
SUBSTITUTE HOUSE BILL 1466

State of Washington 63rd Legislature 2013 Regular Session

By House Capital Budget (originally sponsored by Representatives Haigh, Warnick, Dunshee, Fey, Kristiansen, and Reykdal)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to revisions to alternative public works
2 contracting procedures; amending RCW 39.10.220, 39.10.230, 39.10.240,
3 39.10.250, 39.10.260, 39.10.270, 39.10.280, 39.10.300, 39.10.320,
4 39.10.330, 39.10.340, 39.10.360, 39.10.380, 39.10.385, 39.10.390,
5 39.10.400, 39.10.420, 39.10.440, 39.10.490, 43.131.407, and 43.131.408;
6 reenacting and amending RCW 39.10.210; adding a new section to chapter
7 43.131 RCW; repealing RCW 39.10.500 and 39.10.510; providing an
8 effective date; providing a contingent effective date; providing an
9 expiration date; and declaring an emergency.

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

11 **Sec. 1.** RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014 are each
12 reenacted and amended to read as follows:

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

15 (1) "Alternative public works contracting procedure" means the
16 design-build, general contractor/construction manager, and job order
17 contracting procedures authorized in RCW 39.10.300, 39.10.340, and
18 39.10.420, respectively.

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

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

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

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

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

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

18 ~~((+7))~~ (8) "Job order contract" means a contract in which the
19 contractor agrees to a fixed period, indefinite quantity delivery order
20 contract which provides for the use of negotiated, definitive work
21 orders for public works as defined in RCW 39.04.010.

22 ~~((+8))~~ (9) "Job order contractor" means a registered or licensed
23 contractor awarded a job order contract.

24 ~~((+9))~~ (10) "Maximum allowable construction cost" means the
25 maximum cost of the work to construct the project including a
26 percentage for risk contingency, negotiated support services, and
27 approved change orders.

28 ~~((+10))~~ (11) "Negotiated support services" means items a general
29 contractor would normally manage or perform on a construction project
30 including, but not limited to surveying, hoisting, safety enforcement,
31 provision of toilet facilities, temporary heat, cleanup, and trash
32 removal, and that are negotiated as part of the maximum allowable
33 construction cost.

34 ~~((+11))~~ (12) "Percent fee" means the percentage amount to be
35 earned by the general contractor/construction manager as overhead and
36 profit.

37 ~~((+12))~~ (13) "Public body" means any general or special purpose
38 government in the state of Washington, including but not limited to

1 state agencies, institutions of higher education, counties, cities,
2 towns, ports, school districts, and special purpose districts(~~(~~
3 ~~provided that for the 2009-2011 fiscal biennium, the definition of~~
4 ~~public body for this chapter does not include public bodies funded in~~
5 ~~section 1012, chapter 36, Laws of 2010 1st sp. sess. if alternative~~
6 ~~requirements or procedures of federal law or regulations are~~
7 ~~authorized)).~~

8 ~~((+13))~~ (14) "Public works project" means any work for a public
9 body within the definition of "public work" in RCW 39.04.010.

10 ~~((+14))~~ (15) "Small business entity" means a small business as
11 defined in RCW 39.26.010.

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

16 ~~((+15))~~ (17) "Total project cost" means the cost of the project
17 less financing and land acquisition costs.

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

25 ~~((+17))~~ (19) "Work order" means an order issued for a definite
26 scope of work to be performed pursuant to a job order contract.

27 **Sec. 2.** RCW 39.10.220 and 2007 c 494 s 102 are each amended to
28 read as follows:

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

34 (2) Members of the board are appointed as follows:

35 (a) ~~((The board shall consist of the following members appointed by~~
36 ~~the governor+))~~ Two representatives from construction general
37 contracting; one representative from the architectural profession; one

1 representative from the engineering profession; two representatives
2 from construction specialty subcontracting; two representatives from
3 construction trades labor organizations; one representative from the
4 office of minority and women's business enterprises; one representative
5 from a higher education institution; one representative from the
6 department of ~~((general administration))~~ enterprise services; one
7 individual representing Washington cities; two representatives from
8 private industry; and one representative of a domestic insurer
9 authorized to write surety bonds for contractors in Washington state,
10 each appointed by the governor. All appointed members must be
11 knowledgeable about public works contracting procedures. If a vacancy
12 occurs, the governor shall fill the vacancy for the unexpired term;

13 ~~((Three members shall be positions representing different local~~
14 ~~public owners, selected by the association of Washington cities,))~~ One
15 member representing counties, selected by the Washington state
16 association of counties ~~((, and the Washington public ports association,~~
17 ~~respectively.))~~;

18 ~~((One member shall be a representative from the public hospital~~
19 ~~districts, selected by the association of Washington public hospital~~
20 ~~districts.~~

21 ~~(d))~~ One member representing public ports, selected by the
22 Washington public ports association;

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

25 (e) One member ~~((shall be a representative from))~~ representing
26 school districts, selected by the Washington state school directors'
27 association ~~((-))~~;

28 ~~((e) The board shall include))~~ (f) Two members of the house of
29 representatives, one from each major caucus, appointed by the speaker
30 of the house of representatives, and two members of the senate, one
31 from each major caucus, appointed by the president of the senate.
32 Legislative members are nonvoting.

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

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

1 (5) Legislative members of the board shall be reimbursed for travel
2 expenses in accordance with RCW 44.04.120. Nonlegislative members of
3 the board, project review committee members, and (~~subcommittee~~)
4 committee chairs shall be reimbursed for travel expenses as provided in
5 RCW 43.03.050 and 43.03.060.

