

SSB 5285 - S AMD 345

By Senators Poulsen, Honeyford

ADOPTED 03/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.150.040 and 1989 c 175 s 136 are each amended to
4 read as follows:

5 The legislative authority of a public body may secure services by
6 means of an agreement with a service provider. Such an agreement may
7 obligate a service provider to perform one or more of the following
8 services: Design, finance, construct, own, operate, or maintain water
9 pollution control facilities by which services are provided to the
10 public body. Service agreements and related agreements under this
11 chapter shall be entered into in accordance with the following
12 procedure:

13 (1) The legislative authority of the public body shall publish
14 notice that it is seeking to secure certain specified services by means
15 of entering into an agreement with a service provider. The notice
16 shall be published in the official newspaper of the public body, or if
17 there is no official newspaper then in a newspaper in general
18 circulation within the boundaries of the public body, at least once
19 each week for two consecutive weeks. The final notice shall appear not
20 less than (~~sixty~~) thirty days before the date for submission of
21 proposals. The notice shall state (a) the nature of the services
22 needed, (b) the location in the public body's offices where the
23 requirements and standards for construction, operation, or maintenance
24 of projects needed as part of the services are available for
25 inspection, and (c) the final date for the submission of proposals.
26 The legislative authority may undertake a prequalification process by
27 the same procedure set forth in this subsection.

28 (2) The request for proposals shall (a) indicate the time and place
29 responses are due, (b) include evaluation criteria to be considered in
30 selecting a service provider, (c) specify minimum requirements or other

1 limitations applying to selection, (d) insofar as practicable, set
2 forth terms and provisions to be included in the service agreement, and
3 (e) require the service provider to demonstrate in its proposal to the
4 public body's satisfaction that (~~(a public body's annual costs will be~~
5 ~~lower under its proposal than they would be if the public body~~
6 ~~financed, constructed, owned, operated, and maintained facilities~~
7 ~~required for service)) it is in the public interest to enter into the
8 service agreement and that the service agreement is financially sound
9 and advantageous to the public body from the standpoint of annual
10 costs, quality of services, experience of the provider, reduction of
11 risk, and other factors.~~

12 (3) The criteria set forth in the request for proposals shall be
13 those determined to be relevant by the legislative authority of the
14 public body, which may include but shall not be limited to: The
15 respondent's prior experience, including design, construction, or
16 operation of other similar facilities; respondent's management
17 capability, schedule availability, and financial resources; cost of the
18 service; nature of facility design proposed by respondents; system
19 reliability; performance standards required for the facilities;
20 compatibility with existing service facilities operated by the public
21 body or other providers of service to the public body; project
22 performance warranties; penalty and other enforcement provisions;
23 environmental protection measures to be used; and allocation of project
24 risks. The legislative authority (~~shall~~) may designate persons or
25 entities within or outside the public body (a) to assist it in issuing
26 the request for proposals to ensure that proposals will be responsive
27 to its needs, and (b) to assist it in evaluating the proposals
28 received. (~~The designee shall not be a member of the legislative~~
29 ~~authority.))~~

30 (4) After proposals under subsections (1) through (3) of this
31 section have been received, the legislative authority(~~is~~) or its
32 designee shall determine, on the basis of its review of the proposals,
33 whether one or more proposals have been received from respondents which
34 are (a) determined to be qualified to provide the requested services,
35 and (b) responsive to the notice and evaluation criteria, which shall
36 include, but not be limited to, cost of services. These chosen
37 respondents may, at the discretion of the public body, be aggregated
38 into a short list of qualified respondents, who shall be referred to as

1 the selected respondents in this section. The legislative authority or
2 its designee shall conduct a bidder's conference to include all these
3 selected respondents to assure a full understanding of the proposals.
4 The bidder's conference shall (~~also allow the designee to~~) make these
5 selected respondents aware of any changes in the request for proposal.
6 Any information related to revisions in the request for proposal shall
7 be made available to all these selected respondents. Any selected
8 respondent shall be accorded a reasonable opportunity for revision of
9 its proposal prior to commencement of the negotiation provided in
10 subsection (5) of this section, for the purpose of obtaining best and
11 final proposals.

