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SENATE BILL 5489

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State of Washington

60th Legislature

2007 Regular Session

By Senators Rockefeller and Fairley

Read first time 01/22/2007. Referred to Committee on Government Operations & Elections.

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 alternative public works project within the  
4 previous five years; (vi) the ability to properly manage its capital  
5 facilities plan including, but not limited to, appropriate project  
6 planning and budgeting experience; and (vii) the ability to meet  
7 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/management; (iv) the necessary and appropriate  
21 funding and time to properly manage the job and complete the project;  
22 (v) continuity of project management team, including personnel with  
23 experience managing projects of similar scope and size to the project  
24 being proposed; and (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 thirty days of receipt  
16 of the appeal and shall send a written determination of its decision to  
17 the party making the appeal and to the appropriate public body, as  
18 applicable. The public body shall comply with the determination of the  
19 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 ~~((3) Public bodies authorized under this section may also use))~~  
24 (2) The design-build procedure also may be used for the ~~((following~~  
25 ~~projects that meet the criteria in subsection (2)(b) and (c) of this~~  
26 ~~section:~~

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

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

31 ~~(4) Contracts for design build services shall be awarded through a~~  
32 ~~competitive process utilizing public solicitation of proposals for~~  
33 ~~design build services. The public body shall publish at least once in~~  
34 ~~a legal newspaper of general circulation published in or as near as~~  
35 ~~possible to that part of the county in which the public work will be~~  
36 ~~done, a notice of its request for proposals for design build services~~  
37 ~~and the availability and location of the request for proposal~~  
38 ~~documents. The request for proposal documents shall include:~~

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

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

7       ~~(c) A description of the qualifications to be required of the~~  
8 ~~proposer including, but not limited to, submission of the proposer's~~  
9 ~~accident prevention program;~~

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

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

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

21       ~~(g) Other information relevant to the project.~~

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

29       ~~(a) Best and final proposals shall be evaluated and scored based on~~  
30 ~~the factors, weighting, and process identified in the initial request~~  
31 ~~for proposals. The public body may score the proposals using a system~~  
32 ~~that measures the quality and technical merits of the proposal on a~~  
33 ~~unit price basis. Final proposals may not be considered if the~~  
34 ~~proposal cost is greater than the maximum allowable construction cost~~  
35 ~~identified in the initial request for proposals. The public body shall~~  
36 ~~initiate negotiations with the firm submitting the highest scored best~~  
37 ~~and final proposal. If the public body is unable to execute a contract~~  
38 ~~with the firm submitting the highest scored best and final proposal,~~

1 ~~negotiations with that firm may be suspended or terminated and the~~  
2 ~~public body may proceed to negotiate with the next highest scored firm.~~  
3 ~~Public bodies shall continue in accordance with this procedure until a~~  
4 ~~contract agreement is reached or the selection process is terminated.~~

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

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

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

20 ~~(3) Except for utility projects, the design-build procedure may not~~  
21 ~~be used to procure operations and maintenance services for a period~~  
22 ~~longer than three years.~~

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

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

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

33 (2) The apparent low-responsive bid or proposal does not exceed the  
34 available funds by the greater of one hundred twenty-five thousand  
35 dollars or two percent for projects valued over ten million dollars;  
36 and

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

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

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

8 ~~((The preparation of appropriate, complete, and coordinated~~  
9 ~~design documents consistent with the procedure utilized;~~

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

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

15 ~~((d) To the extent appropriate, on-site architectural or~~  
16 ~~engineering representatives during major construction or installation~~  
17 ~~phases;~~

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

20 ~~(f))~~ (c) Contract documents that include alternative dispute  
21 resolution procedures to be attempted prior to the initiation of  
22 litigation;

23 (d) Submission of project information, as required by the board;  
24 and

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

27 (2) A public body utilizing the ~~((alternative public works))~~  
28 design-build contracting procedure~~((s under RCW 39.10.050 and~~  
29 ~~39.10.060))~~ may provide incentive payments to contractors for early  
30 completion, cost savings, or other goals if such payments are  
31 identified in the request for proposals.

