

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6597**

57th Legislature  
2002 Regular Session

Passed by the Senate February 18, 2002  
YEAS 48 NAYS 0

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**President of the Senate**

Passed by the House March 5, 2002  
YEAS 97 NAYS 0

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**Speaker of the  
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6597** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

Approved

FILED

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Governor of the State of Washington

Secretary of State  
State of Washington

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**SUBSTITUTE SENATE BILL 6597**

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Passed Legislature - 2002 Regular Session

**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** Senate Committee on State & Local Government (originally sponsored by Senators Winsley, Gardner, Kohl-Welles, B. Sheldon and Keiser)

READ FIRST TIME 02/08/2002.

1       AN ACT Relating to alternative public works contracting procedures;  
2 amending RCW 39.10.051, 39.10.061, 39.10.067, and 39.10.902; and  
3 declaring an emergency.

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

5       **Sec. 1.** RCW 39.10.051 and 2001 c 328 s 2 are each amended to read  
6 as follows:

7       (1) Notwithstanding any other provision of law, and after complying  
8 with RCW 39.10.030, the following public bodies may utilize the design-  
9 build procedure of public works contracting for public works projects  
10 authorized under this section: The state department of general  
11 administration; the University of Washington; Washington State  
12 University; every city with a population greater than seventy thousand  
13 and any public authority chartered by such city under RCW 35.21.730  
14 through 35.21.755 and specifically authorized as provided in RCW  
15 39.10.120(4); every county with a population greater than four hundred  
16 fifty thousand; every public utility district with revenues from energy  
17 sales greater than twenty-three million dollars per year; and every  
18 port district with total revenues greater than fifteen million dollars  
19 per year. The authority granted to port districts in this section is

1 in addition to and does not affect existing contracting authority under  
2 RCW 53.08.120 and 53.08.130. For the purposes of this section,  
3 "design-build procedure" means a contract between a public body and  
4 another party in which the party agrees to both design and build the  
5 facility, portion of the facility, or other item specified in the  
6 contract.

7 (2) Public bodies authorized under this section may utilize the  
8 design-build procedure for public works projects valued over (~~twelve~~)  
9 ten million dollars where:

10 (a) The construction activities or technologies to be used are  
11 highly specialized and a design-build approach is critical in  
12 developing the construction methodology or implementing the proposed  
13 technology; or

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

16 (c) Regular interaction with and feedback from facilities users and  
17 operators during design is not critical to an effective facility  
18 design.

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

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

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

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

34 (a) A detailed description of the project including programmatic,  
35 performance, and technical requirements and specifications, functional  
36 and operational elements, minimum and maximum net and gross areas of  
37 any building, and, at the discretion of the public body, preliminary  
38 engineering and architectural drawings;

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

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

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

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

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

15 (g) Other information relevant to the project.

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

23 (a) Best and final proposals shall be evaluated and scored based on  
24 the factors, weighting, and process identified in the initial request  
25 for proposals. The public body may score the proposals using a system  
26 that measures the quality and technical merits of the proposal on a  
27 unit price basis. Final proposals may not be considered if the  
28 proposal cost is greater than the maximum allowable construction cost  
29 identified in the initial request for proposals. The public body shall  
30 initiate negotiations with the firm submitting the highest scored best  
31 and final proposal. If the public body is unable to execute a contract  
32 with the firm submitting the highest scored best and final proposal,  
33 negotiations with that firm may be suspended or terminated and the  
34 public body may proceed to negotiate with the next highest scored firm.  
35 Public bodies shall continue in accordance with this procedure until a  
36 contract agreement is reached or the selection process is terminated.

37 (b) If the public body determines that all finalists are capable of  
38 producing plans and specifications that adequately meet project

1 requirements, the public body may award the contract to the firm that  
2 submits the responsive best and final proposal with the lowest price.