6 (~~If a vacancy occurs of the appointive members of the board,~~
7 ~~the governor shall fill the vacancy for the unexpired term.~~) Vacancies
8 are filled in the same manner as appointed. Members of the board may
9 be removed for malfeasance or misfeasance in office, upon specific
10 written charges by the governor, under chapter 34.05 RCW.

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

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

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

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

22 (11) The board shall encourage participation from persons and
23 entities not represented on the board.

24 **Sec. 3.** RCW 39.10.230 and 2010 1st sp.s. c 21 s 3 are each amended
25 to read as follows:

26 The board has the following powers and duties:

27 (1) Develop and recommend to the legislature policies to further
28 enhance the quality, efficiency, and accountability of capital
29 construction projects through the use of traditional and alternative
30 delivery methods in Washington, and make recommendations regarding
31 expansion, continuation, elimination, or modification of the
32 alternative public works contracting methods;

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

36 (3) Submit recommendations to the appropriate committees of the

1 legislature evaluating alternative contracting procedures that are not
2 authorized under this chapter;

3 (4) Appoint members of ~~((the))~~ committees; and

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

7 **Sec. 4.** RCW 39.10.240 and 2007 c 494 s 104 are each amended to
8 read as follows:

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

14 (2) The board shall, by a majority vote of the board, appoint
15 persons to the committee who are knowledgeable in the use of the
16 design-build and general contractor/construction manager contracting
17 procedures. Appointments must represent a balance among the industries
18 and public owners on the board listed in RCW 39.10.220.

19 ~~((When making initial appointments to the committee, the board
20 shall consider for appointment former members of the school district
21 project review board and the public hospital district project review
22 board.~~

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

29 ~~((e))~~ (b) The committee shall, by a majority vote, elect a chair
30 and vice chair for the committee.

31 ~~((d))~~ (c) The committee chair may select a person or persons on
32 a temporary basis as a nonvoting member if project specific expertise
33 is needed to assist in a review.

34 (3) The chair of the committee, in consultation with the vice
35 chair, may appoint one or more panels of at least six committee members
36 to carry out the duties of the committee. Each panel shall have

1 balanced representation of the private and public sector
2 representatives serving on the committee.

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

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

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

11 **Sec. 5.** RCW 39.10.250 and 2009 c 75 s 2 are each amended to read
12 as follows:

13 The committee shall:

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

19 (2) Review and approve the use of the design-build or general
20 contractor/construction manager contracting procedures on a project by
21 project basis for public bodies that are not certified under RCW
22 39.10.270;

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

27 ~~(4))~~ Review and approve not more than ~~((ten))~~ fifteen projects
28 using the design-build contracting procedure by ~~((certified and))~~
29 noncertified public bodies for projects that have a total project cost
30 between two million and ten million dollars. Projects must meet the
31 criteria in RCW 39.10.300(1). Where possible, the committee shall
32 approve projects among multiple public bodies. ~~((In June 2010))~~ At
33 least annually, the committee shall report to the board regarding the
34 committee's review procedure of these projects and its recommendations
35 for further use; and

36 ~~((+5))~~ (4) Review and approve not more than two design-build

1 demonstration projects that include procurement of operations and
2 maintenance services for a period longer than three years.

3 **Sec. 6.** RCW 39.10.260 and 2007 c 494 s 106 are each amended to
4 read as follows:

5 (1) The committee shall hold regular public meetings to carry out
6 its duties as described in RCW 39.10.250. Committee meetings are
7 subject to chapter 42.30 RCW.

8 (2) The committee shall publish notice of its public meetings at
9 least twenty days before the meeting in a legal newspaper circulated in
10 the area where the public body seeking certification is located, or
11 where each of the proposed projects under consideration will be
12 constructed. All meeting notices must be posted on the committee's web
13 site.

14 (3) The meeting notice must identify the public body that is
15 seeking certification or project approval, and where applicable, a
16 description of projects to be considered at the meeting. The notice
17 must indicate when, where, and how the public may present comments
18 regarding the committee's certification of a public body or approval of
19 a project. Information submitted by a public body to be reviewed at
20 the meeting shall be available on the committee's web site at the time
21 the notice is published.

22 (4) The committee must allow for public comment on the
23 appropriateness of certification of a public body or on the
24 appropriateness of the use of the proposed contracting procedure and
25 the qualifications of a public body to use the contracting procedure.
26 The committee shall receive and record both written and oral comments
27 at the public (~~(hearing)~~) meeting.

28 **Sec. 7.** RCW 39.10.270 and 2009 c 75 s 3 are each amended to read
29 as follows:

30 (1) A public body may apply for certification to use the design-
31 build or general contractor/construction manager contracting procedure,
32 or both. Once certified, a public body may use the contracting
33 procedure for which it is certified on individual projects (~~(with a~~
34 ~~total project cost over ten million dollars)~~) without seeking committee
35 approval(~~(. The certification period is)~~) for a period of three years.
36 Public bodies certified to use the design-build procedure are limited

1 to no more than five projects with a total project cost between two and
2 ten million dollars during the certification period. A public body
3 seeking certification must submit to the committee an application in a
4 format and manner as prescribed by the committee. The application must
5 include a description of the public body's qualifications, its capital
6 plan during the certification period, and its intended use of
7 alternative contracting procedures.

8 (2) A public body seeking certification for the design-build
9 procedure must demonstrate successful management of at least one
10 design-build project within the previous five years. A public body
11 seeking certification for the general contractor/construction manager
12 procedure must demonstrate successful management of at least one
13 general contractor/construction manager project within the previous
14 five years.

