
SUBSTITUTE HOUSE BILL 2056

State of Washington

58th Legislature

2003 Regular Session

By House Committee on State Government (originally sponsored by Representatives Haigh, Armstrong and Miloscia)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to the fairness of public works bidding; amending
2 RCW 39.10.061; and adding new sections to chapter 39.04 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW
5 to read as follows:

6 When a municipality receives a written protest from a bidder for a
7 public works project which is the subject of competitive bids, the
8 municipality shall not execute a contract for the project with anyone
9 other than the protesting bidder, without first providing at least five
10 days' written notice of the municipality's intent to execute a contract
11 for the project. Intermediate Saturdays, Sundays, and legal holidays
12 are not counted in determining the minimum five-day notice period.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
14 to read as follows:

15 A low bidder on a public works project who claims error and fails
16 to enter into a contract is prohibited from bidding on the same project
17 if a second or subsequent call for bids is made for the project.

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,
19 public bodies authorized under this section may utilize the general
20 contractor/construction manager procedure for public works projects
21 valued over ten million dollars where:

22 (a) Implementation of the project involves complex scheduling
23 requirements; or

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

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

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

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

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

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

1 from the bid estimated maximum allowable construction cost due to
2 requested and approved changes in the scope by the public body, the
3 percent fee shall be renegotiated.

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

14 (a) Adequate financial resources or the ability to secure such
15 resources;

16 (b) History of successful completion of a contract of similar type
17 and scope;

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

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

23 (e) Ability to accurately estimate the subcontract bid package
24 scope of work;

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

27 (g) Eligibility to receive an award under applicable laws and
28 regulations; and

29 (h) Ability to meet subcontract bid package scheduling
30 requirements.

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

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

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

4 Subcontract bid packages shall be awarded to the responsible bidder
5 submitting the low responsive bid. The requirements of RCW 39.30.060
6 apply to each subcontract bid package. All subcontractors who bid work
7 over three hundred thousand dollars shall post a bid bond and all
8 subcontractors who are awarded a contract over three hundred thousand
9 dollars shall provide a performance and payment bond for their contract
10 amount. All other subcontractors shall provide a performance and
11 payment bond if required by the general contractor/construction
12 manager. If a general contractor/construction manager receives a
13 written protest from a subcontractor bidder, the general
14 contractor/construction manager shall not execute a contract for the
15 subcontract bid package with anyone other than the protesting bidder
16 without first providing at least five days' written notice of the
17 general contractor/construction manager's intent to execute a contract
18 for the subcontract bid package. Intermediate Saturdays, Sundays, and
19 legal holidays are not counted in determining the minimum five-day
20 notice period. A low bidder who claims error and fails to enter into
21 a contract is prohibited from bidding on the same project if a second
22 or subsequent call for bids is made for the project. Except as
23 provided for under subsection (7) of this section, bidding on
24 subcontract work by the general contractor/construction manager or its
25 subsidiaries is prohibited. The general contractor/construction
26 manager may negotiate with the low-responsive bidder in accordance with
27 RCW 39.10.080 or, if 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.

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