

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6401**

61st Legislature  
2010 Regular Session

Passed by the Senate March 9, 2010  
YEAS 47 NAYS 0

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**President of the Senate**

Passed by the House March 4, 2010  
YEAS 98 NAYS 0

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6401** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SENATE BILL 6401**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senator Brandland

Read first time 01/13/10. Referred to Committee on Labor, Commerce & Consumer Protection.

1            AN ACT Relating to an alternative process for selecting an  
2 electrical contractor or a mechanical contractor, or both, for general  
3 contractor/construction manager projects; and adding a new section to  
4 chapter 39.10 RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 39.10 RCW  
7 to read as follows:

8            As an alternative to the subcontractor selection process outlined  
9 in RCW 39.10.380, a general contractor/construction manager may, with  
10 the approval of the public body, select a mechanical subcontractor, an  
11 electrical subcontractor, or both, using the process outlined in this  
12 section. This alternative selection process may only be used when the  
13 anticipated value of the subcontract will exceed three million dollars.  
14 When using the alternative selection process, the general  
15 contractor/construction manager should select the subcontractor early  
16 in the life of the public works project.

17            (1) In order to use this alternative selection process, the general  
18 contractor/construction manager and the public body must determine that

1 it is in the best interest of the public. In making this determination  
2 the general contractor/construction manager and the public body must:

3 (a) Publish a notice of intent to use this alternative selection  
4 process in a legal newspaper published in or as near as possible to  
5 that part of the county where the public work will be constructed.  
6 Notice must be published at least fourteen calendar days before  
7 conducting a public hearing. The notice must include the date, time,  
8 and location of the hearing; a statement justifying the basis and need  
9 for the alternative selection process; and how interested parties may,  
10 prior to the hearing, obtain the evaluation criteria and applicable  
11 weight given to each criteria that will be used for evaluation;

12 (b) Conduct a hearing and provide an opportunity for any interested  
13 party to submit written and verbal comments regarding the justification  
14 for using this selection process, the evaluation criteria, and weights  
15 for each criteria;

16 (c) After the public hearing, consider the written and verbal  
17 comments received and determine if using this alternative selection  
18 process is in the best interests of the public; and

19 (d) Issue a written final determination to all interested parties.  
20 All protests of the decision to use the alternative selection process  
21 must be in writing and submitted to the public body within seven  
22 calendar days of the final determination. Any modifications to the  
23 criteria and weights based on comments received during the public  
24 hearing process must be included in the final determination.

25 (2) Contracts for the services of a subcontractor under this  
26 section must be awarded through a competitive process requiring a  
27 public solicitation of proposals. Notice of the public solicitation of  
28 proposals must be provided to the office of minority and women's  
29 business enterprises. The public solicitation of proposals must  
30 include:

31 (a) A description of the project, including programmatic,  
32 performance, and technical requirements and specifications when  
33 available;

34 (b) The reasons for using the alternative selection process;

35 (c) A description of the minimum qualifications required of the  
36 firm;

37 (d) A description of the process used to evaluate qualifications

1 and proposals, including evaluation factors and the relative weight of  
2 factors;

3 (e) The form of the contract, including any contract for  
4 preconstruction services, to be awarded;

5 (f) The estimated maximum allowable subcontract cost; and

6 (g) The bid instructions to be used by the finalists.

7 (3) Evaluation factors for selection of the subcontractor must  
8 include, but not be limited to:

9 (a) Ability of the firm's professional personnel;

10 (b) The firm's past performance on similar projects;

11 (c) The firm's ability to meet time and budget requirements;

12 (d) The scope of work the firm proposes to perform with its own  
13 forces and its ability to perform that work;

14 (e) The firm's plan for outreach to minority and women-owned  
15 businesses;

16 (f) The firm's proximity to the project location;

17 (g) The firm's capacity to successfully complete the project;

18 (h) The firm's approach to executing the project;

19 (i) The firm's approach to safety on the project;

20 (j) The firm's safety history; and

21 (k) If the firm is selected as one of the most qualified finalists,  
22 the firm's fee and cost proposal.