32 NEW SECTION. **Sec. 204.** DESIGN-BUILD CONTRACT AWARD. (1)  
33 Contracts for design-build services shall be awarded through a  
34 competitive process using public solicitation of proposals for design-  
35 build services. The public body shall publish at least once in a legal  
36 newspaper of general circulation published in, or as near as possible



1 to, that part of the county in which the public work will be done, a  
2 notice of its request for qualifications from proposers for design-  
3 build services, and the availability and location of the request for  
4 proposal documents. The request for qualifications documents shall  
5 include:

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

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

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

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

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

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

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

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

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

38 (h) Other information relevant to the project.

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

9 (3) Upon selection of the finalists, the public body shall issue a  
10 request for proposals to the finalists, which shall provide the  
11 following information:

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

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

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

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

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

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

9 **PART 3**

10 **GENERAL CONTRACTOR/CONSTRUCTION MANAGER**

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

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

27 ~~(2) Except those school districts proposing projects that are  
28 considered and approved by the school district project review board and  
29 those public hospital districts proposing projects that are considered  
30 and approved by the public hospital district project review board))  
31 Subject to the process in section 107 or 108 of this act, public bodies  
32 ~~((authorized under this section)) may utilize the general  
33 contractor/construction manager procedure for public works projects  
34 ((valued over ten million dollars)) where:~~~~

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

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

4       ~~(e))~~ (3) The involvement of the general contractor/construction  
5 manager during the design stage is critical to the success of the  
6 project(~~(-~~

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

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

1 ~~select the firm submitting the highest scored final proposal using the~~  
2 ~~evaluation factors and the relative weight of factors published in the~~  
3 ~~public solicitation of proposals.~~

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

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

32 ~~(a) Adequate financial resources or the ability to secure such~~  
33 ~~resources;~~

34 ~~(b) History of successful completion of a contract of similar type~~  
35 ~~and scope;~~

36 ~~(c) Project management and project supervision personnel with~~  
37 ~~experience on similar projects and the availability of such personnel~~  
38 ~~for the project;~~

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

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

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

7 ~~(g) Eligibility to receive an award under applicable laws and~~  
8 ~~regulations; and~~

9 ~~(h) Ability to meet subcontract bid package scheduling~~  
10 ~~requirements.~~

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

14 ~~After publication of notice of intent to determine bidder~~  
15 ~~eligibility, subcontractors requesting eligibility shall be provided~~  
16 ~~the evaluation criteria and weighting to be used by the owner and~~  
17 ~~general contractor/construction manager to determine eligible~~  
18 ~~subcontract bidders. After the owner and general~~  
19 ~~contractor/construction manager determine eligible subcontract bidders,~~  
20 ~~subcontractors requesting eligibility shall be provided the results and~~  
21 ~~scoring of the subcontract bidder eligibility determination.~~

22 ~~Subcontract bid packages shall be awarded to the responsible bidder~~  
23 ~~submitting the low responsive bid. The requirements of RCW 39.30.060~~  
24 ~~apply to each subcontract bid package. All subcontractors who bid work~~  
25 ~~over three hundred thousand dollars shall post a bid bond and all~~  
26 ~~subcontractors who are awarded a contract over three hundred thousand~~  
27 ~~dollars shall provide a performance and payment bond for their contract~~  
28 ~~amount. All other subcontractors shall provide a performance and~~  
29 ~~payment bond if required by the general contractor/construction~~  
30 ~~manager. If a general contractor/construction manager receives a~~  
31 ~~written protest from a subcontractor bidder, the general~~  
32 ~~contractor/construction manager shall not execute a contract for the~~  
33 ~~subcontract bid package with anyone other than the protesting bidder~~  
34 ~~without first providing at least two full business days' written notice~~  
35 ~~of the general contractor/construction manager's intent to execute a~~  
36 ~~contract for the subcontract bid package; provided that the protesting~~  
37 ~~bidder submits notice in writing of its protest no later than two full~~  
38 ~~business days following bid opening. Intermediate Saturdays, Sundays,~~