15 (3) To certify a public body, the committee shall determine that
16 the public body:

17 (a) Has the necessary experience and qualifications to determine
18 which projects are appropriate for using alternative contracting
19 procedures;

20 (b) Has the necessary experience and qualifications to carry out
21 the alternative contracting procedure including, but not limited to:
22 (i) Project delivery knowledge and experience; (ii) personnel with
23 appropriate construction experience; (iii) a management plan and
24 rationale for its alternative public works projects; (iv) demonstrated
25 success in managing public works projects; (v) the ability to properly
26 manage its capital facilities plan including, but not limited to,
27 appropriate project planning and budgeting experience; and (vi) the
28 ability to meet requirements of this chapter; and

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

31 (4) The committee shall, if practicable, make its determination at
32 the public meeting during which an application for certification is
33 reviewed. Public comments must be considered before a determination is
34 made. Within ten business days of the public meeting, the committee
35 shall provide a written determination to the public body, and make its
36 determination available to the public on the committee's web site.

37 (5) The committee may revoke any public body's certification upon

1 a finding, after a public hearing, that its use of design-build or
2 general contractor/construction manager contracting procedures no
3 longer serves the public interest.

4 (6) The committee may renew the certification of a public body for
5 ~~((one))~~ additional three-year periods. The public body must submit an
6 application for recertification at least three months before the
7 initial certification expires. The application shall include updated
8 information on the public body's ~~((capital plan for the next three
9 years, its intended use of the procedures))~~ experience and current
10 staffing with the procedure it is applying to renew, and any other
11 information requested in advance by the committee. The committee must
12 review the application for recertification at a meeting held before
13 expiration of the applicant's initial certification period. A public
14 body must reapply for certification under the process described in
15 subsection (1) of this section once the period of recertification
16 expires.

17 (7) Certified public bodies must submit project data information as
18 required in RCW 39.10.320 and 39.10.350.

19 **Sec. 8.** RCW 39.10.280 and 2007 c 494 s 108 are each amended to
20 read as follows:

21 (1) A public body not certified under RCW 39.10.270 must apply for
22 approval from the committee to use the design-build or general
23 contractor/construction manager contracting procedure on a project. A
24 public body seeking approval must submit to the committee an
25 application in a format and manner as prescribed by the committee. The
26 application must include a description of the public body's
27 qualifications, a description of the project, and its intended use of
28 alternative contracting procedures.

29 (2) To approve a proposed project, the committee shall determine
30 that:

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

35 (b) The proposed project meets the requirements for using the
36 alternative contracting procedure as described in RCW 39.10.300 or
37 39.10.340;

1 (c) The public body has the necessary experience or qualified team
2 to carry out the alternative contracting procedure including, but not
3 limited to: (i) Project delivery knowledge and experience; (ii)
4 sufficient personnel with construction experience to administer the
5 contract; (iii) a written management plan that shows clear and logical
6 lines of authority; (iv) the necessary and appropriate funding and time
7 to properly manage the job and complete the project; (v) continuity of
8 project management team, including personnel with experience managing
9 projects of similar scope and size to the project being proposed; and
10 (vi) necessary and appropriate construction budget;

11 (d) For design-build projects, (~~construction~~) public body
12 personnel (~~independent of the design-build team~~) or consultants are
13 knowledgeable in the design-build process and are able to oversee and
14 administer the contract; and

15 (e) The public body has resolved any audit findings related to
16 previous public works projects in a manner satisfactory to the
17 committee.

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

21 (4) Within ten business days after the public meeting, the
22 committee shall provide a written determination to the public body, and
23 make its determination available to the public on the committee's web
24 site. If the committee fails to make a written determination within
25 ten business days of the public meeting, the request of the public body
26 to use the alternative contracting procedure on the requested project
27 shall be deemed approved.

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

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

35 **Sec. 9.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read
36 as follows:

37 (1) Subject to the (~~process~~) requirements in RCW 39.10.250,

1 39.10.270, or 39.10.280, public bodies may utilize the design-build
2 procedure for public works projects in which the total project cost is
3 over ten million dollars and where:

4 (a) ~~The ((design and construction activities, technologies, or~~
5 ~~schedule to be used are highly specialized and a design-build approach~~
6 ~~is critical in developing the construction methodology or implementing~~
7 ~~the proposed technology))~~ construction activities are highly
8 specialized and a design-build approach is critical in developing the
9 construction methodology; or

10 (b) ~~The ((project design is repetitive in nature and is an~~
11 ~~incidental part of the installation or construction))~~ projects selected
12 provide opportunity for greater innovation or efficiencies between the
13 designer and the builder; or

14 (c) ~~((Regular interaction with and feedback from facilities users~~
15 ~~and operators during design is not critical to an effective facility~~
16 ~~design.))~~ Significant savings in project delivery time would be
17 realized.

18 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
19 bodies may use the design-build procedure for parking garages,
20 regardless of cost.

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

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

35 (5) Subject to the process in RCW 39.10.280, public bodies may use
36 the design-build procedure for public works projects in which the total
37 project cost is between two million and ten million dollars and that

1 meet one of the criteria in subsection (1)(a), (b), or (c) of this
2 section.

