

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6597

Chapter 46, Laws of 2002

57th Legislature
2002 Regular Session

ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

EFFECTIVE DATE: 3/14/02

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

BRAD OWEN

President of the Senate

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

FRANK CHOPP

**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.

TONY M. COOK

Secretary

Approved March 14, 2002

FILED

March 14, 2002 - 11:29 a.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6597

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.

Passed the Senate February 18, 2002.

Passed the House March 5, 2002.

Approved by the Governor March 14, 2002.

Filed in Office of Secretary of State March 14, 2002.