1 and legal holidays are not counted. A low bidder who claims error and  
2 fails to enter into a contract is prohibited from bidding on the same  
3 project if a second or subsequent call for bids is made for the  
4 project. Except as provided for under subsection (7) of this section,  
5 bidding on subcontract work by the general contractor/construction  
6 manager or its subsidiaries is prohibited. The general  
7 contractor/construction manager may negotiate with the low responsive  
8 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
9 negotiations, rebid.

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

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

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

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

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

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

32 (9) The authority provided to the state ferry system in this  
33 section is limited to projects concerning construction, renovation,  
34 preservation, demolition, and reconstruction of ferry terminals and  
35 associated land based facilities);

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

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

3       NEW SECTION.   **Sec. 302.** PROJECT MANAGEMENT AND CONTRACTING  
4 REQUIREMENTS.

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

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

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

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

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

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

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

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

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

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

(2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may



1 exceed five percent of the maximum allowable construction cost. No  
2 incentives may be paid from any contingency fund established for  
3 coordination of the construction documents or coordination of the work.

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

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

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

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

27 (a) A description of the project, including programmatic,  
28 performance, and technical requirements and specifications when  
29 available;

30 (b) The reasons for using the general contractor/construction  
31 manager procedure;

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (4) A public body shall establish a committee to evaluate the  
17 proposals. After the committee has selected the most qualified  
18 finalists, these finalists shall submit final proposals, including  
19 sealed bids for the percent fee on the estimated maximum allowable  
20 construction cost and the fixed amount for the general conditions work  
21 specified in the request for proposal. The public body shall select  
22 the firm submitting the highest scored final proposal using the  
23 evaluation factors and the relative weight of factors published in the  
24 public solicitation of proposals.

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

31 NEW SECTION. **Sec. 304.** MAXIMUM ALLOWABLE CONSTRUCTION COST. (1)  
32 The maximum allowable construction cost shall be used to establish a  
33 total contract cost for which the general contractor/construction  
34 manager shall provide a performance and payment bond. The maximum  
35 allowable construction cost shall be negotiated between the public body  
36 and the selected firm when the construction documents and  
37 specifications are at least ninety percent complete, unless both

1 parties agree to set it at a different time. A firm's willingness to  
2 set the maximum allowable construction cost before the construction  
3 documents and specifications are ninety percent complete shall not be  
4 a factor in the selection process.

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

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

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

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

28 NEW SECTION. **Sec. 305.** SUBCONTRACT BIDDING PROCEDURE. (1) All  
29 subcontract work and equipment and material purchases shall be  
30 competitively bid with public bid openings. Subcontract bid packages  
31 and equipment and materials purchases shall be awarded to the  
32 responsible bidder submitting the lowest responsive bid.

33 (2) All subcontract bid packages in which bidder eligibility was  
34 not determined in advance shall include the specific objective criteria  
35 that will be used to evaluate bidder responsibility. If the lowest  
36 bidder is determined not to be responsible, the general  
37 contractor/construction manager must provide written documentation to

1 that bidder explaining the basis for the decision. Responsibility  
2 shall be determined in accordance with criteria listed in the bid  
3 documents.

4 (3) All subcontractors who bid work over three hundred thousand  
5 dollars shall post a bid bond. All subcontractors who are awarded a  
6 contract over three hundred thousand dollars shall provide a  
7 performance and payment bond for the contract amount. All other  
8 subcontractors shall provide a performance and payment bond if required  
9 by the general contractor/construction manager.

