

2 **HB 1070** - S COMM AMD  
3 By Committee on State & Local Government

4 ADOPTED 2/29/00

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 39.10.020 and 1997 c 376 s 1 are each amended to read  
8 as follows:

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

11 (1) "Alternative public works contracting procedure" means the  
12 design-build and the general contractor/construction manager  
13 contracting procedures authorized in RCW 39.10.050 and 39.10.060,  
14 respectively.

15 (2) "Public body" means the state department of general  
16 administration; the University of Washington; Washington State  
17 University; every city with a population greater than one hundred fifty  
18 thousand; every city authorized to use the design-build procedure for  
19 a water system demonstration project under RCW 39.10.065(3); every  
20 county with a population greater than four hundred fifty thousand;  
21 ~~((and))~~ every port district with a population greater than five hundred  
22 thousand; and those school districts proposing projects that are  
23 considered and approved by the school district project review board  
24 under section 4 of this act.

25 (3) "Public works project" means any work for a public body within  
26 the definition of the term public work in RCW 39.04.010.

27 **Sec. 2.** RCW 39.10.060 and 1997 c 376 s 4 are each amended to read  
28 as follows:

29 (1) Notwithstanding any other provision of law, and after complying  
30 with RCW 39.10.030, the following public bodies may utilize the general  
31 contractor/construction manager procedure of public works contracting  
32 for public works projects authorized under subsection (2) of this  
33 section: The state department of general administration; the  
34 University of Washington; Washington State University; every city with  
35 a population greater than one hundred fifty thousand; every county with

1 a population greater than four hundred fifty thousand; ((and)) every  
2 port district with a population greater than five hundred thousand; and  
3 those school districts proposing projects that are considered and  
4 approved by the school district project review board under section 4 of  
5 this act. For the purposes of this section, "general  
6 contractor/construction manager" means a firm with which a public body  
7 has selected and negotiated a maximum allowable construction cost to be  
8 guaranteed by the firm, after competitive selection through formal  
9 advertisement and competitive bids, to provide services during the  
10 design phase that may include life-cycle cost design considerations,  
11 value engineering, scheduling, cost estimating, constructability,  
12 alternative construction options for cost savings, and sequencing of  
13 work, and to act as the construction manager and general contractor  
14 during the construction phase.

15 (2) Except those school districts proposing projects that are  
16 considered and approved by the school district project review board  
17 public bodies authorized under this section may utilize the general  
18 contractor/construction manager procedure for public works projects  
19 valued over ten million dollars where:

20 (a) Implementation of the project involves complex scheduling  
21 requirements;

22 (b) The project involves construction at an existing facility which  
23 must continue to operate during construction; or

24 (c) The involvement of the general contractor/construction manager  
25 during the design stage is critical to the success of the project.

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

29 (4) Contracts for the services of a general contractor/construction  
30 manager under this section shall be awarded through a competitive  
31 process requiring the public solicitation of proposals for general  
32 contractor/construction manager services. The public solicitation of  
33 proposals shall include: A description of the project, including  
34 programmatic, performance, and technical requirements and  
35 specifications when available; the reasons for using the general  
36 contractor/construction manager procedure; a description of the  
37 qualifications to be required of the proposer, including submission of  
38 the proposer's accident prevention program; a description of the  
39 process the public body will use to evaluate qualifications and

1 proposals, including evaluation factors and the relative weight of  
2 factors; the form of the contract to be awarded; the estimated maximum  
3 allowable construction cost; minority and women business enterprise  
4 total project goals, where applicable; and the bid instructions to be  
5 used by the general contractor/construction manager finalists.  
6 Evaluation factors shall include, but not be limited to: Ability of  
7 professional personnel, past performance in negotiated and complex  
8 projects, and ability to meet time and budget requirements; location;  
9 recent, current, and projected work loads of the firm; and the concept  
10 of their proposal. A public body shall establish a committee to  
11 evaluate the proposals. After the committee has selected the most  
12 qualified finalists, these finalists shall submit final proposals,  
13 including sealed bids for the percent fee, which is the percentage  
14 amount to be earned by the general contractor/construction manager as  
15 overhead and profit, on the estimated maximum allowable construction  
16 cost and the fixed amount for the detailed specified general conditions  
17 work. The public body shall select the firm submitting the highest  
18 scored final proposal using the evaluation factors and the relative  
19 weight of factors published in the public solicitation of proposals.

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

38 (6) All subcontract work shall be competitively bid with public bid  
39 openings. Subcontract work shall not be issued for bid until the

1 public body has approved, in consultation with the office of minority  
2 and women's business enterprises or the equivalent local agency, a plan  
3 prepared by the general contractor/construction manager for attaining  
4 applicable minority and women business enterprise total project goals  
5 that equitably spreads women and minority enterprise opportunities to  
6 as many firms in as many bid packages as is practicable. When critical  
7 to the successful completion of a subcontractor bid package the owner  
8 and general contractor/construction manager may evaluate for bidding  
9 eligibility a subcontractor's ability, time, budget, and specification  
10 requirements based on the subcontractor's performance of those items on  
11 previous projects. Subcontract bid packages shall be awarded to the  
12 responsible bidder submitting the low responsive bid. The requirements  
13 of RCW 39.30.060 apply to each subcontract bid package. All  
14 subcontractors who bid work over three hundred thousand dollars shall  
15 post a bid bond and all subcontractors who are awarded a contract over  
16 three hundred thousand dollars shall provide a performance and payment  
17 bond for their contract amount. All other subcontractors shall provide  
18 a performance and payment bond if required by the general  
19 contractor/construction manager. A low bidder who claims error and  
20 fails to enter into a contract is prohibited from bidding on the same  
21 project if a second or subsequent call for bids is made for the  
22 project. Except as provided for under subsection (7) of this section,  
23 bidding on subcontract work by the general contractor/construction  
24 manager or its subsidiaries is prohibited. The general  
25 contractor/construction manager may negotiate with the low-responsive  
26 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
27 negotiations, rebid.