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

7 **Sec. 10.** RCW 39.10.320 and 2007 c 494 s 203 are each amended to
8 read as follows:

9 (1) A public body utilizing the design-build contracting procedure
10 shall provide (~~for~~):

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

13 (b) (~~Employment of~~) Staff or consultants with expertise and prior
14 experience in the management of comparable projects;

15 (c) Contract documents that include alternative dispute resolution
16 procedures to be attempted prior to the initiation of litigation;

17 (d) Submission of project information, as required by the board;
18 (~~and~~)

19 (e) Contract documents that require the contractor, subcontractors,
20 and designers to submit project information required by the board; and

21 (f) Contract documents that include the life-cycle cost model to be
22 used in the submittal if required by the public body.

23 (2) A public body utilizing the design-build contracting procedure
24 may provide incentive payments to contractors for early completion,
25 cost savings, or other goals if such payments are identified in the
26 request for proposals.

27 **Sec. 11.** RCW 39.10.330 and 2009 c 75 s 5 are each amended to read
28 as follows:

29 (1) Contracts for design-build services shall be awarded through a
30 competitive process using public solicitation of proposals for design-
31 build services. The public body shall publish at least once in a legal
32 newspaper of general circulation published in, or as near as possible
33 to, that part of the county in which the public work will be done, a
34 notice of its request for qualifications from proposers for design-
35 build services, and the availability and location of the request for

1 proposal documents. The request for qualifications documents shall
2 include:

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

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

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

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

13 (i) Evaluation factors for request for qualifications shall
14 include, but not be limited to, technical qualifications, such as
15 specialized experience and technical competence; capability to perform;
16 past performance of the proposers' team, including the architect-
17 engineer and construction members; and other appropriate factors.
18 Evaluation factors may also include: (A) The proposer's past
19 performance in utilization of small business entities; (B)
20 disadvantaged business enterprises; and (C) the proposer's past
21 performance using life-cycle or energy performance design-build goals.
22 Cost or price-related factors are not permitted in the request for
23 qualifications phase;

24 (ii) Evaluation factors for finalists' proposals shall include, but
25 not be limited to, the factors listed in (d)(i) of this subsection, as
26 well as technical approach design concept; (~~proposal price~~) ability
27 of professional personnel; past performance on similar projects;
28 ability to meet time and budget requirements; ability to provide a
29 performance and payment bond for the project; recent, current, and
30 projected workloads of the firm; (~~and~~) location; and cost or price-
31 related factors that may include operating costs. The public body may
32 also consider: (A) A proposer's outreach plan to include small
33 business entities and disadvantaged business enterprises as
34 subcontractor and suppliers for the project; and (B) life-cycle costs
35 including utility and other operating costs that will benefit from an
36 energy performance design-build contract. Alternatively, if the public
37 body determines that all finalists will be capable of producing a

1 design that adequately meets project requirements, the public body may
2 award the contract to the firm that submits the responsive proposal
3 with the lowest price;

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

8 (f) The form of the contract to be awarded;

9 ~~((+f))~~ (g) The ~~((amount))~~ honorarium to be paid to finalists
10 submitting responsive proposals and who are not awarded a design-build
11 contract;

12 ~~((+g))~~ (h) The schedule for the procurement process and the
13 project; and

14 ~~((+h))~~ (i) Other information relevant to the project.

15 (2) The public body shall establish an evaluation committee to
16 evaluate the responses to the request for qualifications based solely
17 on the factors, weighting, and process identified in the request for
18 qualifications and any addenda issued by the public body. Based on the
19 evaluation committee's findings, the public body shall select not more
20 than five responsive and responsible finalists to submit proposals.
21 The public body may, in its sole discretion, reject all proposals and
22 shall provide its reasons for rejection in writing to all proposers.

23 (3) The public body must notify all proposers of the finalists
24 selected to move to the next phase of the selection process. The
25 process may not proceed to the next phase until two business days after
26 all proposers are notified of the committee's selection decision. At
27 the request of a proposer not selected as a finalist, the public body
28 must provide the requesting proposer with a scoring summary of the
29 evaluation factors for its proposal. Proposers filing a protest on the
30 selection of the finalists must file the protest in accordance with the
31 published protest procedures. The selection process may not advance to
32 the next phase of selection until two business days after the final
33 protest decision is transmitted to the protestor.

34 (4) Upon selection of the finalists, the public body shall issue a
35 request for proposals to the finalists, which shall provide the
36 following information:

37 (a) A detailed description of the project including programmatic,
38 performance, and technical requirements and specifications; functional

1 and operational elements; minimum and maximum net and gross areas of
2 any building; and, at the discretion of the public body, preliminary
3 engineering and architectural drawings; and

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

5 ~~((+4))~~ (5) The public body shall establish an evaluation committee
6 to evaluate the proposals submitted by the finalists. Design-build
7 contracts shall be awarded using the procedures in (a) or (b) of this
8 subsection. The public body must identify in the request for
9 qualifications which procedure will be used.

10 (a) The finalists' proposals shall be evaluated and scored based
11 solely on the factors, weighting, and process identified in the initial
12 request for qualifications and in any addenda published by the public
13 body. Public bodies may request best and final proposals from
14 finalists. The public body ~~((shall))~~ may initiate negotiations with
15 the firm submitting the highest scored proposal. If the public body is
16 unable to execute a contract with the firm submitting the highest
17 scored proposal, negotiations with that firm may be suspended or
18 terminated and the public body may proceed to negotiate with the next
19 highest scored firm. Public bodies shall continue in accordance with
20 this procedure until a contract agreement is reached or the selection
21 process is terminated.

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

26 ~~((+5))~~ (6) The public body shall notify all finalists of the
27 selection decision and make a selection summary of the final proposals
28 available to all proposers within two business days of such
29 notification. If the public body receives a timely written protest
30 from a finalist firm, the public body may not execute a contract until
31 two business days after the final protest decision is transmitted to
32 the protestor. The protestor must submit its protest in accordance
33 with the published protest procedures.