23 (4) The general contractor/construction manager shall establish a  
24 committee to evaluate the proposals. At least one representative from  
25 the public body shall serve on the committee. Final proposals,  
26 including sealed bids for the percent fee on the estimated maximum  
27 allowable subcontract cost, and the fixed amount for the subcontract  
28 general conditions work specified in the request for proposal, will be  
29 requested from the most qualified firms. The general  
30 contractor/construction manager and the public body shall select the  
31 firm submitting the highest scored final proposal using the evaluation  
32 factors and the relative weight of factors identified in the  
33 solicitation of proposals. The scoring of the nonprice factors must be  
34 made available at the opening of the fee and cost proposals. The  
35 general contractor/construction manager may not evaluate or disqualify  
36 a proposal based on the terms of a collective bargaining agreement.

37 (5) If the general contractor/construction manager is unable to  
38 negotiate a satisfactory maximum allowable subcontract cost with the

1 firm selected deemed by public body and the general  
2 contractor/construction manager to be fair, reasonable, and within the  
3 available funds, negotiations with that firm must be formally  
4 terminated and the general contractor/construction manager may  
5 negotiate with the next highest scored firm until an agreement is  
6 reached or the process is terminated.

7 (6) If the general contractor/construction manager receives a  
8 written protest from a bidder, it may not execute a contract for the  
9 subject work with anyone other than the protesting bidder, without  
10 first providing at least two full business days' written notice to all  
11 bidders of the intent to execute a contract for the subcontract bid  
12 package. The protesting bidder must submit written notice to the  
13 general contractor/construction manager of its protest no later than  
14 two full business days following the bid opening.

15 (7) With the approval of the public body, the general  
16 contractor/construction manager may contract with the selected firm to  
17 provide services during the design phase that may include life-cycle  
18 cost design considerations, value engineering, scheduling, cost  
19 estimating, constructability, alternative construction options for cost  
20 savings, and sequencing of work; and to act as the mechanical or  
21 electrical subcontractor during the construction phase.

22 (8) The maximum allowable subcontract cost must be used to  
23 establish a total subcontract cost for purposes of a performance and  
24 payment bond. Total subcontract cost means the fixed amount for the  
25 detailed specified general conditions work, the negotiated maximum  
26 allowable subcontract cost, and the percent fee on the negotiated  
27 maximum allowable subcontract cost. Maximum allowable subcontract cost  
28 means the maximum cost to complete the work specified for the  
29 subcontract, including the estimated cost of work to be performed by  
30 the subcontractor's own forces, a percentage for risk contingency,  
31 negotiated support services, and approved change orders. The maximum  
32 allowable subcontract cost must be negotiated between the general  
33 contractor/construction manager and the selected firm when the  
34 construction documents and specifications are at least ninety percent  
35 complete. Final agreement on the maximum allowable subcontract cost is  
36 subject to the approval of the public body.

37 (9) If the work of the mechanical contractor or electrical  
38 contractor is completed for less than the maximum allowable subcontract

1 cost, any savings not otherwise negotiated as part of an incentive  
2 clause becomes part of the risk contingency included in the general  
3 contractor/construction manager's maximum allowable construction cost.  
4 If the work of the mechanical contractor or the electrical contractor  
5 is completed for more than the maximum allowable subcontract cost, the  
6 additional cost is the responsibility of that subcontractor. An  
7 independent audit, paid for by the public body, must be conducted upon  
8 completion of the contract to confirm the proper accrual of costs as  
9 outlined in the contract.

10 (10) A mechanical or electrical contractor selected under this  
11 section may perform work with its own forces. In the event it elects  
12 to subcontract some of its work, it must select a subcontractor  
13 utilizing the procedure outlined in RCW 39.10.380.

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