12 (5) After such conference is held, the legislative authority or its
13 designee may negotiate with the selected respondent whose proposal it
14 determines to be the most advantageous to the public body, considering
15 the criteria set forth in the request for proposals. If negotiations
16 are conducted by the designee, the legislative authority shall continue
17 to oversee the negotiations and provide direction to its designee. If
18 the negotiation is unsuccessful, the legislative authority may
19 (~~authorize the designee to~~) commence negotiations with any other
20 selected respondent. On completion of this process, (~~the designee~~
21 ~~shall report to~~) and after the department of ecology review and
22 comments as provided for in subsection (9) of this section, and after
23 public hearing as provided for in subsection (10) of this section, the
24 legislative authority (~~on his or her recommendations and the reasons~~
25 ~~for them~~) may approve a contract with its chosen respondent.

26 (6) Any person aggrieved by the legislative authority's approval of
27 a contract may appeal the determination to an appeals board selected by
28 the public body, which shall consist of not less than three persons
29 determined by the legislative authority to be qualified for such
30 purposes. Such board shall promptly hear and determine whether the
31 public body entered into the agreement in accordance with this chapter
32 and other applicable law. (~~The hearing shall be conducted in the same~~
33 ~~manner as an adjudicative proceeding under chapter 34.05 RCW.~~) The
34 board shall have the power only to affirm or void the agreement.

35 (7) Notwithstanding the foregoing, where contracting for design
36 services by the public body is done separately from contracting for
37 other services permitted under this chapter, the contracting for design

1 (~~of water pollution control facilities~~) services shall be done in
2 accordance with chapter 39.80 RCW.

3 (8) ~~((A))~~ If a public body elects to enter into an agreement
4 whereby the service provider will own all or a portion of the water
5 pollution control facilities it constructs, the service agreement shall
6 include provision for an option by which a public body may acquire at
7 fair market value facilities dedicated to such service.

8 (9) Before any service agreement is entered into by the public
9 body, it shall be reviewed ~~((and approved))~~ by the department of
10 ecology to ensure ~~((that))~~ consistency with the purposes of chapters
11 90.46 and 90.48 RCW ~~((are implemented))~~.

12 The department of ecology has thirty days from receipt of the
13 proposed service agreement to complete its review and provide the
14 public body with comments. A review under this section is not intended
15 to replace any additional permitting or regulatory reviews and
16 approvals that may be required under other applicable laws.

17 (10) Prior to entering into any service agreement under this
18 chapter, the public body must have made written findings, after holding
19 a public hearing on the proposal, that it is in the public interest to
20 enter into the service agreement and that the service agreement is
21 financially sound and advantageous compared to other methods.

22 (11) Each service agreement shall include project performance bonds
23 or other security by the service provider which in the judgment of the
24 public body is sufficient to secure adequate performance by the service
25 provider.

26 **Sec. 2.** RCW 70.150.070 and 1986 c 244 s 7 are each amended to read
27 as follows:

28 RCW 70.150.030 through 70.150.060 shall be deemed to provide an
29 additional method for the provision of services from and in connection
30 with facilities and shall be regarded as supplemental and additional to
31 powers conferred by other state laws and by federal laws. A public
32 body that is also eligible to enter into agreements with service
33 providers under the alternative public works contracting procedures in
34 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061
35 or this chapter as its method of procurement for such services.

1 **Sec. 3.** RCW 39.10.020 and 2003 c 352 s 1, 2003 c 301 s 2, and 2003
2 c 300 s 3 are each reenacted and amended to read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Alternative public works contracting procedure" means the
6 design-build and the general contractor/construction manager
7 contracting procedures authorized in RCW 39.10.051 and 39.10.061,
8 respectively. Public bodies eligible to enter into agreements with
9 service providers for the furnishing of services in connection with
10 water pollution control facilities under the authority of chapter
11 70.150 RCW may elect to use either RCW 39.10.051 and 39.10.061 or
12 chapter 70.150 RCW as their method of procurement for such services.

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 seventy thousand
16 and any public authority chartered by such city under RCW 35.21.730
17 through 35.21.755 and specifically authorized as provided in RCW
18 39.10.120(4); every county with a population greater than four hundred
19 fifty thousand; every port district with total revenues greater than
20 fifteen million dollars per year; every public hospital district with
21 total revenues greater than fifteen million dollars per year utilizing
22 the design-build procedure authorized by RCW 39.10.051 and every public
23 hospital district, regardless of total revenues, proposing projects
24 that are considered and approved by the public hospital district
25 project review board under RCW 39.10.117; every public utility district
26 with revenues from energy sales greater than twenty-three million
27 dollars per year; those school districts proposing projects that are
28 considered and approved by the school district project review board
29 under RCW 39.10.115; and the state ferry system.

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

32 (4) "Job order contract" means a contract between a public body or
33 any school district and a registered or licensed contractor in which
34 the contractor agrees to a fixed period, indefinite quantity delivery
35 order contract which provides for the use of negotiated, definitive
36 work orders for public works as defined in RCW 39.04.010.