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

9 **Sec. 2.** RCW 39.10.061 and 2001 c 328 s 3 are each amended to read  
10 as follows:

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

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

30 (a) Implementation of the project involves complex scheduling  
31 requirements; or

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

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

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

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

32 (5) The maximum allowable construction cost may be negotiated  
33 between the public body and the selected firm after the scope of the  
34 project is adequately determined to establish a guaranteed contract  
35 cost for which the general contractor/construction manager will provide  
36 a performance and payment bond. The guaranteed contract cost includes  
37 the fixed amount for the detailed specified general conditions work,  
38 the negotiated maximum allowable construction cost, the percent fee on  
39 the negotiated maximum allowable construction cost, and sales tax. If

1 the public body is unable to negotiate a satisfactory maximum allowable  
2 construction cost with the firm selected that the public body  
3 determines to be fair, reasonable, and within the available funds,  
4 negotiations with that firm shall be formally terminated and the public  
5 body shall negotiate with the next highest scored firm and continue  
6 until an agreement is reached or the process is terminated. If the  
7 maximum allowable construction cost varies more than fifteen percent  
8 from the bid estimated maximum allowable construction cost due to  
9 requested and approved changes in the scope by the public body, the  
10 percent fee shall be renegotiated.

11 (6) All subcontract work shall be competitively bid with public bid  
12 openings. When critical to the successful completion of a  
13 subcontractor bid package and after publication of notice of intent to  
14 determine bidder eligibility in a legal newspaper of general  
15 circulation published in or as near as possible to that part of the  
16 county in which the public work will be done at least twenty days  
17 before requesting qualifications from interested subcontract bidders,  
18 the owner and general contractor/construction manager may determine  
19 subcontractor bidding eligibility using the following evaluation  
20 criteria:

21 (a) Adequate financial resources or the ability to secure such  
22 resources;

23 (b) History of successful completion of a contract of similar type  
24 and scope;

25 (c) Project management and project supervision personnel with  
26 experience on similar projects and the availability of such personnel  
27 for the project;

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

30 (e) Ability to accurately estimate the subcontract bid package  
31 scope of work;

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

34 (g) Eligibility to receive an award under applicable laws and  
35 regulations; and

36 (h) Ability to meet subcontract bid package scheduling  
37 requirements.

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

4 After publication of notice of intent to determine bidder  
5 eligibility, subcontractors requesting eligibility shall be provided  
6 the evaluation criteria and weighting to be used by the owner and  
7 general contractor/construction manager to determine eligible  
8 subcontract bidders. After the owner and general  
9 contractor/construction manager determine eligible subcontract bidders,  
10 subcontractors requesting eligibility shall be provided the results and  
11 scoring of the subcontract bidder eligibility determination.

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

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

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

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

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

36 In no event may the value of subcontract work performed by the  
37 general contractor/construction manager exceed thirty percent of the  
38 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 **Sec. 3.** RCW 39.10.067 and 2000 c 209 s 3 are each amended to read  
13 as follows:

14 In addition to the projects authorized in RCW ~~((39.10.060))~~  
15 39.10.061, public bodies may also use the general  
16 contractor/construction manager contracting procedure for the  
17 construction of school district capital demonstration projects, subject  
18 to the following conditions:

19 (1) The project must receive approval from the school district  
20 project review board established under RCW 39.10.115.

21 (2) The school district project review board may not authorize more  
22 than ~~((two))~~ ten demonstration projects valued over ~~((ten))~~ five  
23 million dollars ~~((and))~~, of which at least two demonstration projects  
24 must be valued between five and ten million dollars.

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

28 **Sec. 4.** RCW 39.10.902 and 2001 c 328 s 6 are each amended to read  
29 as follows:

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

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

33 (2) RCW 39.10.020 and 2001 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s  
34 1, & 1994 c 132 s 2;

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

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

37 (5) RCW 39.10.051 and 2001 c 328 s 2 and section 1 of this act;

- 1 (6) RCW 39.10.061 and 2001 c 328 s 3 and section 2 of this act;  
2 (7) RCW 39.10.065 and 1997 c 376 s 5;  
3 (8) RCW 39.10.067 and 2000 c 209 s 3 and section 3 of this act;  
4 (9) RCW 39.10.070 and 1994 c 132 s 7;  
5 (10) RCW 39.10.080 and 1994 c 132 s 8;  
6 (11) RCW 39.10.090 and 1994 c 132 s 9;  
7 (12) RCW 39.10.100 and 1994 c 132 s 10;  
8 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;  
9 (14) RCW 39.10.900 and 1994 c 132 s 13; and  
10 (15) RCW 39.10.901 and 1994 c 132 s 14.

11 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
12 preservation of the public peace, health, or safety, or support of the  
13 state government and its existing public institutions, and takes effect  
14 immediately.

--- END ---