

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1466

Chapter 222, Laws of 2013

63rd Legislature
2013 Regular Session

PUBLIC WORKS--ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURE

EFFECTIVE DATE: 06/30/13 - Except for section 24, which is contingent.

Passed by the House April 23, 2013
Yeas 81 Nays 16

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 16, 2013
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved May 14, 2013, 11:11 a.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1466** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 14, 2013

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1466

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Capital Budget (originally sponsored by Representatives Haigh, Warnick, Dunshee, Fey, Kristiansen, and Reykdal)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to revisions to alternative public works
2 contracting procedures; amending RCW 39.10.220, 39.10.230, 39.10.240,
3 39.10.250, 39.10.260, 39.10.270, 39.10.280, 39.10.300, 39.10.320,
4 39.10.330, 39.10.340, 39.10.360, 39.10.380, 39.10.385, 39.10.390,
5 39.10.400, 39.10.420, 39.10.440, 39.10.490, 43.131.407, and 43.131.408;
6 reenacting and amending RCW 39.10.210; adding a new section to chapter
7 43.131 RCW; repealing RCW 39.10.500 and 39.10.510; providing an
8 effective date; providing a contingent effective date; providing an
9 expiration date; and declaring an emergency.

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

11 **Sec. 1.** RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014 are each
12 reenacted and amended to read as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Alternative public works contracting procedure" means the
16 design-build, general contractor/construction manager, and job order
17 contracting procedures authorized in RCW 39.10.300, 39.10.340, and
18 39.10.420, respectively.

19 (2) "Board" means the capital projects advisory review board.

1 (3) "Certified public body" means a public body certified to use
2 design-build or general contractor/construction manager contracting
3 procedures, or both, under RCW 39.10.270.

4 (4) "Committee," unless otherwise noted, means the project review
5 committee.

6 (5) "Design-build procedure" means a contract between a public body
7 and another party in which the party agrees to both design and build
8 the facility, portion of the facility, or other item specified in the
9 contract.

10 (6) "Disadvantaged business enterprise" means any business entity
11 certified with the office of minority and women's business enterprises
12 under chapter 39.19 RCW.

13 (7) "General contractor/construction manager" means a firm with
14 which a public body has selected (~~(and negotiated a maximum allowable~~
15 ~~construction cost))~~ to provide services during the design phase and
16 negotiated a maximum allowable construction cost to act as construction
17 manager and general contractor during the construction phase.

18 ~~((7))~~ (8) "Job order contract" means a contract in which the
19 contractor agrees to a fixed period, indefinite quantity delivery order
20 contract which provides for the use of negotiated, definitive work
21 orders for public works as defined in RCW 39.04.010.

22 ~~((8))~~ (9) "Job order contractor" means a registered or licensed
23 contractor awarded a job order contract.

24 ~~((9))~~ (10) "Maximum allowable construction cost" means the
25 maximum cost of the work to construct the project including a
26 percentage for risk contingency, negotiated support services, and
27 approved change orders.

28 ~~((10))~~ (11) "Negotiated support services" means items a general
29 contractor would normally manage or perform on a construction project
30 including, but not limited to surveying, hoisting, safety enforcement,
31 provision of toilet facilities, temporary heat, cleanup, and trash
32 removal, and that are negotiated as part of the maximum allowable
33 construction cost.

34 ~~((11))~~ (12) "Percent fee" means the percentage amount to be
35 earned by the general contractor/construction manager as overhead and
36 profit.

37 ~~((12))~~ (13) "Public body" means any general or special purpose
38 government in the state of Washington, including but not limited to

1 state agencies, institutions of higher education, counties, cities,
2 towns, ports, school districts, and special purpose districts(~~(~~
3 ~~provided that for the 2009-2011 fiscal biennium, the definition of~~
4 ~~public body for this chapter does not include public bodies funded in~~
5 ~~section 1012, chapter 36, Laws of 2010 1st sp. sess. if alternative~~
6 ~~requirements or procedures of federal law or regulations are~~
7 ~~authorized)).~~

8 ~~((13))~~ (14) "Public works project" means any work for a public
9 body within the definition of "public work" in RCW 39.04.010.

10 ~~((14))~~ (15) "Small business entity" means a small business as
11 defined in RCW 39.26.010.

12 (16) "Total contract cost" means the fixed amount for the detailed
13 specified general conditions work, the negotiated maximum allowable
14 construction cost, and the percent fee on the negotiated maximum
15 allowable construction cost.

16 ~~((15))~~ (17) "Total project cost" means the cost of the project
17 less financing and land acquisition costs.

