 spreads certified women and minority business enterprise subcontracting
17 opportunities, to the extent permitted by the Washington state civil
18 rights act, RCW 49.60.400, among the various subcontract disciplines.

19 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
20 each work order issued shall be treated as a separate contract. The
21 alternate filing provisions of RCW 39.12.040(2) apply to each work
22 order that otherwise meets the eligibility requirements of RCW
23 39.12.040(2).

24 (7) The job order contract shall not be used for the procurement of
25 architectural or engineering services not associated with specific work
26 orders. Architectural and engineering services shall be procured in
27 accordance with RCW 39.80.040.

28 NEW SECTION. **Sec. 405.** A public body shall provide to the board
29 the following information for each job order contract at the end of
30 each contract year:

31 (1) A list of work orders issued;

32 (2) The cost of each work order;

33 (3) A list of subcontractors hired under each work order;

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

37 (5) Any other information requested by the board.

PART 5
OTHER PROVISIONS

Sec. 501. RCW 39.10.120 and 2001 c 328 s 5 are each amended to read as follows:

~~((1) Except as provided in subsections (2) and (3) of this section,)) The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, ~~((2007))~~ 2013. Methods of public works contracting authorized ~~((by RCW 39.10.050 and 39.10.060 or 39.10.051 and 39.10.061))~~ under this chapter shall remain in full force and effect until completion of contracts signed before July 1, ~~((2007))~~ 2013.~~

~~((2) For the purposes of a baseball stadium as defined in RCW 82.14.0485, the design build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 1997.~~

~~(3) For the purposes of a stadium and exhibition center, as defined in RCW 36.102.010, the design build contracting procedures under RCW 39.10.050 or 39.10.051 shall remain in full force and effect until completion of contracts signed before December 31, 2002.~~

~~(4) A public authority chartered by a city that is a public body may utilize an alternative public works contracting procedure under this chapter only after receiving specific authorization on a project by project basis from the governing body of the city. For purposes of public authorities authorized to use alternative public works contracting procedures under this chapter, the city chartering any such public authority shall itself comply with RCW 39.10.030 on behalf of the public authority.))~~

NEW SECTION. **Sec. 502.** Projects approved by the school district project review board established under RCW 39.10.115, and the hospital district project review board established under RCW 39.10.117 before July 1, 2007, may proceed without the approval of the committee established in section 104 of this act.

NEW SECTION. **Sec. 503.** Projects using the design-build or general contractor/construction manager contracting procedures in which advertising for selection of a contractor has begun by the effective

1 date of this section but no contract has been awarded may proceed
2 without seeking approval of the committee under the processes in
3 sections 107 and 108 of this act.

4 **Sec. 504.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to
5 read as follows:

6 (1) Public improvement contracts shall provide, and public bodies
7 shall reserve, a contract retainage not to exceed five percent of the
8 moneys earned by the contractor as a trust fund for the protection and
9 payment of: (a) The claims of any person arising under the contract;
10 and (b) the state with respect to taxes imposed pursuant to Title 82
11 RCW which may be due from such contractor.

12 (2) Every person performing labor or furnishing supplies toward the
13 completion of a public improvement contract shall have a lien upon
14 moneys reserved by a public body under the provisions of a public
15 improvement contract. However, the notice of the lien of the claimant
16 shall be given within forty-five days of completion of the contract
17 work, and in the manner provided in RCW 39.08.030.

18 (3) The contractor at any time may request the contract retainage
19 be reduced to one hundred percent of the value of the work remaining on
20 the project.

21 (a) After completion of all contract work other than landscaping,
22 the contractor may request that the public body release and pay in full
23 the amounts retained during the performance of the contract, and sixty
24 days thereafter the public body must release and pay in full the
25 amounts retained (other than continuing retention of five percent of
26 the moneys earned for landscaping) subject to the provisions of
27 chapters 39.12 and 60.28 RCW.

28 (b) Sixty days after completion of all contract work the public
29 body must release and pay in full the amounts retained during the
30 performance of the contract subject to the provisions of chapters 39.12
31 and 60.28 RCW.

