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HOUSE BILL 1511

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Haigh, Armstrong, Wallace and Ruderman

Read first time 01/29/2003.                      Referred to Committee on State Government.

1            AN ACT Relating to public hospital district public works  
2 contracting; amending RCW 39.10.020, 39.10.051, 39.10.061, and  
3 39.10.902; and adding new sections to chapter 39.10 RCW.

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

5            **Sec. 1.** RCW 39.10.020 and 2001 c 328 s 1 are each amended to read  
6 as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Alternative public works contracting procedure" means the  
10 design-build and the general contractor/construction manager  
11 contracting procedures authorized in RCW 39.10.051 and 39.10.061,  
12 respectively.

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

1 fifteen million dollars per year; every public hospital district with  
2 total revenues greater than fifteen million dollars per year; every  
3 public utility district with revenues from energy sales greater than  
4 twenty-three million dollars per year; (~~and~~) those school districts  
5 proposing projects that are considered and approved by the school  
6 district project review board under RCW 39.10.115; and those public  
7 hospital districts proposing projects that are considered and approved  
8 by the public hospital district project review board under sections 4  
9 and 5 of this act.

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 **Sec. 2.** RCW 39.10.051 and 2002 c 46 s 1 are each amended to read  
13 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; every public  
25 hospital district with total revenues greater than fifteen million  
26 dollars per year; and every port district with total revenues greater  
27 than fifteen million dollars per year. The authority granted to port  
28 districts in this section is in addition to and does not affect  
29 existing contracting authority under RCW 53.08.120 and 53.08.130. For  
30 the purposes of this section, "design-build procedure" means a contract  
31 between a public body and another party in which the party agrees to  
32 both design and build the facility, portion of the facility, or other  
33 item specified in the contract.

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

1 (a) The construction activities or technologies to be used are  
2 highly specialized and a design-build approach is critical in  
3 developing the construction methodology or implementing the proposed  
4 technology; or

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

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

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

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

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

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

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

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

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

34 (d) A description of the process the public body will use to  
35 evaluate qualifications and proposals, including evaluation factors and  
36 the relative weight of factors. Evaluation factors shall include, but  
37 not be limited to: Proposal price; ability of professional personnel;  
38 past performance on similar projects; ability to meet time and budget

1 requirements; ability to provide a performance and payment bond for the  
2 project; recent, current, and projected work loads of the firm;  
3 location; and the concept of the proposal;

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

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

7 (g) Other information relevant to the project.

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

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

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

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

1       **Sec. 3.** RCW 39.10.061 and 2002 c 46 s 2 are each amended to read  
2 as follows:

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

17       (2) Except those school districts proposing projects that are  
18 considered and approved by the school district project review board and  
19 those public hospital districts proposing projects that are considered  
20 and approved by the public hospital district project review board,  
21 public bodies authorized under this section may utilize the general  
22 contractor/construction manager procedure for public works projects  
23 valued over ten million dollars where:

24       (a) Implementation of the project involves complex scheduling  
25 requirements; or

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

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

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

33       (4) Contracts for the services of a general contractor/construction  
34 manager under this section shall be awarded through a competitive  
35 process requiring the public solicitation of proposals for general  
36 contractor/construction manager services. The public solicitation of  
37 proposals shall include: A description of the project, including  
38 programmatic, performance, and technical requirements and

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

26 (5) The maximum allowable construction cost may be negotiated  
27 between the public body and the selected firm after the scope of the  
28 project is adequately determined to establish a guaranteed contract  
29 cost for which the general contractor/construction manager will provide  
30 a performance and payment bond. The guaranteed contract cost includes  
31 the fixed amount for the detailed specified general conditions work,  
32 the negotiated maximum allowable construction cost, the percent fee on  
33 the negotiated maximum allowable construction cost, and sales tax. If  
34 the public body is unable to negotiate a satisfactory maximum allowable  
35 construction cost with the firm selected that the public body  
36 determines to be fair, reasonable, and within the available funds,  
37 negotiations with that firm shall be formally terminated and the public  
38 body shall negotiate with the next highest scored firm and continue

1 until an agreement is reached or the process is terminated. If the  
2 maximum allowable construction cost varies more than fifteen percent  
3 from the bid estimated maximum allowable construction cost due to  
4 requested and approved changes in the scope by the public body, the  
5 percent fee shall be renegotiated.

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

16 (a) Adequate financial resources or the ability to secure such  
17 resources;

18 (b) History of successful completion of a contract of similar type  
19 and scope;

20 (c) Project management and project supervision personnel with  
21 experience on similar projects and the availability of such personnel  
22 for the project;

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

25 (e) Ability to accurately estimate the subcontract bid package  
26 scope of work;

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

29 (g) Eligibility to receive an award under applicable laws and  
30 regulations; and

31 (h) Ability to meet subcontract bid package scheduling  
32 requirements.

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

36 After publication of notice of intent to determine bidder  
37 eligibility, subcontractors requesting eligibility shall be provided  
38 the evaluation criteria and weighting to be used by the owner and

1 general contractor/construction manager to determine eligible  
2 subcontract bidders. After the owner and general  
3 contractor/construction manager determine eligible subcontract bidders,  
4 subcontractors requesting eligibility shall be provided the results and  
5 scoring of the subcontract bidder eligibility determination.

