

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5060

Chapter 328, Laws of 2001

57th Legislature
2001 Regular Session

ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

EFFECTIVE DATE: 7/1/01

Passed by the Senate April 16, 2001
YEAS 30 NAYS 16

BRAD OWEN
President of the Senate

Passed by the House April 4, 2001
YEAS 92 NAYS 0

CLYDE BALLARD
Speaker of the
House of Representatives

FRANK CHOPP
Speaker of the
House of Representatives

Approved May 15, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5060** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

May 15, 2001 - 3:18 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5060

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Senate Committee on State & Local Government (originally sponsored by Senators Winsley and Patterson)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to alternative public works contracting procedures;
2 amending RCW 39.10.020, 39.10.115, and 39.10.902; reenacting and
3 amending RCW 39.10.120; adding new sections to chapter 39.10 RCW;
4 repealing RCW 39.10.050, 39.10.060, and 39.10.110; providing an
5 effective date; and declaring an emergency.

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

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

1 as provided in RCW 39.10.120(4); (~~every city authorized to use the~~
2 ~~design-build procedure for a water system demonstration project under~~
3 ~~RCW 39.10.065(3);~~) every county with a population greater than four
4 hundred fifty thousand; every port district with (~~a population~~) total
5 revenues greater than (~~five hundred thousand~~) fifteen million dollars
6 per year; every public utility district with revenues from energy sales
7 greater than twenty-three million dollars per year; and those school
8 districts proposing projects that are considered and approved by the
9 school district project review board under RCW 39.10.115.

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

12 NEW SECTION. Sec. 2. A new section is added to chapter 39.10 RCW
13 to read as follows:

14 (1) Notwithstanding any other provision of law, and after complying
15 with RCW 39.10.030, the following public bodies may utilize the design-
16 build procedure of public works contracting for public works projects
17 authorized under this section: The state department of general
18 administration; the University of Washington; Washington State
19 University; every city with a population greater than seventy thousand
20 and any public authority chartered by such city under RCW 35.21.730
21 through 35.21.755 and specifically authorized as provided in RCW
22 39.10.120(4); every county with a population greater than four hundred
23 fifty thousand; every public utility district with revenues from energy
24 sales greater than twenty-three million dollars per year; and every
25 port district with total revenues greater than fifteen million dollars
26 per year. The authority granted to port districts in this section is
27 in addition to and does not affect existing contracting authority under
28 RCW 53.08.120 and 53.08.130. For the purposes of this section,
29 "design-build procedure" means a contract between a public body and
30 another party in which the party agrees to both design and build the
31 facility, portion of the facility, or other item specified in the
32 contract.

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

36 (a) The construction activities or technologies to be used are
37 highly specialized and a design-build approach is critical in

1 developing the construction methodology or implementing the proposed
2 technology; or

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

5 (c) Regular interaction with and feedback from facilities users and
6 operators during design is not critical to an effective facility
7 design.

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

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

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

15 (4) Contracts for design-build services shall be awarded through a
16 competitive process utilizing public solicitation of proposals for
17 design-build services. The public body shall publish at least once in
18 a legal newspaper of general circulation published in or as near as
19 possible to that part of the county in which the public work will be
20 done, a notice of its request for proposals for design-build services
21 and the availability and location of the request for proposal
22 documents. The request for proposal documents shall include:

23 (a) A detailed description of the project including programmatic,
24 performance, and technical requirements and specifications, functional
25 and operational elements, minimum and maximum net and gross areas of
26 any building, and, at the discretion of the public body, preliminary
27 engineering and architectural drawings;

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

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

32 (d) A description of the process the public body will use to
33 evaluate qualifications and proposals, including evaluation factors and
34 the relative weight of factors. Evaluation factors shall include, but
35 not be limited to: Proposal price; ability of professional personnel;
36 past performance on similar projects; ability to meet time and budget
37 requirements; ability to provide a performance and payment bond for the
38 project; recent, current, and projected work loads of the firm;
39 location; and the concept of the proposal;

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

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

4 (g) Other information relevant to the project.