32 (4) The moneys reserved by a public body under the provisions of a
33 public improvement contract, at the option of the contractor, shall be:

34 (a) Retained in a fund by the public body;

35 (b) Deposited by the public body in an interest bearing account in
36 a bank, mutual savings bank, or savings and loan association. Interest

1 on moneys reserved by a public body under the provision of a public
2 improvement contract shall be paid to the contractor;

3 (c) Placed in escrow with a bank or trust company by the public
4 body. When the moneys reserved are placed in escrow, the public body
5 shall issue a check representing the sum of the moneys reserved payable
6 to the bank or trust company and the contractor jointly. This check
7 shall be converted into bonds and securities chosen by the contractor
8 and approved by the public body and the bonds and securities shall be
9 held in escrow. Interest on the bonds and securities shall be paid to
10 the contractor as the interest accrues.

11 (5) The contractor or subcontractor may withhold payment of not
12 more than five percent from the moneys earned by any subcontractor or
13 sub-subcontractor or supplier contracted with by the contractor to
14 provide labor, materials, or equipment to the public project. Whenever
15 the contractor or subcontractor reserves funds earned by a
16 subcontractor or sub-subcontractor or supplier, the contractor or
17 subcontractor shall pay interest to the subcontractor or sub-
18 subcontractor or supplier at a rate equal to that received by the
19 contractor or subcontractor from reserved funds.

20 (6) A contractor may submit a bond for all or any portion of the
21 contract retainage in a form acceptable to the public body and from a
22 bonding company meeting standards established by the public body. The
23 public body shall accept a bond meeting these requirements unless the
24 public body can demonstrate good cause for refusing to accept it. This
25 bond and any proceeds therefrom are subject to all claims and liens and
26 in the same manner and priority as set forth for retained percentages
27 in this chapter. The public body shall release the bonded portion of
28 the retained funds to the contractor within thirty days of accepting
29 the bond from the contractor. Whenever a public body accepts a bond in
30 lieu of retained funds from a contractor, the contractor shall accept
31 like bonds from any subcontractors or suppliers from which the
32 contractor has retained funds. The contractor shall then release the
33 funds retained from the subcontractor or supplier to the subcontractor
34 or supplier within thirty days of accepting the bond from the
35 subcontractor or supplier.

36 (7) If the public body administering a contract, after a
37 substantial portion of the work has been completed, finds that an
38 unreasonable delay will occur in the completion of the remaining

1 portion of the contract for any reason not the result of a breach
2 thereof, it may, if the contractor agrees, delete from the contract the
3 remaining work and accept as final the improvement at the stage of
4 completion then attained and make payment in proportion to the amount
5 of the work accomplished and in this case any amounts retained and
6 accumulated under this section shall be held for a period of sixty days
7 following the completion. In the event that the work is terminated
8 before final completion as provided in this section, the public body
9 may thereafter enter into a new contract with the same contractor to
10 perform the remaining work or improvement for an amount equal to or
11 less than the cost of the remaining work as was provided for in the
12 original contract without advertisement or bid. The provisions of this
13 chapter are exclusive and shall supersede all provisions and
14 regulations in conflict herewith.

15 (8) Whenever the department of transportation has contracted for
16 the construction of two or more ferry vessels, sixty days after
17 completion of all contract work on each ferry vessel, the department
18 must release and pay in full the amounts retained in connection with
19 the construction of the vessel subject to the provisions of RCW
20 60.28.020 and chapter 39.12 RCW. However, the department of
21 transportation may at its discretion condition the release of funds
22 retained in connection with the completed ferry upon the contractor
23 delivering a good and sufficient bond with two or more sureties, or
24 with a surety company, in the amount of the retained funds to be
25 released to the contractor, conditioned that no taxes shall be
26 certified or claims filed for work on the ferry after a period of sixty
27 days following completion of the ferry; and if taxes are certified or
28 claims filed, recovery may be had on the bond by the department of
29 revenue and the materialmen and laborers filing claims.

30 (9) Except as provided in subsection (1) of this section,
31 reservation by a public body for any purpose from the moneys earned by
32 a contractor by fulfilling its responsibilities under public
33 improvement contracts is prohibited.

34 (10) Contracts on projects funded in whole or in part by farmers
35 home administration and subject to farmers home administration
36 regulations are not subject to subsections (1) through (9) of this
37 section.