10 (4) If the general contractor/construction manager receives a  
11 written protest from a subcontractor bidder or an equipment or material  
12 supplier, the general contractor/construction manager shall not execute  
13 a contract for the subcontract bid package or equipment or material  
14 purchase order with anyone other than the protesting bidder without  
15 first providing at least two full business days' written notice of the  
16 intent to execute a contract for the subcontract bid package:  
17 PROVIDED, That the protesting bidder must submit written notice of its  
18 protest no later than two full business days following the bid opening.  
19 Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

23 (6) The general contractor/construction manager may negotiate with  
24 the lowest responsible and responsive bidder in accordance with RCW  
25 39.10.080 (as recodified by this act) and, if unsuccessful, must rebid  
26 the subcontract work or equipment or material purchases.

27 (7) The general contractor/construction manager must provide a  
28 written explanation if all bids are rejected.

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

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

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

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

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

9 (3) In no event may the general contractor/construction manager or  
10 its subsidiaries purchase equipment or materials for assignment to  
11 subcontract bid package bidders for installation or warranty. The  
12 value of subcontract work performed and equipment and materials  
13 supplied by the general contractor/construction manager may not exceed  
14 thirty percent of the negotiated maximum allowable construction cost.  
15 Negotiated support services performed by the general  
16 contractor/construction manager shall not be considered subcontract  
17 work for purposes of this subsection.

18 NEW SECTION. **Sec. 307.** PREBID DETERMINATION OF SUBCONTRACTOR  
19 ELIGIBILITY. If determination of subcontractor eligibility prior to  
20 seeking bids is in the best interest of the project and critical to the  
21 successful completion of a subcontract bid package, the general  
22 contractor/construction manager, with written approval by the public  
23 body, may determine eligibility before issuing a subcontractor bid  
24 package using the process in section 305 of this act. The general  
25 contractor/construction manager must:

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

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

34 (3) Ensure the public hearing notice includes the date, time, and  
35 location of the hearing, a statement justifying the basis and need for  
36 performing eligibility analysis before bid opening, and specific

1 eligibility criteria and applicable weights given to each criteria and  
2 subcriteria that will be used during evaluation;

3 (4) After the public hearing, consider written and verbal comments  
4 received and determine, in conjunction with the public owner, if  
5 determining bidder eligibility in advance of seeking bids is in the  
6 best interests of the project;

7 (5) With the public owner, issue a written final determination to  
8 all interested parties. All protests must be filed within seven  
9 calendar days of the final determination. Any modifications to the  
10 eligibility criteria and weights shall be based on comments received  
11 during the public hearing process and shall be included in the final  
12 determination; and

13 (6) Provide the results and scoring of the bidder eligibility  
14 determination to all interested bidders.

15 NEW SECTION. **Sec. 308.** SUBCONTRACT AGREEMENTS. Subcontract  
16 agreements used by the general contractor/construction manager shall  
17 not:

18 (1) Delegate or assign the general contractor/construction  
19 manager's implied duty not to hinder or delay the subcontractor.  
20 Nothing in this subsection (1) prohibits the general  
21 contractor/construction manager from requiring subcontractors not to  
22 hinder or delay the work of the general contractor/construction manager  
23 or other subcontractors and to hold subcontractors responsible for such  
24 damages;

25 (2) Delegate or assign the general contractor/construction  
26 manager's authority to resolve subcontractor conflicts. The general  
27 contractor/construction manager may delegate or assign coordination of  
28 specific elements of the work, including: (a) The coordination of shop  
29 drawings among subcontractors; (b) the coordination among  
30 subcontractors in ceiling spaces and mechanical rooms; and (c) the  
31 coordination of a subcontractor's lower tier subcontractors. Nothing  
32 in this subsection prohibits the general contractor/construction  
33 manager from imposing a duty on its subcontractors to cooperate with  
34 the general contractor/construction manager and other subcontractors in  
35 the coordination of the work;

