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**SUBSTITUTE HOUSE BILL 3124**

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**State of Washington**                      **58th Legislature**                      **2004 Regular Session**

**By** House Committee on State Government (originally sponsored by Representatives Miloscia and Jarrett)

READ FIRST TIME 02/06/04.

1            AN ACT Relating to allowing a general contractor/construction  
2 manager to perform more than thirty percent of a project when it  
3 involves tunneling; and reenacting and amending RCW 39.10.061 and  
4 39.10.902.

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

6            **Sec. 1.** RCW 39.10.061 and 2003 c 352 s 3 and 2003 c 300 s 5 are  
7 each reenacted and amended to read as follows:

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

1 alternative construction options for cost savings, and sequencing of  
2 work, and to act as the construction manager and general contractor  
3 during the construction phase.

4 (2) Except those school districts proposing projects that are  
5 considered and approved by the school district project review board and  
6 those public hospital districts proposing projects that are considered  
7 and approved by the public hospital district project review board,  
8 public bodies authorized under this section may utilize the general  
9 contractor/construction manager procedure for public works projects  
10 valued over ten million dollars where:

11 (a) Implementation of the project involves complex scheduling  
12 requirements; or

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

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

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

20 (4) Contracts for the services of a general contractor/construction  
21 manager under this section shall be awarded through a competitive  
22 process requiring the public solicitation of proposals for general  
23 contractor/construction manager services. The public solicitation of  
24 proposals shall include: A description of the project, including  
25 programmatic, performance, and technical requirements and  
26 specifications when available; the reasons for using the general  
27 contractor/construction manager procedure; a description of the  
28 qualifications to be required of the proposer, including submission of  
29 the proposer's accident prevention program; a description of the  
30 process the public body will use to evaluate qualifications and  
31 proposals, including evaluation factors and the relative weight of  
32 factors; the form of the contract to be awarded; the estimated maximum  
33 allowable construction cost; and the bid instructions to be used by the  
34 general contractor/construction manager finalists. Evaluation factors  
35 shall include, but not be limited to: Ability of professional  
36 personnel, past performance in negotiated and complex projects, and  
37 ability to meet time and budget requirements; the scope of work the  
38 general contractor/construction manager proposes to self-perform and

1 its ability to perform it; location; recent, current, and projected  
2 work loads of the firm; and the concept of their proposal. A public  
3 body shall establish a committee to evaluate the proposals. After the  
4 committee has selected the most qualified finalists, these finalists  
5 shall submit final proposals, including sealed bids for the percent  
6 fee, which is the percentage amount to be earned by the general  
7 contractor/construction manager as overhead and profit, on the  
8 estimated maximum allowable construction cost and the fixed amount for  
9 the detailed specified general conditions work. The public body shall  
10 select the firm submitting the highest scored final proposal using the  
11 evaluation factors and the relative weight of factors published in the  
12 public solicitation of proposals.

13 (5) The maximum allowable construction cost may be negotiated  
14 between the public body and the selected firm after the scope of the  
15 project is adequately determined to establish a guaranteed contract  
16 cost for which the general contractor/construction manager will provide  
17 a performance and payment bond. The guaranteed contract cost includes  
18 the fixed amount for the detailed specified general conditions work,  
19 the negotiated maximum allowable construction cost, the percent fee on  
20 the negotiated maximum allowable construction cost, and sales tax. If  
21 the public body is unable to negotiate a satisfactory maximum allowable  
22 construction cost with the firm selected that the public body  
23 determines to be fair, reasonable, and within the available funds,  
24 negotiations with that firm shall be formally terminated and the public  
25 body shall negotiate with the next highest scored firm and continue  
26 until an agreement is reached or the process is terminated. If the  
27 maximum allowable construction cost varies more than fifteen percent  
28 from the bid estimated maximum allowable construction cost due to  
29 requested and approved changes in the scope by the public body, the  
30 percent fee shall be renegotiated.

31 (6) All subcontract work shall be competitively bid with public bid  
32 openings. When critical to the successful completion of a  
33 subcontractor bid package and after publication of notice of intent to  
34 determine bidder eligibility in a legal newspaper of general  
35 circulation published in or as near as possible to that part of the  
36 county in which the public work will be done at least twenty days  
37 before requesting qualifications from interested subcontract bidders,

1 the owner and general contractor/construction manager may determine  
2 subcontractor bidding eligibility using the following evaluation  
3 criteria:

4 (a) Adequate financial resources or the ability to secure such  
5 resources;

6 (b) History of successful completion of a contract of similar type  
7 and scope;

8 (c) Project management and project supervision personnel with  
9 experience on similar projects and the availability of such personnel  
10 for the project;

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

13 (e) Ability to accurately estimate the subcontract bid package  
14 scope of work;

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

17 (g) Eligibility to receive an award under applicable laws and  
18 regulations; and

19 (h) Ability to meet subcontract bid package scheduling  
20 requirements.