37 (5) "Job order contractor" means a registered or licensed
38 contractor awarded a job order contract.

1 (6) "Unit price book" means a book containing specific prices,
2 based on generally accepted industry standards and information, where
3 available, for various items of work to be performed by the job order
4 contractor. The prices may include: All the costs of materials;
5 labor; equipment; overhead, including bonding costs; and profit for
6 performing the items of work. The unit prices for labor must be at the
7 rates in effect at the time the individual work order is issued.

8 (7) "Work order" means an order issued for a definite scope of work
9 to be performed pursuant to a job order contract.

10 **Sec. 4.** RCW 90.48.285 and 1987 c 109 s 144 are each amended to
11 read as follows:

12 The department is authorized to enter into contracts with any
13 municipal or public corporation or political subdivision within the
14 state for the purpose of assisting such agencies to finance the design
15 and construction of water pollution control projects, whether procured
16 through chapter 39.10 or 70.150 RCW, or otherwise, that are necessary
17 to prevent the discharge of untreated or inadequately treated sewage or
18 other waste into the waters of the state, including but not limited to,
19 systems for the control of storm or surface waters which will provide
20 for the removal of waste or polluting materials in a manner conforming
21 to the comprehensive plan of water pollution control and abatement
22 proposed by the agencies and approved by the department. Any such
23 contract may provide for:

24 The payment by the department to a municipal or public corporation
25 or political subdivision on a monthly, quarterly, or annual basis of
26 varying amounts of moneys as advances which shall be repayable by said
27 municipal or public corporation, or political subdivision under
28 conditions determined by the department.

29 Contracts made by the department shall be subject to the following
30 limitations:

31 (1) No contract shall be made unless the department shall find that
32 the project cannot be financed at reasonable cost or within statutory
33 limitations by the borrower without the making of such contract.

34 (2) No contract shall be made with any public or municipal
35 corporation or political subdivision to assist in the financing of any
36 project located within a sewage drainage basin for which the department

1 shall have previously adopted a comprehensive water pollution control
2 and abatement plan unless the project is found by the department to
3 conform with the basin comprehensive plan.

4 (3) The department shall determine the interest rate, not to exceed
5 ten percent per annum, which such advances shall bear.

6 (4) The department shall provide such reasonable terms and
7 conditions of repayment of advances as it may determine.

8 (5) The total outstanding amount which the department may at any
9 time be obligated to pay under all outstanding contracts made pursuant
10 to this section shall not exceed the moneys available for such payment.

11 (6) Municipal or public corporations or political subdivisions
12 shall meet such qualifications and follow such procedures in applying
13 for contract assistance as shall be established by the department.

14 In making such contracts the department shall give priority to
15 projects which will provide relief from actual or potential public
16 health hazards or water pollution conditions and which provide
17 substantial capacity beyond present requirements to meet anticipated
18 future demand.

19 **Sec. 5.** RCW 39.10.902 and 2003 c 301 s 8 and 2003 c 300 s 8 are
20 each reenacted and amended to read as follows:

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

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

24 (2) RCW 39.10.020 and 2005 c ... s 3 (section 3 of this act), 2003
25 c 352 s 1, 2003 c 301 s 2, 2003 c 300 s 3, 2001 c 328 s 1, 2000 c 209
26 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;

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

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

29 (5) RCW 39.10.051 and 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s
30 1, & 2001 c 328 s 2;

31 (6) RCW 39.10.061 and 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s
32 2, & 2001 c 328 s 3;

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

34 (8) RCW 39.10.067 and 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209
35 s 3;

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

37 (10) RCW 39.10.080 and 1994 c 132 s 8;

- 1 (11) RCW 39.10.090 and 1994 c 132 s 9;
2 (12) RCW 39.10.100 and 1994 c 132 s 10;
3 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
4 (14) RCW 39.10.900 and 1994 c 132 s 13;
5 (15) RCW 39.10.901 and 1994 c 132 s 14;
6 (16) RCW 39.10.068 and 2003 c 300 s 6;
7 (17) RCW 39.10.117 and 2003 c 300 s 7; and
8 (18) RCW 39.10.130 and 2003 c 301 s 1."

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ADOPTED 03/15/2005

9 On page 1, line 2 of the title, after "flexibility" strike the
10 remainder of the title and insert "; amending RCW 70.150.040,
11 70.150.070, and 90.48.285; and reenacting and amending RCW 39.10.020
12 and 39.10.902."

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