36 (3) Restrict the subcontractor's right to damages for changes to  
37 the construction schedule or work to the extent that the delay or

1 disruption is caused by the general contractor/construction manager or  
2 entities acting for it. The general contractor/construction manager  
3 may require the subcontractor to provide notice that rescheduling or  
4 resequencing will result in delays or additional costs;

5 (4) Require the subcontractor to bear the cost of trade damage  
6 repair except to the extent the subcontractor is responsible for the  
7 damage. Nothing in this subsection (4) precludes the general  
8 contractor/construction manager from requiring the subcontractor to  
9 take reasonable steps to protect the subcontractor's work from trade  
10 damage; or

11 (5) Require the subcontractor to execute progress payment  
12 applications that waive bond or retainage rights as a condition of  
13 receipt of progress payment, except to the extent the subcontractor has  
14 received or will receive payment. Nothing in this section precludes  
15 the general contractor/construction manager from requiring the  
16 subcontractor to execute a full and final release, including a waiver  
17 of bond and retainage rights, as a condition of final payment.

#### 18 PART 4

#### 19 JOB ORDER CONTRACTING

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

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

24 (a) The department of general administration;

25 (b) The University of Washington;

26 (c) Washington State University;

27 (d) Every city with a population greater than seventy thousand and  
28 any public authority chartered by such city under RCW 35.21.730 through  
29 35.21.755;

30 (e) Every county with a population greater than four hundred fifty  
31 thousand;

32 (f) Every port district with total revenues greater than fifteen  
33 million dollars per year;

34 (g) Every public utility district with revenues from energy sales  
35 greater than twenty-three million dollars per year;

36 (h) Every school district; and

1        (i) The state ferry system.

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

4        ~~(a) A public body has made)) a determination is made that the use~~  
5 ~~of job order contracts will benefit the public by providing an~~  
6 ~~effective means of reducing the total lead-time and cost for the~~  
7 ~~construction of public works projects ((~~or~~)) for repair and renovation~~  
8 ~~required at public facilities through the use of unit price books and~~  
9 ~~work orders by eliminating time-consuming, costly aspects of the~~  
10 ~~traditional public works process, which require separate contracting~~  
11 ~~actions for each small project((+~~

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

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

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

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

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

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

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

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

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



1       ~~(f) 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. The public body shall ensure that~~  
4 ~~evaluation factors include, but are not limited to, proposal price and~~  
5 ~~the ability of the proposer to perform the job order contract. In~~  
6 ~~evaluating the ability of the proposer to perform the job order~~  
7 ~~contract, the public body may consider: The ability of the~~  
8 ~~professional personnel who will work on the job order contract; past~~  
9 ~~performance on similar contracts; ability to meet time and budget~~  
10 ~~requirements; ability to provide a performance and payment bond for the~~  
11 ~~job order contract; recent, current, and projected work loads of the~~  
12 ~~proposer; location; and the concept of the proposal;~~

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

14       ~~(h) The method for pricing renewals of or extensions to the job~~  
15 ~~order contract;~~

16       ~~(i) A notice that the proposals are subject to the provisions of~~  
17 ~~RCW 39.10.100; and~~

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

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

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

35       ~~(5) The public body shall issue no work orders until it has~~  
36 ~~approved, in consultation with the office of minority and women's~~  
37 ~~business enterprises or the equivalent local agency, a plan prepared by~~  
38 ~~the job order contractor that equitably spreads certified women and~~

1 ~~minority business enterprise subcontracting opportunities, to the~~  
2 ~~extent permitted by the Washington state civil rights act, RCW~~  
3 ~~49.60.400, among the various subcontract disciplines.~~

4 ~~(6) Job order contracts may be executed for an initial contract~~  
5 ~~term of not to exceed two years, with the option of extending or~~  
6 ~~renewing the job order contract for one year. All extensions or~~  
7 ~~renewals must be priced as provided in the request for proposals. The~~  
8 ~~extension or renewal must be mutually agreed to by the public body and~~  
9 ~~the job order contractor.~~