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

36 (8) The public body shall provide appropriate honorarium payments
37 to finalists submitting responsive proposals that are not awarded a
38 design-build contract. Honorarium payments shall be sufficient to

1 generate meaningful competition among potential proposers on design-
2 build projects. In determining the amount of the honorarium, the
3 public body shall consider the level of effort required to meet the
4 selection criteria.

5 **Sec. 12.** RCW 39.10.340 and 2007 c 494 s 301 are each amended to
6 read as follows:

7 Subject to the process in RCW 39.10.270 or 39.10.280, public bodies
8 may utilize the general contractor/construction manager procedure for
9 public works projects where at least one of the following is met:

- 10 (1) Implementation of the project involves complex scheduling,
11 phasing, or coordination;
- 12 (2) The project involves construction at an occupied facility which
13 must continue to operate during construction;
- 14 (3) The involvement of the general contractor/construction manager
15 during the design stage is critical to the success of the project;
- 16 (4) The project encompasses a complex or technical work
17 environment; or
- 18 (5) The project requires specialized work on a building that has
19 historic significance.

20 **Sec. 13.** RCW 39.10.360 and 2009 c 75 s 6 are each amended to read
21 as follows:

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

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

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

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

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

1 (d) A description of the process the public body will use to
2 evaluate qualifications and proposals, including evaluation factors
3 ~~((and))~~, the relative weight of factors, and protest procedures
4 including time limits for filing a protest, which in no event may limit
5 the time to file a protest to fewer than four business days from the
6 date the proposer was notified of the selection decision;

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

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

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

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

14 ~~((+a+))~~ (i) Ability of the firm's professional personnel;

15 ~~((+b+))~~ (ii) The firm's past performance in negotiated and complex
16 projects;

17 ~~((+c+))~~ (iii) The firm's ability to meet time and budget
18 requirements;

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

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

22 ~~((+f+))~~ (vi) Recent, current, and projected workloads of the firm;
23 and

24 ~~((+g+))~~ (vii) The firm's approach to executing the project.

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

29 (4) A public body shall establish a committee to evaluate the
30 proposals. After the committee has selected the most qualified
31 finalists, at the time specified by the public body, these finalists
32 shall submit final proposals, including sealed bids for the percent fee
33 on the estimated maximum allowable construction cost and the fixed
34 amount for the general conditions work specified in the request for
35 proposal. The public body shall establish a time and place for the
36 opening of sealed bids for the percent fee on the estimated maximum
37 allowable construction cost and the fixed amount for the general
38 conditions work specified in the request for proposal. At the time and

1 place named, these bids must be publicly opened and read and the public
2 body shall make all previous scoring available to the public. The
3 public body shall select the firm submitting the highest scored final
4 proposal using the evaluation factors and the relative weight of
5 factors published in the public solicitation of proposals. A public
6 body shall not evaluate or disqualify a proposal based on the terms of
7 a collective bargaining agreement.

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

16 (6) Public bodies may contract with the selected firm to provide
17 services during the design phase that may include life-cycle cost
18 design considerations, value engineering, scheduling, cost estimating,
19 constructability, alternative construction options for cost savings,
20 and sequencing of work, and to act as the construction manager and
21 general contractor during the construction phase.

22 **Sec. 14.** RCW 39.10.380 and 2007 c 494 s 305 are each amended to
23 read as follows:

24 (1) All subcontract work and equipment and material purchases shall
25 be competitively bid with public bid openings. Subcontract bid
26 packages and equipment and materials purchases shall be awarded to the
27 responsible bidder submitting the lowest responsive bid. In preparing
28 subcontract bid packages, the general contractor/construction manager
29 shall not be required to violate or waive terms of a collective
30 bargaining agreement.

31 (2) All subcontract bid packages in which bidder eligibility was
32 not determined in advance shall include the specific objective criteria
33 that will be used by the general contractor/construction manager and
34 the public body to evaluate bidder responsibility. If the lowest
35 bidder submitting a responsive bid is determined by the general
36 contractor/construction manager and the public body not to be
37 responsible, the general contractor/construction manager and the public

1 body must provide written documentation to that bidder explaining their
2 intent to reject the bidder as not responsible and afford the bidder
3 the opportunity to establish that it is a responsible bidder.
4 Responsibility shall be determined in accordance with criteria listed
5 in the bid documents. Protests concerning bidder responsibility
6 determination by the general contractor/construction manager and the
7 public body shall be in accordance with subsection (4) of this section.

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

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

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

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

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

33 (b) 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

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

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

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

5 **Sec. 15.** RCW 39.10.385 and 2010 c 163 s 1 are each amended to read
6 as follows:

7 As an alternative to the subcontractor selection process outlined
8 in RCW 39.10.380, a general contractor/construction manager may, with
9 the approval of the public body, select ((a)) mechanical
10 subcontractors, ((an)) electrical subcontractors, or both, using the
11 process outlined in this section. This alternative selection process
12 may only be used when the anticipated value of the subcontract will
13 exceed three million dollars. When using the alternative selection
14 process, the general contractor/construction manager should select the
15 subcontractor early in the life of the public works project.