18 ~~((16))~~ (18) "Unit price book" means a book containing specific
19 prices, based on generally accepted industry standards and information,
20 where available, for various items of work to be performed by the job
21 order contractor. The prices may include: All the costs of materials;
22 labor; equipment; overhead, including bonding costs; and profit for
23 performing the items of work. The unit prices for labor must be at the
24 rates in effect at the time the individual work order is issued.

25 ~~((17))~~ (19) "Work order" means an order issued for a definite
26 scope of work to be performed pursuant to a job order contract.

27 **Sec. 2.** RCW 39.10.220 and 2007 c 494 s 102 are each amended to
28 read as follows:

29 (1) The board is created in the department of ~~((general~~
30 ~~administration))~~ enterprise services to provide an evaluation of public
31 capital projects construction processes, including the impact of
32 contracting methods on project outcomes, and to advise the legislature
33 on policies related to public works delivery methods.

34 (2) Members of the board are appointed as follows:

35 (a) ~~((The board shall consist of the following members appointed by~~
36 ~~the governor.))~~ Two representatives from construction general
37 contracting; one representative from the architectural profession; one

1 representative from the engineering profession; two representatives
2 from construction specialty subcontracting; two representatives from
3 construction trades labor organizations; one representative from the
4 office of minority and women's business enterprises; one representative
5 from a higher education institution; one representative from the
6 department of ~~((general-administration))~~ enterprise services; one
7 individual representing Washington cities; two representatives from
8 private industry; and one representative of a domestic insurer
9 authorized to write surety bonds for contractors in Washington state,
10 each appointed by the governor. All appointed members must be
11 knowledgeable about public works contracting procedures. If a vacancy
12 occurs, the governor shall fill the vacancy for the unexpired term;

13 ~~((Three members shall be positions representing different local~~
14 ~~public owners, selected by the association of Washington cities,))~~ One
15 member representing counties, selected by the Washington state
16 association of counties ~~((, and the Washington public ports association,~~
17 ~~respectively.))~~;

18 ~~((One member shall be a representative from the public hospital~~
19 ~~districts, selected by the association of Washington public hospital~~
20 ~~districts.~~

21 ~~(d))~~ One member representing public ports, selected by the
22 Washington public ports association;

23 (d) One member representing public hospital districts, selected by
24 the association of Washington public hospital districts;

25 (e) One member ~~((shall be a representative from))~~ representing
26 school districts, selected by the Washington state school directors'
27 association ~~((-))~~;

28 ~~((e) The board shall include))~~ (f) Two members of the house of
29 representatives, one from each major caucus, appointed by the speaker
30 of the house of representatives, and two members of the senate, one
31 from each major caucus, appointed by the president of the senate.
32 Legislative members are nonvoting.

33 (3) Members selected under subsection (2)(a) of this section shall
34 serve for terms of four years, with the terms expiring on June 30th on
35 the fourth year of the term.

36 (4) The board chair is selected from among the appointed members by
37 the majority vote of the voting members.

1 (5) Legislative members of the board shall be reimbursed for travel
2 expenses in accordance with RCW 44.04.120. Nonlegislative members of
3 the board, project review committee members, and (~~subcommittee~~)
4 committee chairs shall be reimbursed for travel expenses as provided in
5 RCW 43.03.050 and 43.03.060.

6 (~~If a vacancy occurs of the appointive members of the board,~~
7 ~~the governor shall fill the vacancy for the unexpired term.~~) Vacancies
8 are filled in the same manner as appointed. Members of the board may
9 be removed for malfeasance or misfeasance in office, upon specific
10 written charges by the governor, under chapter 34.05 RCW.

11 (7) The board shall meet as often as necessary.

12 (8) Board members are expected to consistently attend board
13 meetings. The chair of the board may ask the governor to remove any
14 member who misses more than two meetings in any calendar year without
15 cause.

16 (9) The department of (~~general administration~~) enterprise
17 services shall provide staff support as may be required for the proper
18 discharge of the function of the board.

19 (10) The board may establish (~~subcommittees~~) committees as it
20 desires and may invite nonmembers of the board to serve as committee
21 members.

22 (11) The board shall encourage participation from persons and
23 entities not represented on the board.

24 **Sec. 3.** RCW 39.10.230 and 2010 1st sp.s. c 21 s 3 are each amended
25 to read as follows:

26 The board has the following powers and duties:

27 (1) Develop and recommend to the legislature policies to further
28 enhance the quality, efficiency, and accountability of capital
29 construction projects through the use of traditional and alternative
30 delivery methods in Washington, and make recommendations regarding
31 expansion, continuation, elimination, or modification of the
32 alternative public works contracting methods;

33 (2) Evaluate the use of existing contracting procedures and the
34 potential future use of other alternative contracting procedures
35 including competitive negotiation contracts;

36 (3) Submit recommendations to the appropriate committees of the

1 legislature evaluating alternative contracting procedures that are not
2 authorized under this chapter;

3 (4) Appoint members of ~~((the))~~ committees; and

4 (5) Develop and administer questionnaires designed to provide
5 quantitative and qualitative data on alternative public works
6 contracting procedures on which evaluations are based.