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

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

18 ~~(9) All work orders issued for the same project shall be treated as~~  
19 ~~a single work order for purposes of the one hundred fifty thousand~~  
20 ~~dollar limit on work orders in subsection (8) of this section and the~~  
21 ~~two hundred thousand dollar limit on work orders in subsection (1)(b)~~  
22 ~~of this section.~~

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

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

27 ~~(12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,~~  
28 ~~each work order issued shall be treated as a separate contract. The~~  
29 ~~alternate filing provisions of RCW 39.12.040(2) shall apply to each~~  
30 ~~work order that otherwise meets the eligibility requirements of RCW~~  
31 ~~39.12.040(2).~~

32 ~~(13) The requirements of RCW 39.30.060 do not apply to requests for~~  
33 ~~proposals for job order contracts.~~

34 ~~(14) Job order contractors shall pay prevailing wages for all work~~  
35 ~~that would otherwise be subject to the requirements of chapter 39.12~~  
36 ~~RCW. Prevailing wages for all work performed pursuant to each work~~  
37 ~~order must be the rates in effect at the time the individual work order~~  
38 ~~is issued.~~

1       ~~(15) If, in the initial contract term, the public body, at no fault~~  
2 ~~of the job order contractor, fails to issue the minimum amount of work~~  
3 ~~orders stated in the public request for proposals, the public body~~  
4 ~~shall pay the contractor an amount equal to the difference between the~~  
5 ~~minimum work order amount and the actual total of the work orders~~  
6 ~~issued multiplied by an appropriate percentage for overhead and profit~~  
7 ~~contained in the general conditions for Washington state facility~~  
8 ~~construction. This will be the contractor's sole remedy.~~

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

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

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

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

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

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

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

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

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

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

36       (f) A description of the process the public body will use to  
37 evaluate qualifications and proposals, including evaluation factors and

1 the relative weight of factors. The public body shall ensure that  
2 evaluation factors include, but are not limited to, proposal price and  
3 the ability of the proposer to perform the job order contract. In  
4 evaluating the ability of the proposer to perform the job order  
5 contract, the public body may consider: The ability of the  
6 professional personnel who will work on the job order contract; past  
7 performance on similar contracts; ability to meet time and budget  
8 requirements; ability to provide a performance and payment bond for the  
9 job order contract; recent, current, and projected work loads of the  
10 proposer; location; and the concept of the proposal;

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

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

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

16 (j) Other information relevant to the project.

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

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

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

36 NEW SECTION. **Sec. 403.** JOB ORDER CONTRACT REQUIREMENTS. (1) The

1 maximum total dollar amount that may be awarded under a job order  
2 contract is four million dollars per year for a maximum of three years.

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

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

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

19 (5) The job order contractor shall publish notification of intent  
20 to perform public works projects at the beginning of each contract year  
21 in a statewide publication and in a legal newspaper of general  
22 circulation in every county in which the public works projects are  
23 anticipated.

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

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

37 (8) All job order contracts awarded under this section must be

1 signed before July 1, 2013; however the job order contract may be  
2 extended or renewed as provided for in this section.

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

5 NEW SECTION. **Sec. 404.** WORK ORDERS. (1) The maximum dollar  
6 amount for a work order is three hundred thousand dollars, except that  
7 two work orders of three hundred fifty thousand dollars each are  
8 allowed.

9 (2) No more than five work orders equal to or greater than three  
10 hundred thousand dollars may be issued by a public body in a twelve-  
11 month contract performance period for each job order contract.

12 (3) All work orders issued for the same project shall be treated as  
13 a single work order for purposes of the dollar limit on work orders.

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

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

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

25 (7) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
26 each work order issued shall be treated as a separate contract. The  
27 alternate filing provisions of RCW 39.12.040(2) apply to each work  
28 order that otherwise meets the eligibility requirements of RCW  
29 39.12.040(2).