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

20 (a) Publish a notice of intent to use this alternative selection
21 process in a legal newspaper published in or as near as possible to
22 that part of the county where the public work will be constructed.
23 Notice must be published at least fourteen calendar days before
24 conducting a public hearing. The notice must include the date, time,
25 and location of the hearing; a statement justifying the basis and need
26 for the alternative selection process; ((and)) how interested parties
27 may, prior to the hearing, obtain the evaluation criteria and
28 applicable weight given to each criteria that will be used for
29 evaluation; and protest procedures including time limits for filing a
30 protest, which may in no event, limit the time to file a protest to
31 fewer than four business days from the date the proposer was notified
32 of the selection decision;

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

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

4 (d) Issue a written final determination to all interested parties.
5 All protests of the decision to use the alternative selection process
6 must be in writing and submitted to the public body within seven
7 calendar days of the final determination. Any modifications to the
8 criteria (~~(and)~~), weights, and protest procedures based on comments
9 received during the public hearing process must be included in the
10 final determination.

11 (2) Contracts for the services of a subcontractor under this
12 section must be awarded through a competitive process requiring a
13 public solicitation of proposals. Notice of the public solicitation of
14 proposals must be provided to the office of minority and women's
15 business enterprises. The public solicitation of proposals must
16 include:

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

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

21 (c) A description of the minimum qualifications required of the
22 firm;

23 (d) A description of the process used to evaluate qualifications
24 and proposals, including evaluation factors and the relative weight of
25 factors;

26 (e) Protest procedures;

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

29 (~~(f)~~) (g) The estimated maximum allowable subcontract cost; and

30 (~~(g)~~) (h) The bid instructions to be used by the finalists.

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

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

34 (b) The firm's past performance on similar projects;

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

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

1 (e) The firm's plan for outreach to minority and women-owned
2 businesses;

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

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

5 (h) The firm's approach to executing the project;

6 (i) The firm's approach to safety on the project;

7 (j) The firm's safety history; and

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

10 (4) The general contractor/construction manager shall establish a
11 committee to evaluate the proposals. At least one representative from
12 the public body shall serve on the committee. Final proposals,
13 including sealed bids for the percent fee on the estimated maximum
14 allowable subcontract cost, and the fixed amount for the subcontract
15 general conditions work specified in the request for proposal, will be
16 requested from the most qualified firms.

17 (5) The general contractor/construction manager must notify all
18 proposers of the most qualified firms that will move to the next phase
19 of the selection process. The process may not proceed to the next
20 phase until two business days after all proposers are notified of the
21 committee's selection decision. At the request of a proposer, the
22 general contractor/construction manager must provide the requesting
23 proposer with a scoring summary of the evaluation factors for its
24 proposal. Proposers filing a protest on the selection of the most
25 qualified finalists must file the protest with the public body in
26 accordance with the published protest procedures. The selection
27 process may not advance to the next phase of selection until two
28 business days after the final protest decision issued by the public
29 body is transmitted to the protestor.

30 (6) The general contractor/construction manager and the public body
31 shall select the firm submitting the highest scored final proposal
32 using the evaluation factors and the relative weight of factors
33 identified in the solicitation of proposals. The scoring of the
34 nonprice factors must be made available at the opening of the fee and
35 cost proposals. The general contractor/construction manager shall
36 notify all proposers of the selection decision and make a selection
37 summary of the final proposals, which shall be available to all

1 proposers within two business days of such notification. The general
2 contractor/construction manager may not evaluate or disqualify a
3 proposal based on the terms of a collective bargaining agreement.

4 ~~((+5))~~ (7) If the public body receives a timely written protest
5 from a "most qualified firm," the general contractor/construction
6 manager may not execute a contract for the protested subcontract work
7 until two business days after the final protest decision issued by the
8 public body is transmitted to the protestor. The protestor must submit
9 its protest in accordance with the published protest procedures.

10 (8) If the general contractor/construction manager is unable to
11 negotiate a satisfactory maximum allowable subcontract cost with the
12 firm selected deemed by public body and the general
13 contractor/construction manager to be fair, reasonable, and within the
14 available funds, negotiations with that firm must be formally
15 terminated and the general contractor/construction manager may
16 negotiate with the next highest scored firm until an agreement is
17 reached or the process is terminated.

18 ~~((+6) If the general contractor/construction manager receives a~~
19 ~~written protest from a bidder, it may not execute a contract for the~~
20 ~~subject work with anyone other than the protesting bidder, without~~
21 ~~first providing at least two full business days' written notice to all~~
22 ~~bidders of the intent to execute a contract for the subcontract bid~~
23 ~~package. The protesting bidder must submit written notice to the~~
24 ~~general contractor/construction manager of its protest no later than~~
25 ~~two full business days following the bid opening.~~

26 ~~(+7))~~ (9) With the approval of the public body, the general
27 contractor/construction manager may contract with the selected firm to
28 provide preconstruction services during the design phase that may
29 include life-cycle cost design considerations, value engineering,
30 scheduling, cost estimating, constructability, alternative construction
31 options for cost savings, and sequencing of work; and to act as the
32 mechanical or electrical subcontractor during the construction phase.

33 ~~((+8))~~ (10) The maximum allowable subcontract cost must be used to
34 establish a total subcontract cost for purposes of a performance and
35 payment bond. Total subcontract cost means the fixed amount for the
36 detailed specified general conditions work, the negotiated maximum
37 allowable subcontract cost, and the percent fee on the negotiated
38 maximum allowable subcontract cost. Maximum allowable subcontract cost

1 means the maximum cost to complete the work specified for the
2 subcontract, including the estimated cost of work to be performed by
3 the subcontractor's own forces, a percentage for risk contingency,
4 negotiated support services, and approved change orders. The maximum
5 allowable subcontract cost must be negotiated between the general
6 contractor/construction manager and the selected firm when the
7 construction documents and specifications are at least ninety percent
8 complete. Final agreement on the maximum allowable subcontract cost is
9 subject to the approval of the public body.