7 The capital projects advisory review board is directed to review
8 current statutes regarding life-cycle cost analysis and energy
9 efficiency as related to the design-build procurement method performed
10 under chapter 39.10 RCW. Capital projects advisory review board shall
11 report to the appropriate committees of the legislature by December 31,
12 2013, with recommendations for statutory changes that promote energy
13 efficiency and reduce the total cost to construct, operate and maintain
14 public buildings. Recommendation must include provisions for
15 postoccupancy validation of estimated energy efficiency measures, and
16 operating and maintenance cost estimates. Life-cycle estimates of
17 energy use must include estimates of energy consumptions for materials
18 used in construction.

19 **Sec. 4.** RCW 39.10.240 and 2007 c 494 s 104 are each amended to
20 read as follows:

21 (1) The board shall establish a project review committee to review
22 and approve public works projects using the design-build and general
23 contractor/construction manager contracting procedures authorized in
24 RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in
25 RCW 39.10.270.

26 (2) The board shall, by a majority vote of the board, appoint
27 persons to the committee who are knowledgeable in the use of the
28 design-build and general contractor/construction manager contracting
29 procedures. Appointments must represent a balance among the industries
30 and public owners on the board listed in RCW 39.10.220.

31 ~~((When making initial appointments to the committee, the board~~
32 ~~shall consider for appointment former members of the school district~~
33 ~~project review board and the public hospital district project review~~
34 ~~board.~~

35 ~~(b))~~ Each member of the committee shall be appointed for a term of
36 three years. However, for initial appointments, the board shall
37 stagger the appointment of committee members so that the first members

1 are appointed to serve terms of one, two, or three years from the date
2 of appointment. Appointees may be reappointed to serve more than one
3 term.

4 ~~((e))~~ (b) The committee shall, by a majority vote, elect a chair
5 and vice chair for the committee.

6 ~~((d))~~ (c) The committee chair may select a person or persons on
7 a temporary basis as a nonvoting member if project specific expertise
8 is needed to assist in a review.

9 (3) The chair of the committee, in consultation with the vice
10 chair, may appoint one or more panels of at least six committee members
11 to carry out the duties of the committee. Each panel shall have
12 balanced representation of the private and public sector
13 representatives serving on the committee.

14 (4) Any member of the committee directly or indirectly affiliated
15 with a submittal before the committee must recuse himself or herself
16 from the committee consideration of that submittal.

17 (5) Any person who sits on the committee or panel is not precluded
18 from subsequently bidding on or participating in projects that have
19 been reviewed by the committee.

20 (6) The committee shall meet as often as necessary to ensure that
21 certification and approvals are completed in a timely manner.

22 **Sec. 5.** RCW 39.10.250 and 2009 c 75 s 2 are each amended to read
23 as follows:

24 The committee shall:

25 (1) Certify, or ~~((recertify))~~ renew certification for, public
26 bodies ~~((for a period of three years))~~ to use ~~((the))~~ design-build or
27 general contractor/construction manager contracting procedures, or
28 both~~((, contracting procedures for projects with a total project cost~~
29 ~~of ten million dollars or more))~~;

30 (2) Review and approve the use of the design-build or general
31 contractor/construction manager contracting procedures on a project by
32 project basis for public bodies that are not certified under RCW
33 39.10.270;

34 (3) ~~((Review — and — approve — the — use — of — the — general~~
35 ~~contractor/construction — manager — contracting — procedure — by — certified~~
36 ~~public bodies for projects with a total project cost under ten million~~
37 ~~dollars;~~

1 ~~(4)~~) Review and approve not more than ~~(ten)~~ fifteen projects
2 using the design-build contracting procedure by ~~(certified-and)~~
3 noncertified public bodies for projects that have a total project cost
4 between two million and ten million dollars. Projects must meet the
5 criteria in RCW 39.10.300(1). Where possible, the committee shall
6 approve projects among multiple public bodies. ~~(In June 2010)~~ At
7 least annually, the committee shall report to the board regarding the
8 committee's review procedure of these projects and its recommendations
9 for further use; and

10 ~~(5)~~) (4) Review and approve not more than two design-build
11 demonstration projects that include procurement of operations and
12 maintenance services for a period longer than three years.