30 (8) The job order contract shall not be used for the procurement of  
31 architectural or engineering services not associated with specific work  
32 orders. Architectural and engineering services shall be procured in  
33 accordance with RCW 39.80.040.

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

- 1 (1) A list of work orders issued;
- 2 (2) The cost of each work order;
- 3 (3) A list of subcontractors hired under each work order;
- 4 (4) If requested by the board, a copy of the intent to pay
- 5 prevailing wage and the affidavit of wages paid for each work order
- 6 subcontract; and
- 7 (5) Any other information requested by the board.

8 **PART 5**  
9 **OTHER PROVISIONS**

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

12 ~~((1) Except as provided in subsections (2) and (3) of this~~  
13 ~~section,))~~ The alternative public works contracting procedures  
14 authorized under this chapter are limited to public works contracts  
15 signed before July 1, ~~((2007))~~ 2013. Methods of public works  
16 contracting authorized ~~((by RCW 39.10.050 and 39.10.060 or 39.10.051~~  
17 ~~and 39.10.061))~~ under this chapter shall remain in full force and  
18 effect until completion of contracts signed before July 1, ~~((2007))~~  
19 2013.

20 ~~((2) For the purposes of a baseball stadium as defined in RCW~~  
21 ~~82.14.0485, the design build contracting procedures under RCW 39.10.050~~  
22 ~~shall remain in full force and effect until completion of contracts~~  
23 ~~signed before December 31, 1997.~~

24 ~~(3) For the purposes of a stadium and exhibition center, as defined~~  
25 ~~in RCW 36.102.010, the design build contracting procedures under RCW~~  
26 ~~39.10.050 or 39.10.051 shall remain in full force and effect until~~  
27 ~~completion of contracts signed before December 31, 2002.~~

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

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

6        **Sec. 503.**    RCW 60.28.011 and 2003 c 301 s 7 are each amended to  
7 read as follows:

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

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

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

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

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

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

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



1 (b) Deposited by the public body in an interest bearing account in  
2 a bank, mutual savings bank, or savings and loan association. Interest  
3 on moneys reserved by a public body under the provision of a public  
4 improvement contract shall be paid to the contractor;

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

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

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

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

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

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

37 (10) Contracts on projects funded in whole or in part by farmers

1 home administration and subject to farmers home administration  
2 regulations are not subject to subsections (1) through (9) of this  
3 section.

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

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

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

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

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

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

32 **Sec. 504.** RCW 70.150.070 and 2005 c 469 s 2 are each amended to  
33 read as follows:

34 RCW 70.150.030 through 70.150.060 shall be deemed to provide an  
35 additional method for the provision of services from and in connection  
36 with facilities and shall be regarded as supplemental and additional to  
37 powers conferred by other state laws and by federal laws. (~~A public~~

1 ~~body that is also eligible to enter into agreements with service~~  
2 ~~providers under the alternative public works contracting procedures in~~  
3 ~~chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061~~  
4 ~~or this chapter as its method of procurement for such services.))~~