10 ~~((+9))~~ (11) If the work of the mechanical contractor or electrical
11 contractor is completed for less than the maximum allowable subcontract
12 cost, any savings not otherwise negotiated as part of an incentive
13 clause becomes part of the risk contingency included in the general
14 contractor/construction manager's maximum allowable construction cost.
15 If the work of the mechanical contractor or the electrical contractor
16 is completed for more than the maximum allowable subcontract cost, the
17 additional cost is the responsibility of that subcontractor. An
18 independent audit, paid for by the public body, must be conducted
19 ~~((upon completion of the contract))~~ to confirm the proper accrual of
20 costs as outlined in the contract.

21 ~~((+10))~~ (12) A mechanical or electrical contractor selected under
22 this section may perform work with its own forces. In the event it
23 elects to subcontract some of its work, it must select a subcontractor
24 utilizing the procedure outlined in RCW 39.10.380.

25 **Sec. 16.** RCW 39.10.390 and 2007 c 494 s 306 are each amended to
26 read as follows:

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

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

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

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

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

4 (3) In no event may the general contractor/construction manager or
5 its subsidiaries (~~(purchase equipment or materials for assignment to~~
6 ~~subcontract bid package bidders for installation or warranty)) assign
7 warranty responsibility or the terms of its contract or purchase order
8 with vendors for equipment or material purchases to subcontract bid
9 package bidders or subcontractors who have been awarded a contract.~~

10 The value of subcontract work performed and equipment and materials
11 supplied by the general contractor/construction manager may not exceed
12 thirty percent of the negotiated maximum allowable construction cost.
13 Negotiated support services performed by the general
14 contractor/construction manager shall not be considered subcontract
15 work for purposes of this subsection.

16 **Sec. 17.** RCW 39.10.400 and 2007 c 494 s 307 are each amended to
17 read as follows:

18 (1) If determination of subcontractor eligibility prior to seeking
19 bids is in the best interest of the project and critical to the
20 successful completion of a subcontract bid package, the general
21 contractor/construction manager and the public body may determine
22 subcontractor eligibility to bid. The general contractor/construction
23 manager and the public body must:

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

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

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

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

5 (e) Issue a written final determination to all interested parties.
6 All protests of the decision to establish bidder eligibility before
7 issuing a subcontractor bid package must be filed with the superior
8 court within seven calendar days of the final determination. Any
9 modifications to the eligibility criteria and weights shall be based on
10 comments received during the public hearing process and shall be
11 included in the final determination.

12 (2) Determinations of bidder eligibility shall be in accordance
13 with the evaluation criteria and weights for each criteria established
14 in the final determination and shall be provided to interested persons
15 upon request. Any potential bidder determined not to meet eligibility
16 criteria must be afforded ((the)) one opportunity to establish its
17 eligibility. Protests concerning bidder eligibility determinations
18 shall be in accordance with subsection (1) of this section.

19 **Sec. 18.** RCW 39.10.420 and 2012 c 102 s 1 are each amended to read
20 as follows:

21 (1) The following public bodies of the state of Washington are
22 authorized to award job order contracts and use the job order
23 contracting procedure:

24 (a) The department of enterprise services;

25 (b) The state universities, regional universities, and The
26 Evergreen State College;

27 (c) Sound transit (central Puget Sound regional transit authority);

28 (d) Every city with a population greater than seventy thousand and
29 any public authority chartered by such city under RCW 35.21.730 through
30 35.21.755;

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

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

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

37 (h) Every school district; and

1 (i) The state ferry system.

2 (2)(a) The department of enterprise services may issue job order
3 contract work orders for Washington state parks department projects.

4 (b) The department of enterprise services, the University of
5 Washington, and Washington State University may issue job order
6 contract work orders for the state regional universities and The
7 Evergreen State College.

8 (3) Public bodies may use a job order contract for public works
9 projects when a determination is made that the use of job order
10 contracts will benefit the public by providing an effective means of
11 reducing the total lead-time and cost for the construction of public
12 works projects for repair and renovation required at public facilities
13 through the use of unit price books and work orders by eliminating
14 time-consuming, costly aspects of the traditional public works process,
15 which require separate contracting actions for each small project.

16 **Sec. 19.** RCW 39.10.440 and 2007 c 494 s 403 are each amended to
17 read as follows:

18 (1) The maximum total dollar amount that may be awarded under a job
19 order contract is four million dollars per year for a maximum of three
20 years. The maximum total dollar amount that may be awarded under a job
21 order contract for counties with a population of more than one million
22 is six million dollars per year for a maximum of three years.

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

29 (3) A public body may have no more than two job order contracts in
30 effect at any one time, with the exception of the department of
31 (~~general administration~~) enterprise services, which may have four job
32 order contracts in effect at any one time.

33 (4) At least ninety percent of work contained in a job order
34 contract must be subcontracted to entities other than the job order
35 contractor. The job order contractor must distribute contracts as
36 equitably as possible among qualified and available subcontractors

1 including minority and woman-owned subcontractors to the extent
2 permitted by law.

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

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

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

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

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

26 **Sec. 20.** RCW 39.10.490 and 2007 c 494 s 501 are each amended to
27 read as follows:

28 The alternative public works contracting procedures authorized
29 under this chapter are limited to public works contracts signed before
30 July 1, (~~(2013)~~) 2021. Methods of public works contracting authorized
31 under this chapter shall remain in full force and effect until
32 completion of contracts signed before July 1, (~~(2013)~~) 2021.