1 (11) This subsection applies only to a public body that has
2 contracted for the construction of a facility using the general
3 contractor/construction manager procedure, as defined under RCW
4 (~~39.10.061~~) 39.10.020 (as recodified by this act). If the work
5 performed by a subcontractor on the project has been completed within
6 the first half of the time provided in the general
7 contractor/construction manager contract for completing the work, the
8 public body may accept the completion of the subcontract. The public
9 body must give public notice of this acceptance. After a forty-five
10 day period for giving notice of liens, and compliance with the
11 retainage release procedures in RCW 60.28.021, the public body may
12 release that portion of the retained funds associated with the
13 subcontract. Claims against the retained funds after the forty-five
14 day period are not valid.

15 (12) Unless the context clearly requires otherwise, the definitions
16 in this subsection apply throughout this section.

17 (a) "Contract retainage" means an amount reserved by a public body
18 from the moneys earned by a person under a public improvement contract.

19 (b) "Person" means a person or persons, mechanic, subcontractor, or
20 materialperson who performs labor or provides materials for a public
21 improvement contract, and any other person who supplies the person with
22 provisions or supplies for the carrying on of a public improvement
23 contract.

24 (c) "Public body" means the state, or a county, city, town,
25 district, board, or other public body.

26 (d) "Public improvement contract" means a contract for public
27 improvements or work, other than for professional services, or a work
28 order as defined in RCW 39.10.020 (as recodified by this act).

29 **Sec. 505.** RCW 70.150.070 and 2005 c 469 s 2 are each amended to
30 read as follows:

31 RCW 70.150.030 through 70.150.060 shall be deemed to provide an
32 additional method for the provision of services from and in connection
33 with facilities and shall be regarded as supplemental and additional to
34 powers conferred by other state laws and by federal laws. (~~A public
35 body that is also eligible to enter into agreements with service
36 providers under the alternative public works contracting procedures in~~

1 ~~chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061~~
2 ~~or this chapter as its method of procurement for such services.)~~

3 NEW SECTION. **Sec. 506.** A new section is added to chapter 43.131
4 RCW to read as follows:

5 The alternative works contracting procedures under chapter 39.10
6 RCW shall be terminated June 30, 2013, as provided in section 507 of
7 this act.

8 NEW SECTION. **Sec. 507.** A new section is added to chapter 43.131
9 RCW to read as follows:

10 The following acts or parts of acts, as now existing or hereafter
11 amended, are each repealed, effective June 30, 2014:

12 (1) RCW 39.10.010 (as recodified by this act) and section 1 of this
13 act & 1994 c 132 s 1;

14 (2) RCW 39.10.020 (as recodified by this act) and section 101 of
15 this act & 2005 c 469 s 3;

16 (3) RCW 39.10.800 (as recodified by this act) and section 102 of
17 this act & 2005 c 377 s 1;

18 (4) RCW 39.10.810 (as recodified by this act) and section 103 of
19 this act & 2005 c 377 s 2;

20 (5) RCW 39.10.--- and section 104 of this act;

21 (6) RCW 39.10.--- and section 105 of this act;

22 (7) RCW 39.10.--- and section 106 of this act;

23 (8) RCW 39.10.--- and section 107 of this act;

24 (9) RCW 39.10.--- and section 108 of this act;

25 (10) RCW 39.10.--- and section 109 of this act;

26 (11) RCW 39.10.051 (as recodified by this act) and section 201 of
27 this act, 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328
28 s 2;

29 (12) RCW 39.10.080 (as recodified by this act) and section 202 of
30 this act & 1994 c 132 s 8;

31 (13) RCW 39.10.070 (as recodified by this act) and section 203 of
32 this act & 1994 c 132 s 7;

33 (14) RCW 39.10.--- and section 204 of this act;

34 (15) RCW 39.10.061 (as recodified by this act) and section 301 of
35 this act, 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328
36 s 3;

