
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: AMH-2374.2/01 2nd draft

ATTY/TYPIST: KT:rmh

BRIEF DESCRIPTION:

2 **ESSB 5060** - H COMM AMD
3 By Committee on State Government

4 ADOPTED AS AMENDED 4/4/01

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

7 "Sec. 1. RCW 39.10.020 and 2000 c 209 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 sections 2 and 3 of this act, 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~~
18 ~~fifty~~) seventy thousand and any public authority chartered by such
19 city under RCW 35.21.730 through 35.21.755 and specifically authorized
20 as provided in RCW 39.10.120(4); (~~every city authorized to use the~~
21 design-build procedure for a water system demonstration project under
22 RCW 39.10.065(3);) every county with a population greater than four
23 hundred fifty thousand; every port district with (~~a population~~) total
24 revenues greater than (~~five hundred thousand~~) fifteen million dollars
25 per year; every public utility district with revenues from energy sales
26 greater than twenty-three million dollars per year; and those school
27 districts proposing projects that are considered and approved by the
28 school district project review board under RCW 39.10.115.

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

31 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.10 RCW
32 to read as follows:

33 (1) Notwithstanding any other provision of law, and after complying
34 with RCW 39.10.030, the following public bodies may utilize the design-
35 build procedure of public works contracting for public works projects

1 authorized under this section: The state department of general
2 administration; the University of Washington; Washington State
3 University; every city with a population greater than seventy thousand
4 and any public authority chartered by such city under RCW 35.21.730
5 through 35.21.755 and specifically authorized as provided in RCW
6 39.10.120(4); every county with a population greater than four hundred
7 fifty thousand; every public utility district with revenues from energy
8 sales greater than twenty-three million dollars per year; and every
9 port district with total revenues greater than fifteen million dollars
10 per year. The authority granted to port districts in this section is
11 in addition to and does not affect existing contracting authority under
12 RCW 53.08.120 and 53.08.130. For the purposes of this section,
13 "design-build procedure" means a contract between a public body and
14 another party in which the party agrees to both design and build the
15 facility, portion of the facility, or other item specified in the
16 contract.

17 (2) Public bodies authorized under this section may utilize the
18 design-build procedure for public works projects valued over twelve
19 million dollars where:

20 (a) The construction activities or technologies to be used are
21 highly specialized and a design-build approach is critical in
22 developing the construction methodology or implementing the proposed
23 technology; or

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

26 (c) Regular interaction with and feedback from facilities users and
27 operators during design is not critical to an effective facility
28 design.

29 (3) Public bodies authorized under this section may also use the
30 design-build procedure for the following projects that meet the
31 criteria in subsection (2)(b) and (c) of this section:

32 (a) The construction or erection of preengineered metal buildings
33 or prefabricated modular buildings, regardless of cost; or

34 (b) The construction of new student housing projects valued over
35 five million dollars.

36 (4) Contracts for design-build services shall be awarded through a
37 competitive process utilizing public solicitation of proposals for
38 design-build services. The public body shall publish at least once in
39 a legal newspaper of general circulation published in or as near as

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

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

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

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

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

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

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

25 (g) Other information relevant to the project.

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

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

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

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

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

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

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

34 (2) Except those school districts proposing projects that are
35 considered and approved by the school district project review board,
36 public bodies authorized under this section may utilize the general
37 contractor/construction manager procedure for public works projects
38 valued over twelve million dollars where:

1 (a) Implementation of the project involves complex scheduling
2 requirements; or

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

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

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

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

1 evaluation factors and the relative weight of factors published in the
2 public solicitation of proposals.

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

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

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

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

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

38 (d) Current and projected workload and the impact the project will
39 have on the subcontractor's current and projected workload;

1 (e) Ability to accurately estimate the subcontract bid package
2 scope of work;

3 (f) Ability to meet subcontract bid package shop drawing and other
4 coordination procedures;

5 (g) Eligibility to receive an award under applicable laws and
6 regulations; and

7 (h) Ability to meet subcontract bid package scheduling
8 requirements.

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

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

20 Subcontract bid packages shall be awarded to the responsible bidder
21 submitting the low responsive bid. The requirements of RCW 39.30.060
22 apply to each subcontract bid package. All subcontractors who bid work
23 over three hundred thousand dollars shall post a bid bond and all
24 subcontractors who are awarded a contract over three hundred thousand
25 dollars shall provide a performance and payment bond for their contract
26 amount. All other subcontractors shall provide a performance and
27 payment bond if required by the general contractor/construction
28 manager. A low bidder who claims error and fails to enter into a
29 contract is prohibited from bidding on the same project if a second or
30 subsequent call for bids is made for the project. Except as provided
31 for under subsection (7) of this section, bidding on subcontract work
32 by the general contractor/construction manager or its subsidiaries is
33 prohibited. The general contractor/construction manager may negotiate
34 with the low-responsive bidder in accordance with RCW 39.10.080 or, if
35 unsuccessful in such negotiations, rebid.

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

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

1 (b) The bid opening is managed by the public body; and
2 (c) Notification of the general contractor/construction manager's
3 intention to bid is included in the public solicitation of bids for the
4 bid package.