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

12 (a) Best and final proposals shall be evaluated and scored based on
13 the factors, weighting, and process identified in the initial request
14 for proposals. The public body may score the proposals using a system
15 that measures the quality and technical merits of the proposal on a
16 unit price basis. Final proposals may not be considered if the
17 proposal cost is greater than the maximum allowable construction cost
18 identified in the initial request for proposals. The public body shall
19 initiate negotiations with the firm submitting the highest scored best
20 and final proposal. If the public body is unable to execute a contract
21 with the firm submitting the highest scored best and final proposal,
22 negotiations with that firm may be suspended or terminated and the
23 public body may proceed to negotiate with the next highest scored firm.
24 Public bodies shall continue in accordance with this procedure until a
25 contract agreement is reached or the selection process is terminated.

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

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

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

1 (1) Notwithstanding any other provision of law, and after complying
2 with RCW 39.10.030, a public body may utilize the general
3 contractor/construction manager procedure of public works contracting
4 for public works projects authorized under subsection (2) of this
5 section. 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 twelve million dollars where:

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

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

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

1 (6) All subcontract work shall be competitively bid with public bid
2 openings. When critical to the successful completion of a
3 subcontractor bid package and after publication of notice of intent to
4 determine bidder eligibility in a legal newspaper of general
5 circulation published in or as near as possible to that part of the
6 county in which the public work will be done at least twenty days
7 before requesting qualifications from interested subcontract bidders,
8 the owner and general contractor/construction manager may determine
9 subcontractor bidding eligibility using the following evaluation
10 criteria:

11 (a) Adequate financial resources or the ability to secure such
12 resources;

13 (b) History of successful completion of a contract of similar type
14 and scope;

15 (c) Project management and project supervision personnel with
16 experience on similar projects and the availability of such personnel
17 for the project;

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

20 (e) Ability to accurately estimate the subcontract bid package
21 scope of work;

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

24 (g) Eligibility to receive an award under applicable laws and
25 regulations; and

26 (h) Ability to meet subcontract bid package scheduling
27 requirements.

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

31 After publication of notice of intent to determine bidder
32 eligibility, subcontractors requesting eligibility shall be provided
33 the evaluation criteria and weighting to be used by the owner and
34 general contractor/construction manager to determine eligible
35 subcontract bidders. After the owner and general
36 contractor/construction manager determine eligible subcontract bidders,
37 subcontractors requesting eligibility shall be provided the results and
38 scoring of the subcontract bidder eligibility determination.

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

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

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

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

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

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

28 (8) A public body may include an incentive clause in any contract
29 awarded under this section for savings of either time or cost or both
30 from that originally negotiated. No incentives granted may exceed five
31 percent of the maximum allowable construction cost. If the project is
32 completed for less than the agreed upon maximum allowable construction
33 cost, any savings not otherwise negotiated as part of an incentive
34 clause shall accrue to the public body. If the project is completed
35 for more than the agreed upon maximum allowable construction cost,
36 excepting increases due to any contract change orders approved by the
37 public body, the additional cost shall be the responsibility of the
38 general contractor/construction manager.

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

3 (1) The school district project review board is established to
4 review school district proposals submitted by school districts to use
5 alternative public works contracting procedures. The board shall
6 select and approve qualified projects based upon an evaluation of the
7 information submitted by the school district under subsection (2) of
8 this section. (~~The membership of the board shall be selected by the~~
9 ~~independent oversight committee as established under RCW 39.10.110~~)
10 After July 1, 2001, any appointments for full terms or to fill a
11 vacancy shall be made by the governor and shall include the following
12 representatives, each having experience with public works or commercial
13 construction: One representative from the office of the superintendent
14 of public instruction; one representative from the office of financial
15 management; two representatives from the construction industry, one of
16 whom works for a construction company with gross annual revenues of
17 twenty million dollars or less; one representative from the specialty
18 contracting industry; one representative from organized labor; one
19 representative from the design industry; one representative from a
20 public body previously authorized under this chapter to use an
21 alternative public works contracting procedure who has experience using
22 such alternative contracting procedures; one representative from school
23 districts with ten thousand or more annual average full-time equivalent
24 pupils; and one representative from school districts with fewer than
25 ten thousand average full-time equivalent pupils. Each member shall be
26 appointed for a term of three years, with the first three-year term
27 commencing after June 8, 2000. Any member of the school district
28 project review board who is directly affiliated with any applicant
29 before the board must recuse him or herself from consideration of the
30 application.