- 1 (16) RCW 39.10.--- and section 302 of this act;
- 2 (17) RCW 39.10.--- and section 303 of this act;
- 3 (18) RCW 39.10.--- and section 304 of this act;
- 4 (19) RCW 39.10.--- and section 305 of this act;
- 5 (20) RCW 39.10.--- and section 306 of this act;
- 6 (21) RCW 39.10.--- and section 307 of this act;
- 7 (22) RCW 39.10.--- and section 308 of this act;
- 8 (23) RCW 39.10.130 (as recodified by this act) and section 401 of
- 9 this act & 2003 c 301 s 1;
- 10 (24) RCW 39.10.--- and section 402 of this act;
- 11 (25) RCW 39.10.--- and section 403 of this act;
- 12 (26) RCW 39.10.--- and section 404 of this act;
- 13 (27) RCW 39.10.--- and section 405 of this act;
- 14 (28) RCW 39.10.100 (as recodified by this act) and 2005 c 274 s 275
- 15 & 1994 c 132 s 10;
- 16 (29) RCW 39.10.090 (as recodified by this act) and 1994 c 132 s 9;
- 17 (30) RCW 39.10.120 (as recodified by this act) and section 501 of
- 18 this act & 2001 c 328 s 5;
- 19 (31) RCW 39.10.--- and section 502 of this act;
- 20 (32) RCW 39.10.--- and section 503 of this act;
- 21 (33) RCW 39.10.900 (as recodified by this act) and 1994 c 132 s 13;
- 22 (34) RCW 39.10.901 (as recodified by this act) and 1994 c 132 s 14;
- 23 and
- 24 (35) RCW 39.10.--- and section 510 of this act.

25 NEW SECTION. **Sec. 508.** RCW 39.10.902 (Repealer) and 2006 c 261 s

26 3 & 2005 c 469 s 5 are each repealed.

27 NEW SECTION. **Sec. 509.** The following acts or parts of acts are

28 each repealed:

29 (1) RCW 39.10.030 (Public notification and review process) and 1997

30 c 376 s 2 & 1994 c 132 s 3;

31 (2) RCW 39.10.040 (Baseball stadium project--Alternative procedure

32 may be used) and 1994 c 132 s 4;

33 (3) RCW 39.10.063 (City demonstration projects--Conditions--

34 Contract deadline) and 2005 c 377 s 3;

35 (4) RCW 39.10.065 (Demonstration projects--Contract deadline--

36 Transfer of authority to other public body) and 1997 c 376 s 5;

1 (5) RCW 39.10.067 (School district capital demonstration projects--
2 Conditions) and 2006 c 261 s 1, 2003 c 301 s 3, 2002 c 46 s 3, & 2000
3 c 209 s 3;

4 (6) RCW 39.10.068 (Public hospital district capital demonstration
5 projects--Conditions) and 2003 c 300 s 6;

6 (7) RCW 39.10.115 (School district project review board--
7 Established--Procedures) and 2006 c 261 s 2, 2001 c 328 s 4, & 2000 c
8 209 s 4; and

9 (8) RCW 39.10.117 (Public hospital district project review board--
10 Established--Procedures) and 2003 c 300 s 7.

11 NEW SECTION. **Sec. 510.** PART HEADINGS AND CAPTIONS NOT LAW. Part
12 headings and captions used in this act are not any part of the law.

13 NEW SECTION. **Sec. 511.** The following sections are codified or
14 recodified in chapter 39.10 RCW in the following order:

- 15 RCW 39.10.010
- 16 RCW 39.10.020
- 17 RCW 39.10.800
- 18 RCW 39.10.810
- 19 Section 104 of this act
- 20 Section 105 of this act
- 21 Section 106 of this act
- 22 Section 107 of this act
- 23 Section 108 of this act
- 24 Section 109 of this act
- 25 RCW 39.10.051
- 26 RCW 39.10.080
- 27 RCW 39.10.070
- 28 Section 204 of this act
- 29 RCW 39.10.061
- 30 Section 302 of this act
- 31 Section 303 of this act
- 32 Section 304 of this act
- 33 Section 305 of this act
- 34 Section 306 of this act
- 35 Section 307 of this act
- 36 Section 308 of this act

1 RCW 39.10.130
2 Section 402 of this act
3 Section 403 of this act
4 Section 404 of this act
5 Section 405 of this act
6 RCW 39.10.100
7 RCW 39.10.090
8 RCW 39.10.120
9 Section 502 of this act
10 Section 503 of this act
11 RCW 39.10.900
12 RCW 39.10.901
13 Section 510 of this act

14 NEW SECTION. **Sec. 512.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 July 1, 2007, except for section 104 of this act, which takes effect
18 immediately, and section 508 of this act, which takes effect June 30,
19 2007.

20 NEW SECTION. **Sec. 513.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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