5 NEW SECTION. **Sec. 505.** A new section is added to chapter 43.131  
6 RCW to read as follows:

7 The alternative works contracting procedures under chapter 39.10  
8 RCW shall be terminated June 30, 2013, as provided in section 506 of  
9 this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (15) RCW 39.10.061 (as recodified by this act) and section 301 of  
2 this act, 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328  
3 s 3;
- 4 (16) RCW 39.10.--- and section 302 of this act;
- 5 (17) RCW 39.10.--- and section 303 of this act;
- 6 (18) RCW 39.10.--- and section 304 of this act;
- 7 (19) RCW 39.10.--- and section 305 of this act;
- 8 (20) RCW 39.10.--- and section 306 of this act;
- 9 (21) RCW 39.10.--- and section 307 of this act;
- 10 (22) RCW 39.10.--- and section 308 of this act;
- 11 (23) RCW 39.10.130 (as recodified by this act) and section 401 of  
12 this act & 2003 c 301 s 1;
- 13 (24) RCW 39.10.--- and section 402 of this act;
- 14 (25) RCW 39.10.--- and section 403 of this act;
- 15 (26) RCW 39.10.--- and section 404 of this act;
- 16 (27) RCW 39.10.--- and section 405 of this act;
- 17 (28) RCW 39.10.100 (as recodified by this act) and 2005 c 274 s 275  
18 & 1994 c 132 s 10;
- 19 (29) RCW 39.10.090 (as recodified by this act) and 1994 c 132 s 9;
- 20 (30) RCW 39.10.120 (as recodified by this act) and section 501 of  
21 this act & 2001 c 328 s 5;
- 22 (31) RCW 39.10.--- and section 502 of this act;
- 23 (32) RCW 39.10.900 (as recodified by this act) and 1994 c 132 s 13;
- 24 (33) RCW 39.10.901 (as recodified by this act) and 1994 c 132 s 14;
- 25 and
- 26 (34) RCW 39.10.--- and section 509 of this act.

27 NEW SECTION. **Sec. 507.** RCW 39.10.902 (Repealer) and 2006 c 261 s  
28 3 & 2005 c 469 s 5 are each repealed.

29 NEW SECTION. **Sec. 508.** The following acts or parts of acts are  
30 each repealed:

31 (1) RCW 39.10.030 (Public notification and review process) and 1997  
32 c 376 s 2 & 1994 c 132 s 3;

33 (2) RCW 39.10.040 (Baseball stadium project--Alternative procedure  
34 may be used) and 1994 c 132 s 4;

35 (3) RCW 39.10.063 (City demonstration projects--Conditions--  
36 Contract deadline) and 2005 c 377 s 3;

- 1 (4) RCW 39.10.065 (Demonstration projects--Contract deadline--
- 2 Transfer of authority to other public body) and 1997 c 376 s 5;
- 3 (5) RCW 39.10.067 (School district capital demonstration projects--
- 4 Conditions) and 2006 c 261 s 1, 2003 c 301 s 3, 2002 c 46 s 3, & 2000
- 5 c 209 s 3;
- 6 (6) RCW 39.10.068 (Public hospital district capital demonstration
- 7 projects--Conditions) and 2003 c 300 s 6;
- 8 (7) RCW 39.10.115 (School district project review board--
- 9 Established--Procedures) and 2006 c 261 s 2, 2001 c 328 s 4, & 2000 c
- 10 209 s 4; and
- 11 (8) RCW 39.10.117 (Public hospital district project review board--
- 12 Established--Procedures) and 2003 c 300 s 7.

13 NEW SECTION. **Sec. 509.** PART HEADINGS AND CAPTIONS NOT LAW. Part

14 headings and captions used in this act are not any part of the law.

15 NEW SECTION. **Sec. 510.** The following sections are codified or

16 recodified in chapter 39.10 RCW in the following order:

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

1 Section 307 of this act  
2 Section 308 of this act  
3 RCW 39.10.130  
4 Section 402 of this act  
5 Section 403 of this act  
6 Section 404 of this act  
7 Section 405 of this act  
8 RCW 39.10.100  
9 RCW 39.10.090  
10 RCW 39.10.120  
11 Section 502 of this act  
12 RCW 39.10.900  
13 RCW 39.10.901  
14 Section 509 of this act

15 NEW SECTION. **Sec. 511.** This act is necessary for the immediate  
16 preservation of the public peace, health, or safety, or support of the  
17 state government and its existing public institutions, and takes effect  
18 July 1, 2007, except for section 104 of this act, which takes effect  
19 immediately, and section 507 of this act, which takes effect June 30,  
20 2007.

21 NEW SECTION. **Sec. 512.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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