33 **Sec. 21.** RCW 43.131.407 and 2007 c 494 s 506 are each amended to
34 read as follows:

35 The alternative (~~(public)~~) public works contracting procedures

1 under chapter 39.10 RCW shall be terminated June 30, (~~2013~~) 2021, as
2 provided in RCW 43.131.408.

3 **Sec. 22.** RCW 43.131.408 and 2012 c 102 s 4 are each amended to
4 read as follows:

5 The following acts or parts of acts, as now existing or hereafter
6 amended, are each repealed, effective June 30, (~~2014~~) 2022:

7 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
8 1994 c 132 s 1;

9 (2) RCW 39.10.210 and 2013 c ... s 1 (section 1 of this act), 2010
10 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

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

13 (4) RCW 39.10.230 and 2013 c ... s 3 (section 3 of this act), 2010
14 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

15 (5) RCW 39.10.240 and 2013 c ... s 4 (section 4 of this act) & 2007
16 c 494 s 104;

17 (6) RCW 39.10.250 and 2013 c ... s 5 (section 5 of this act), 2009
18 c 75 s 2, & 2007 c 494 s 105;

19 (7) RCW 39.10.260 and 2013 c ... s 6 (section 6 of this act) & 2007
20 c 494 s 106;

21 (8) RCW 39.10.270 and 2013 c ... s 7 (section 7 of this act), 2009
22 c 75 s 3, & 2007 c 494 s 107;

23 (9) RCW 39.10.280 and 2013 c ... s 8 (section 8 of this act) & 2007
24 c 494 s 108;

25 (10) RCW 39.10.290 and 2007 c 494 s 109;

26 (11) RCW 39.10.300 and 2013 c ... s 9 (section 9 of this act), 2009
27 c 75 s 4, & 2007 c 494 s 201;

28 (12) RCW 39.10.320 and 2013 c ... s 10 (section 10 of this act),
29 2007 c 494 s 203, & 1994 c 132 s 7;

30 (13) RCW 39.10.330 and 2013 c ... s 11 (section 11 of this act),
31 2009 c 75 s 5, & 2007 c 494 s 204;

32 (14) RCW 39.10.340 and 2013 c ... s 12 (section 12 of this act) &
33 2007 c 494 s 301;

34 (15) RCW 39.10.350 and 2007 c 494 s 302;

35 (16) RCW 39.10.360 and 2013 c ... s 13 (section 13 of this act),
36 2009 c 75 s 6, & 2007 c 494 s 303;

37 (17) RCW 39.10.370 and 2007 c 494 s 304;

1 (18) RCW 39.10.380 and 2013 c ... s 14 (section 14 of this act) &
2 2007 c 494 s 305;
3 (19) RCW 39.10.385 and 2013 c ... s 15 (section 15 of this act) &
4 2010 c 163 s 1;
5 (20) RCW 39.10.390 and 2013 c ... s 16 (section 16 of this act) &
6 2007 c 494 s 306;
7 (21) RCW 39.10.400 and 2013 c ... s 17 (section 17 of this act) &
8 2007 c 494 s 307;
9 (22) RCW 39.10.410 and 2007 c 494 s 308;
10 (23) RCW 39.10.420 and 2013 c ... s 18 (section 18 of this act),
11 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;
12 (24) RCW 39.10.430 and 2007 c 494 s 402;
13 (25) RCW 39.10.440 and 2013 c ... s 19 (section 19 of this act) &
14 2007 c 494 s 403;
15 (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
16 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
17 (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;
18 (29) RCW 39.10.480 and 1994 c 132 s 9;
19 (30) RCW 39.10.490 and 2013 c ... s 20 (section 20 of this act),
20 2007 c 494 s 501, & 2001 c 328 s 5;
21 (~~(31) ((RCW 39.10.500 and 2007 c 494 s 502;~~
22 ~~(32) RCW 39.10.510 and 2007 c 494 s 503;~~
23 ~~(33))~~) RCW 39.10.900 and 1994 c 132 s 13;
24 ((~~(34)~~)) (32) RCW 39.10.901 and 1994 c 132 s 14;
25 ((~~(35)~~)) (33) RCW 39.10.903 and 2007 c 494 s 510;
26 ((~~(36)~~)) (34) RCW 39.10.904 and 2007 c 494 s 512; and
27 ((~~(37)~~)) (35) RCW 39.10.905 and 2007 c 494 s 513.

28 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
29 each repealed:

- 30 (1) RCW 39.10.500 (Exemptions) and 2007 c 494 s 502; and
31 (2) RCW 39.10.510 (Previously advertised projects) and 2007 c 494
32 s 503.

33 NEW SECTION. **Sec. 24.** A new section is added to chapter 43.131
34 RCW to read as follows:

- 35 (1) If the sunset review process in RCW 43.131.010 through
36 43.131.150 expires before June 30, 2021, the joint legislative audit

1 and review committee must conduct a program and fiscal review of the
2 alternative public works contracting procedures authorized in chapter
3 39.10 RCW. The review must be completed by June 30, 2021, and findings
4 reported to the office of financial management and any affected
5 entities. The report must be prepared in the manner set forth in RCW
6 44.28.071 and 44.28.075.

7 (2) This section expires July 1, 2022.

8 NEW SECTION. **Sec. 25.** Section 24 of this act takes effect upon
9 the expiration of RCW 43.131.051.

10 NEW SECTION. **Sec. 26.** Sections 1 through 23 of this act are
11 necessary for the immediate preservation of the public peace, health,
12 or safety, or support of the state government and its existing public
13 institutions, and take effect June 30, 2013.

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