31 (2) A school district seeking to use alternative contracting
32 procedures authorized under this chapter shall file an application with
33 the school district project review board. The application form shall
34 require the district to submit a detailed statement of the proposed
35 project, including the school district's name; student population based
36 upon October full-time equivalents; the current projected total budget
37 for the project, including the estimated construction costs, costs for
38 professional services, equipment and furnishing costs, off-site costs,
39 contract administration costs, and other related project costs; the

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

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

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

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

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

26 (1) Except as provided in subsections (2) and (3) of this section,
27 the alternative public works contracting procedures authorized under
28 this chapter are limited to public works contracts signed before July
29 1, ~~((2001))~~ 2007. Methods of public works contracting authorized by
30 RCW 39.10.050 and 39.10.060 or sections 2 and 3 of this act shall
31 remain in full force and effect until completion of contracts signed
32 before July 1, ~~((2001))~~ 2007.

33 (2) For the purposes of a baseball stadium as defined in RCW
34 82.14.0485, the design-build contracting procedures under RCW 39.10.050
35 shall remain in full force and effect until completion of contracts
36 signed before December 31, 1997.

37 (3) For the purposes of a stadium and exhibition center, as defined
38 in RCW 36.102.010, the design-build contracting procedures under RCW

1 39.10.050 or section 2 of this act shall remain in full force and
2 effect until completion of contracts signed before December 31, 2002.

3 (4) A public authority chartered by a city that is a public body
4 may utilize an alternative public works contracting procedure under
5 this chapter only after receiving specific authorization on a project-
6 by-project basis from the governing body of the city. For purposes of
7 public authorities authorized to use alternative public works
8 contracting procedures under this chapter, the city chartering any such
9 public authority shall itself comply with RCW 39.10.030 on behalf of
10 the public authority.

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

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

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

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

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

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

20 (5) ~~((RCW 39.10.050 and 1994 c 132 s 5))~~ Section 2 of this act;

21 (6) ~~((RCW 39.10.060 and 1994 c 132 s 6))~~ Section 3 of this act;

22 (7) RCW 39.10.065 and 1997 c 376 s 5;

23 (8) RCW 39.10.067 and 2000 c 209 s 3;

24 (9) RCW 39.10.070 and 1994 c 132 s 7;

25 ~~((+9))~~ (10) RCW 39.10.080 and 1994 c 132 s 8;

26 ~~((+10))~~ (11) RCW 39.10.090 and 1994 c 132 s 9;

27 ~~((+11))~~ (12) RCW 39.10.100 and 1994 c 132 s 10;

28 ~~((+12) RCW 39.10.110 and 1994 c 132 s 11;))~~

29 (13) RCW 39.10.115 and section 4 of this act & 2000 c 209 s 4;

30 (14) RCW 39.10.900 and 1994 c 132 s 13; and

31 ~~((+14))~~ (15) RCW 39.10.901 and 1994 c 132 s 14~~((+and~~

32 ~~+15) RCW 39.10.902 and 1994 c 132 s 15)).~~

33 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
34 repealed:

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

1 (2) RCW 39.10.060 (General contractor/construction manager
2 procedure--Which public bodies may use--Limitations) and 2000 c 209 s
3 2, 2000 c 194 s 1, 1997 c 376 s 4, 1996 c 18 s 6, & 1994 c 132 s 6; and
4 (3) RCW 39.10.110 (Temporary independent oversight committee) and
5 1997 c 376 s 6 & 1994 c 132 s 11.

6 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing public institutions, and takes effect
9 July 1, 2001.

Passed the Senate April 16, 2001.

Passed the House April 4, 2001.

Approved by the Governor May 15, 2001.

Filed in Office of Secretary of State May 15, 2001.