

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1070

56th Legislature
2000 Regular Session

Passed by the House March 5, 2000
Yeas 80 Nays 1

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate February 29, 2000
Yeas 39 Nays 5

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1070** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1070

Passed Legislature - 2000 Regular Session

AS AMENDED BY THE SENATE

State of Washington

56th Legislature

1999 Regular Session

By Representatives Romero and D. Schmidt; by request of Alternative Public Works Methods Oversight Committee

Read first time 01/14/1999. Referred to Committee on State Government.

1 AN ACT Relating to the general contractor/construction manager
2 procedure for school districts; amending RCW 39.10.020 and 39.10.060;
3 and adding new sections to chapter 39.10 RCW.

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

5 **Sec. 1.** RCW 39.10.020 and 1997 c 376 s 1 are each amended to read
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

13 (2) "Public body" means the state department of general
14 administration; the University of Washington; Washington State
15 University; every city with a population greater than one hundred fifty
16 thousand; every city authorized to use the design-build procedure for
17 a water system demonstration project under RCW 39.10.065(3); every
18 county with a population greater than four hundred fifty thousand;
19 ((and)) every port district with a population greater than five hundred

1 thousand; and those school districts proposing projects that are
2 considered and approved by the school district project review board
3 under section 4 of this act.

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

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

8 (1) Notwithstanding any other provision of law, and after complying
9 with RCW 39.10.030, the following public bodies may utilize the general
10 contractor/construction manager procedure of public works contracting
11 for public works projects authorized under subsection (2) of this
12 section: The state department of general administration; the
13 University of Washington; Washington State University; every city with
14 a population greater than one hundred fifty thousand; every county with
15 a population greater than four hundred fifty thousand; ((and)) every
16 port district with a population greater than five hundred thousand; and
17 those school districts proposing projects that are considered and
18 approved by the school district project review board under section 4 of
19 this act. For the purposes of this section, "general
20 contractor/construction manager" means a firm with which a public body
21 has selected and negotiated a maximum allowable construction cost to be
22 guaranteed by the firm, after competitive selection through formal
23 advertisement and competitive bids, to provide services during the
24 design phase that may include life-cycle cost design considerations,
25 value engineering, scheduling, cost estimating, constructability,
26 alternative construction options for cost savings, and sequencing of
27 work, and to act as the construction manager and general contractor
28 during the construction phase.

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

34 (a) Implementation of the project involves complex scheduling
35 requirements;

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

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

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

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

36 (5) The maximum allowable construction cost may be negotiated
37 between the public body and the selected firm after the scope of the
38 project is adequately determined to establish a guaranteed contract
39 cost for which the general contractor/construction manager will provide

1 a performance and payment bond. The guaranteed contract cost includes
2 the fixed amount for the detailed specified general conditions work,
3 the negotiated maximum allowable construction cost, the percent fee on
4 the negotiated maximum allowable construction cost, and sales tax. If
5 the public body is unable to negotiate a satisfactory maximum allowable
6 construction cost with the firm selected that the public body
7 determines to be fair, reasonable, and within the available funds,
8 negotiations with that firm shall be formally terminated and the public
9 body shall negotiate with the next highest scored firm and continue
10 until an agreement is reached or the process is terminated. If the
11 maximum allowable construction cost varies more than fifteen percent
12 from the bid estimated maximum allowable construction cost due to
13 requested and approved changes in the scope by the public body, the
14 percent fee shall be renegotiated.

15 (6) All subcontract work shall be competitively bid with public bid
16 openings. Subcontract work shall not be issued for bid until the
17 public body has approved, in consultation with the office of minority
18 and women's business enterprises or the equivalent local agency, a plan
19 prepared by the general contractor/construction manager for attaining
20 applicable minority and women business enterprise total project goals
21 that equitably spreads women and minority enterprise opportunities to
22 as many firms in as many bid packages as is practicable. When critical
23 to the successful completion of a subcontractor bid package the owner
24 and general contractor/construction manager may evaluate for bidding
25 eligibility a subcontractor's ability, time, budget, and specification
26 requirements based on the subcontractor's performance of those items on
27 previous projects. Subcontract bid packages shall be awarded to the
28 responsible bidder submitting the low responsive bid. The requirements
29 of RCW 39.30.060 apply to each subcontract bid package. All
30 subcontractors who bid work over three hundred thousand dollars shall
31 post a bid bond and all subcontractors who are awarded a contract over
32 three hundred thousand dollars shall provide a performance and payment
33 bond for their contract amount. All other subcontractors shall provide
34 a performance and payment bond if required by the general
35 contractor/construction manager. A low bidder who claims error and
36 fails to enter into a contract is prohibited from bidding on the same
37 project if a second or subsequent call for bids is made for the
38 project. Except as provided for under subsection (7) of this section,
39 bidding on subcontract work by the general contractor/construction

1 manager or its subsidiaries is prohibited. The general
2 contractor/construction manager may negotiate with the low-responsive
3 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such
4 negotiations, rebid.

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) The school district project review board is established to
7 review school district proposals submitted by school districts to use
8 alternative public works contracting procedures. The board shall
9 select and approve qualified projects based upon an evaluation of the
10 information submitted by the school district under subsection (2) of
11 this section. The membership of the board shall be selected by the
12 independent oversight committee as established under RCW 39.10.110 and
13 shall include the following representatives, each having experience
14 with public works or commercial construction: One representative from
15 the office of the superintendent of public instruction; one
16 representative from the office of financial management; two
17 representatives from the construction industry, one of whom works for
18 a construction company with gross annual revenues of twenty million
19 dollars or less; one representative from the specialty contracting
20 industry; one representative from organized labor; one representative
21 from the design industry; one representative from a public body
22 previously authorized under this chapter to use an alternative public
23 works contracting procedure who has experience using such alternative
24 contracting procedures; one representative from school districts with
25 ten thousand or more annual average full-time equivalent pupils; and
26 one representative from school districts with fewer than ten thousand
27 average full-time equivalent pupils. Each member shall be appointed
28 for a term of three years, with the first three-year term commencing
29 after the effective date of this section. Any member of the school
30 district project review board who is directly affiliated with any
31 applicant before the board must recuse him or herself from
32 consideration of the application.

33 (2) A school district seeking to use alternative contracting
34 procedures authorized under this chapter shall file an application with
35 the school district project review board. The application form shall
36 require the district to submit a detailed statement of the proposed
37 project, including the school district's name; student population based
38 upon October full-time equivalents; the current projected total budget

1 for the project, including the estimated construction costs, costs for
2 professional services, equipment and furnishing costs, off-site costs,
3 contract administration costs, and other related project costs; the
4 anticipated project design and construction schedule; a summary of the
5 school district's construction activity for the preceding six years;
6 and an explanation of why the school district believes the use of an
7 alternative contracting procedure is in the public interest and why the
8 school district is qualified to use an alternative contracting
9 procedure, including a summary of the relevant experience of the school
10 district's management team. The applicant shall also provide in a
11 timely manner any other information concerning implementation of
12 projects under this chapter requested by the school district project
13 review board to assist in its consideration.

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

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

21 (5) The school district project review board shall prepare and
22 issue a report reviewing the use of the alternative public works
23 contracting procedures by school districts. The board shall report to
24 the independent oversight committee at least sixty days before the
25 oversight committee is required to report to the legislature under RCW
26 39.10.110(4).

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