28 (7) The general contractor/construction manager, or its  
29 subsidiaries, may bid on subcontract work on projects valued over  
30 twenty million dollars if:

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

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

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

37 In no event may the value of subcontract work performed by the  
38 general contractor/construction manager exceed twenty percent of the  
39 negotiated maximum allowable construction cost.

1 (8) A public body may include an incentive clause in any contract  
2 awarded under this section for savings of either time or cost or both  
3 from that originally negotiated. No incentives granted may exceed five  
4 percent of the maximum allowable construction cost. If the project is  
5 completed for less than the agreed upon maximum allowable construction  
6 cost, any savings not otherwise negotiated as part of an incentive  
7 clause shall accrue to the public body. If the project is completed  
8 for more than the agreed upon maximum allowable construction cost,  
9 excepting increases due to any contract change orders approved by the  
10 public body, the additional cost shall be the responsibility of the  
11 general contractor/construction manager.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.10 RCW  
13 to read as follows:

14 In addition to the projects authorized in RCW 39.10.060, public  
15 bodies may also use the general contractor/construction manager  
16 contracting procedure for the construction of school district capital  
17 demonstration projects, subject to the following conditions:

18 (1) The project must receive approval from the school district  
19 project review board established under section 4 of this act.

20 (2) The school district project review board may not authorize more  
21 than two demonstration projects valued over ten million dollars and two  
22 demonstration projects valued between five and ten million dollars.

23 (3) The school district project review board may not approve more  
24 than one demonstration project under this section for each school  
25 district.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.10 RCW  
27 to read as follows:

28 (1) The school district project review board is established to  
29 review school district proposals submitted by school districts to use  
30 alternative public works contracting procedures. The board shall  
31 select and approve qualified projects based upon an evaluation of the  
32 information submitted by the school district under subsection (2) of  
33 this section. The membership of the board shall be selected by the  
34 independent oversight committee as established under RCW 39.10.110 and  
35 shall include the following representatives, each having experience  
36 with public works or commercial construction: One representative from  
37 the office of the superintendent of public instruction; one

1 representative from the office of financial management; two  
2 representatives from the construction industry, one of whom works for  
3 a construction company with gross annual revenues of twenty million  
4 dollars or less; one representative from the specialty contracting  
5 industry; one representative from organized labor; one representative  
6 from the design industry; one representative from a public body  
7 previously authorized under this chapter to use an alternative public  
8 works contracting procedure who has experience using such alternative  
9 contracting procedures; one representative from school districts with  
10 ten thousand or more annual average full-time equivalent pupils; and  
11 one representative from school districts with fewer than ten thousand  
12 average full-time equivalent pupils. Each member shall be appointed  
13 for a term of three years, with the first three-year term commencing  
14 after the effective date of this section. Any member of the school  
15 district project review board who is directly affiliated with any  
16 applicant before the board must recuse him or herself from  
17 consideration of the application.

18 (2) A school district seeking to use alternative contracting  
19 procedures authorized under this chapter shall file an application with  
20 the school district project review board. The application form shall  
21 require the district to submit a detailed statement of the proposed  
22 project, including the school district's name; student population based  
23 upon October full-time equivalents; the current projected total budget  
24 for the project, including the estimated construction costs, costs for  
25 professional services, equipment and furnishing costs, off-site costs,  
26 contract administration costs, and other related project costs; the  
27 anticipated project design and construction schedule; a summary of the  
28 school district's construction activity for the preceding six years;  
29 and an explanation of why the school district believes the use of an  
30 alternative contracting procedure is in the public interest and why the  
31 school district is qualified to use an alternative contracting  
32 procedure, including a summary of the relevant experience of the school  
33 district's management team. The applicant shall also provide in a  
34 timely manner any other information concerning implementation of  
35 projects under this chapter requested by the school district project  
36 review board to assist in its consideration.

37 (3) Any school district whose application is approved by the school  
38 district project review board shall comply with the public notification  
39 and review requirements in RCW 39.10.030.

1 (4) Any school district whose application is approved by the school  
2 district project review board shall not use as an evaluation factor  
3 whether a contractor submitting a bid for the approved project has had  
4 prior general contractor/construction manager procedure experience.

5 (5) The school district project review board shall prepare and  
6 issue a report reviewing the use of the alternative public works  
7 contracting procedures by school districts. The board shall report to  
8 the independent oversight committee at least sixty days before the  
9 oversight committee is required to report to the legislature under RCW  
10 39.10.110(4)."

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13 ADOPTED 2/29/00

14 On page 1, line 2 of the title, after "districts;" strike the  
15 remainder of the title and insert "amending RCW 39.10.020 and  
16 39.10.060; and adding new sections to chapter 39.10 RCW."

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