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

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

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

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

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

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

33 (8) A public body may include an incentive clause in any contract  
34 awarded under this section for savings of either time or cost or both  
35 from that originally negotiated. No incentives granted may exceed five  
36 percent of the maximum allowable construction cost. If the project is  
37 completed for less than the agreed upon maximum allowable construction  
38 cost, any savings not otherwise negotiated as part of an incentive



1 clause shall accrue to the public body. If the project is completed  
2 for more than the agreed upon maximum allowable construction cost,  
3 excepting increases due to any contract change orders approved by the  
4 public body, the additional cost shall be the responsibility of the  
5 general contractor/construction manager.

6 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.10 RCW  
7 to read as follows:

8 In addition to the projects authorized in RCW 39.10.061, public  
9 hospital districts may also use the general contractor/construction  
10 manager contracting procedure for the construction of public hospital  
11 district capital demonstration projects, subject to the following  
12 conditions:

13 (1) The project must receive approval from the public hospital  
14 district project review board established under section 5 of this act.

15 (2) The public hospital district project review board may not  
16 authorize more than ten demonstration projects valued over five million  
17 dollars, of which at least two demonstration projects must be valued  
18 between five and ten million dollars.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 39.10 RCW  
20 to read as follows:

21 (1) The public hospital district project review board is  
22 established to review public hospital district proposals submitted by  
23 public hospital districts to use alternative public works contracting  
24 procedures. The board shall select and approve qualified projects  
25 based upon an evaluation of the information submitted by the public  
26 hospital district under subsection (2) of this section. Any  
27 appointments for full terms or to fill a vacancy shall be made by the  
28 governor and shall include the following representatives, each having  
29 experience with public works or commercial construction: One  
30 representative from the department of health; one representative from  
31 the office of financial management; two representatives from the  
32 construction industry, one of whom works for a construction company  
33 with gross annual revenues of twenty million dollars or less; one  
34 representative from the specialty contracting industry; one  
35 representative from organized labor; one representative from the design  
36 industry; one representative from a public body previously authorized

1 under this chapter to use an alternative public works contracting  
2 procedure who has experience using such alternative contracting  
3 procedures; one representative from public hospital districts with  
4 total revenues greater than fifteen million dollars per year; and one  
5 representative from public hospital districts with total revenues equal  
6 to or less than fifteen million dollars per year. Each member shall be  
7 appointed for a term of three years, with the first three-year term  
8 commencing after July 27, 2003. Any member of the public hospital  
9 district project review board who is directly affiliated with any  
10 applicant before the board must recuse him or herself from  
11 consideration of the application.

12 (2) A public hospital district seeking to use alternative  
13 contracting procedures authorized under this chapter pursuant to  
14 section 4 of this act shall file an application with the public  
15 hospital district project review board. The application form shall  
16 require the district to submit a detailed statement of the proposed  
17 project, including the public hospital district's name; the current  
18 projected total budget for the project, including the estimated  
19 construction costs, costs for professional services, equipment and  
20 furnishing costs, off-site costs, contract administration costs, and  
21 other related project costs; the anticipated project design and  
22 construction schedule; a summary of the public hospital district's  
23 construction activity for the preceding six years; and an explanation  
24 of why the public hospital district believes the use of an alternative  
25 contracting procedure is in the public interest and why the public  
26 hospital district is qualified to use an alternative contracting  
27 procedure, including a summary of the relevant experience of the public  
28 hospital district's management team. The applicant shall also provide  
29 in a timely manner any other information concerning implementation of  
30 projects under this chapter requested by the public hospital district  
31 project review board to assist in its consideration.

32 (3) Any public hospital district whose application is approved by  
33 the public hospital district project review board shall comply with the  
34 public notification and review requirements in RCW 39.10.030.

35 (4) Any public hospital district whose application is approved by  
36 the public hospital district project review board shall not use as an  
37 evaluation factor whether a contractor submitting a bid for the

1 approved project has had prior general contractor/construction manager  
2 procedure experience.

3 **Sec. 6.** RCW 39.10.902 and 2002 c 46 s 4 are each amended to read  
4 as follows:

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

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

8 (2) RCW 39.10.020 and 2003 c ... s 1 (section 1 of this act), 2001  
9 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;

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

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

12 (5) RCW 39.10.051 and 2003 c ... s 2 (section 2 of this act), 2002  
13 c 46 s 1, & 2001 c 328 s 2;

14 (6) RCW 39.10.061 and 2003 c ... s 3 (section 3 of this act), 2002  
15 c 46 s 2, & 2001 c 328 s 3;

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

17 (8) RCW 39.10.067 and 2002 c 46 s 3 & 2000 c 209 s 3;

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

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

20 (11) RCW 39.10.090 and 1994 c 132 s 9;

21 (12) RCW 39.10.100 and 1994 c 132 s 10;

22 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;

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

24 (15) RCW 39.10.901 and 1994 c 132 s 14;

25 (16) RCW 39.10.--- and 2003 c ... s 4 (section 4 of this act); and

26 (17) RCW 39.10.--- and 2003 c ... s 5 (section 5 of this act).

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