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

24 After publication of notice of intent to determine bidder  
25 eligibility, subcontractors requesting eligibility shall be provided  
26 the evaluation criteria and weighting to be used by the owner and  
27 general contractor/construction manager to determine eligible  
28 subcontract bidders. After the owner and general  
29 contractor/construction manager determine eligible subcontract bidders,  
30 subcontractors requesting eligibility shall be provided the results and  
31 scoring of the subcontract bidder eligibility determination.

32 Subcontract bid packages shall be awarded to the responsible bidder  
33 submitting the low responsive bid. The requirements of RCW 39.30.060  
34 apply to each subcontract bid package. All subcontractors who bid work  
35 over three hundred thousand dollars shall post a bid bond and all  
36 subcontractors who are awarded a contract over three hundred thousand  
37 dollars shall provide a performance and payment bond for their contract  
38 amount. All other subcontractors shall provide a performance and

1 payment bond if required by the general contractor/construction  
2 manager. If a general contractor/construction manager receives a  
3 written protest from a subcontractor bidder, the general  
4 contractor/construction manager shall not execute a contract for the  
5 subcontract bid package with anyone other than the protesting bidder  
6 without first providing at least two full business days' written notice  
7 of the general contractor/construction manager's intent to execute a  
8 contract for the subcontract bid package; provided that the protesting  
9 bidder submits notice in writing of its protest no later than two full  
10 business days following bid opening. Intermediate Saturdays, Sundays,  
11 and legal holidays are not counted. A low bidder who claims error and  
12 fails to enter into a contract is prohibited from bidding on the same  
13 project if a second or subsequent call for bids is made for the  
14 project. Except as provided for under subsection (7) of this section,  
15 bidding on subcontract work by the general contractor/construction  
16 manager or its subsidiaries is prohibited. The general  
17 contractor/construction manager may negotiate with the low-responsive  
18 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
19 negotiations, rebid.

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

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

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

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

28 ~~((In no event may))~~ The value of subcontract work performed by the  
29 general contractor/construction manager shall not exceed thirty percent  
30 of the negotiated maximum allowable construction cost unless the  
31 subcontract is for constructing tunnels with a contract value greater  
32 than seventy-five million dollars and the public body is a city or  
33 county with a population greater than one million.

34 (8) A public body may include an incentive clause in any contract  
35 awarded under this section for savings of either time or cost or both  
36 from that originally negotiated. No incentives granted may exceed five  
37 percent of the maximum allowable construction cost. If the project is  
38 completed for less than the agreed upon maximum allowable construction

1 cost, any savings not otherwise negotiated as part of an incentive  
2 clause shall accrue to the public body. If the project is completed  
3 for more than the agreed upon maximum allowable construction cost,  
4 excepting increases due to any contract change orders approved by the  
5 public body, the additional cost shall be the responsibility of the  
6 general contractor/construction manager.

7 (9) The authority provided to the state ferry system in this  
8 section is limited to projects concerning construction, renovation,  
9 preservation, demolition, and reconstruction of ferry terminals and  
10 associated land-based facilities.

11 **Sec. 2.** RCW 39.10.902 and 2003 c 301 s 8 and 2003 c 300 s 8 are  
12 each reenacted and amended to read as follows:

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

- 15 (1) RCW 39.10.010 and 1994 c 132 s 1;
- 16 (2) RCW 39.10.020 and 2003 c 301 s 2, 2003 c 300 s 3, 2001 c 328 s  
17 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;
- 18 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;
- 19 (4) RCW 39.10.040 and 1994 c 132 s 4;
- 20 (5) RCW 39.10.051 and 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328  
21 s 2;
- 22 (6) RCW 39.10.061 and 2004 c . . . s 1 (section 1 of this act),  
23 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328 s 3;
- 24 (7) RCW 39.10.065 and 1997 c 376 s 5;
- 25 (8) RCW 39.10.067 and 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209  
26 s 3;
- 27 (9) RCW 39.10.070 and 1994 c 132 s 7;
- 28 (10) RCW 39.10.080 and 1994 c 132 s 8;
- 29 (11) RCW 39.10.090 and 1994 c 132 s 9;
- 30 (12) RCW 39.10.100 and 1994 c 132 s 10;
- 31 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;
- 32 (14) RCW 39.10.900 and 1994 c 132 s 13;
- 33 (15) RCW 39.10.901 and 1994 c 132 s 14;
- 34 (16) RCW 39.10.068 and 2003 c 300 s 6;
- 35 (17) RCW 39.10.117 and 2003 c 300 s 7; and

1 (18) RCW 39.10.130 and 2003 c 301 s 1.

--- **END** ---