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

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

19 **Sec. 4.** RCW 39.10.115 and 2000 c 209 s 4 are each amended to read
20 as follows:

21 (1) The school district project review board is established to
22 review school district proposals submitted by school districts to use
23 alternative public works contracting procedures. The board shall
24 select and approve qualified projects based upon an evaluation of the
25 information submitted by the school district under subsection (2) of
26 this section. (~~The membership of the board shall be selected by the~~
27 ~~independent oversight committee as established under RCW 39.10.110~~)
28 After July 1, 2001, any appointments for full terms or to fill a
29 vacancy shall be made by the governor and shall include the following
30 representatives, each having experience with public works or commercial
31 construction: One representative from the office of the superintendent
32 of public instruction; one representative from the office of financial
33 management; two representatives from the construction industry, one of
34 whom works for a construction company with gross annual revenues of
35 twenty million dollars or less; one representative from the specialty
36 contracting industry; one representative from organized labor; one
37 representative from the design industry; one representative from a
38 public body previously authorized under this chapter to use an

1 alternative public works contracting procedure who has experience using
2 such alternative contracting procedures; one representative from school
3 districts with ten thousand or more annual average full-time equivalent
4 pupils; and one representative from school districts with fewer than
5 ten thousand average full-time equivalent pupils. Each member shall be
6 appointed for a term of three years, with the first three-year term
7 commencing after June 8, 2000. Any member of the school district
8 project review board who is directly affiliated with any applicant
9 before the board must recuse him or herself from consideration of the
10 application.

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

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

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

37 ~~((5) The school district project review board shall prepare and~~
38 ~~issue a report reviewing the use of the alternative public works~~
39 ~~contracting procedures by school districts. The board shall report to~~

1 the independent oversight committee at least sixty days before the
2 oversight committee is required to report to the legislature under RCW
3 39.10.110(4).))

4 **Sec. 5.** RCW 39.10.120 and 1997 c 376 s 7 and 1997 c 220 s 404 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in subsections (2) and (3) of this section,
7 the alternative public works contracting procedures authorized under
8 this chapter are limited to public works contracts signed before July
9 1, ((2001)) 2007. Methods of public works contracting authorized by
10 RCW 39.10.050 and 39.10.060 or sections 2 and 3 of this act shall
11 remain in full force and effect until completion of contracts signed
12 before July 1, ((2001)) 2007.

13 (2) For the purposes of a baseball stadium as defined in RCW
14 82.14.0485, the design-build contracting procedures under RCW 39.10.050
15 shall remain in full force and effect until completion of contracts
16 signed before December 31, 1997.

17 (3) For the purposes of a stadium and exhibition center, as defined
18 in RCW 36.102.010, the design-build contracting procedures under RCW
19 39.10.050 or section 2 of this act shall remain in full force and
20 effect until completion of contracts signed before December 31, 2002.

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

29 **Sec. 6.** RCW 39.10.902 and 1997 c 376 s 8 are each amended to read
30 as follows:

31 The following acts or parts of acts, as now existing or hereafter
32 amended, are each repealed, effective July 1, ((2001)) 2007:

33 (1) RCW 39.10.010 and 1994 c 132 s 1;

34 (2) RCW 39.10.020 and section 1 of this act, 2000 c 209 s 1, 1997
35 c 376 s 1, & 1994 c 132 s 2;

36 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

37 (4) RCW 39.10.040 and 1994 c 132 s 4;

1 (~~5~~) (~~(RCW 39.10.050 and 1994 c 132 s 5)~~) Section 2 of this act;
2 (~~6~~) (~~(RCW 39.10.060 and 1994 c 132 s 6)~~) Section 3 of this act;
3 (~~7~~) RCW 39.10.065 and 1997 c 376 s 5;
4 (~~8~~) RCW 39.10.067 and 2000 c 209 s 3;
5 (~~9~~) RCW 39.10.070 and 1994 c 132 s 7;
6 (~~(+9)~~) (10) RCW 39.10.080 and 1994 c 132 s 8;
7 (~~(+10)~~) (11) RCW 39.10.090 and 1994 c 132 s 9;
8 (~~(+11)~~) (12) RCW 39.10.100 and 1994 c 132 s 10;
9 (~~(+12)~~ RCW 39.10.110 and 1994 c 132 s 11);)
10 (~~13~~) RCW 39.10.115 and section 4 of this act & 2000 c 209 s 4;
11 (14) RCW 39.10.900 and 1994 c 132 s 13; and
12 (~~(+14)~~) (15) RCW 39.10.901 and 1994 c 132 s 14(~~(; and~~
13 (~~15~~) RCW 39.10.902 and 1994 c 132 s 15)).

14 NEW SECTION. Sec. 7. The following acts or parts of acts are each
15 repealed:

16 (1) RCW 39.10.050 (Design-build procedure--Which public bodies may
17 use) and 1997 c 376 s 3 & 1994 c 132 s 5;

18 (2) RCW 39.10.060 (General contractor/construction manager
19 procedure--Which public bodies may use--Limitations) and 2000 c 209 s
20 2, 2000 c 194 s 1, 1997 c 376 s 4, 1996 c 18 s 6, & 1994 c 132 s 6; and

21 (3) RCW 39.10.110 (Temporary independent oversight committee) and
22 1997 c 376 s 6 & 1994 c 132 s 11.

23 NEW SECTION. Sec. 8. This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 July 1, 2001."

27 Correct the title.

--- END ---