13 **Sec. 6.** RCW 39.10.260 and 2007 c 494 s 106 are each amended to
14 read as follows:

15 (1) The committee shall hold regular public meetings to carry out
16 its duties as described in RCW 39.10.250. Committee meetings are
17 subject to chapter 42.30 RCW.

18 (2) The committee shall publish notice of its public meetings at
19 least twenty days before the meeting in a legal newspaper circulated in
20 the area where the public body seeking certification is located, or
21 where each of the proposed projects under consideration will be
22 constructed. All meeting notices must be posted on the committee's web
23 site.

24 (3) The meeting notice must identify the public body that is
25 seeking certification or project approval, and where applicable, a
26 description of projects to be considered at the meeting. The notice
27 must indicate when, where, and how the public may present comments
28 regarding the committee's certification of a public body or approval of
29 a project. Information submitted by a public body to be reviewed at
30 the meeting shall be available on the committee's web site at the time
31 the notice is published.

32 (4) The committee must allow for public comment on the
33 appropriateness of certification of a public body or on the
34 appropriateness of the use of the proposed contracting procedure and
35 the qualifications of a public body to use the contracting procedure.
36 The committee shall receive and record both written and oral comments
37 at the public ~~(hearing)~~ meeting.

1 **Sec. 7.** RCW 39.10.270 and 2009 c 75 s 3 are each amended to read
2 as follows:

3 (1) A public body may apply for certification to use the design-
4 build or general contractor/construction manager contracting procedure,
5 or both. Once certified, a public body may use the contracting
6 procedure for which it is certified on individual projects (~~(with a~~
7 ~~total project cost over ten million dollars))~~) without seeking committee
8 approval(~~(. The certification period is))~~) for a period of three years.
9 Public bodies certified to use the design-build procedure are limited
10 to no more than five projects with a total project cost between two and
11 ten million dollars during the certification period. A public body
12 seeking certification must submit to the committee an application in a
13 format and manner as prescribed by the committee. The application must
14 include a description of the public body's qualifications, its capital
15 plan during the certification period, and its intended use of
16 alternative contracting procedures.

17 (2) A public body seeking certification for the design-build
18 procedure must demonstrate successful management of at least one
19 design-build project within the previous five years. A public body
20 seeking certification for the general contractor/construction manager
21 procedure must demonstrate successful management of at least one
22 general contractor/construction manager project within the previous
23 five years.

24 (3) To certify a public body, the committee shall determine that
25 the public body:

26 (a) Has the necessary experience and qualifications to determine
27 which projects are appropriate for using alternative contracting
28 procedures;

29 (b) Has the necessary experience and qualifications to carry out
30 the alternative contracting procedure including, but not limited to:

31 (i) Project delivery knowledge and experience; (ii) personnel with
32 appropriate construction experience; (iii) a management plan and
33 rationale for its alternative public works projects; (iv) demonstrated
34 success in managing public works projects; (v) the ability to properly
35 manage its capital facilities plan including, but not limited to,
36 appropriate project planning and budgeting experience; and (vi) the
37 ability to meet requirements of this chapter; and

1 (c) Has resolved any audit findings on previous public works
2 projects in a manner satisfactory to the committee.

3 (4) The committee shall, if practicable, make its determination at
4 the public meeting during which an application for certification is
5 reviewed. Public comments must be considered before a determination is
6 made. Within ten business days of the public meeting, the committee
7 shall provide a written determination to the public body, and make its
8 determination available to the public on the committee's web site.

9 (5) The committee may revoke any public body's certification upon
10 a finding, after a public hearing, that its use of design-build or
11 general contractor/construction manager contracting procedures no
12 longer serves the public interest.

13 (6) The committee may renew the certification of a public body for
14 ~~((one))~~ additional three-year periods. The public body must submit an
15 application for recertification at least three months before the
16 initial certification expires. The application shall include updated
17 information on the public body's ~~((capital plan for the next three
18 years, its intended use of the procedures))~~ experience and current
19 staffing with the procedure it is applying to renew, and any other
20 information requested in advance by the committee. The committee must
21 review the application for recertification at a meeting held before
22 expiration of the applicant's initial certification period. A public
23 body must reapply for certification under the process described in
24 subsection (1) of this section once the period of recertification
25 expires.

26 (7) Certified public bodies must submit project data information as
27 required in RCW 39.10.320 and 39.10.350.

28 **Sec. 8.** RCW 39.10.280 and 2007 c 494 s 108 are each amended to
29 read as follows:

30 (1) A public body not certified under RCW 39.10.270 must apply for
31 approval from the committee to use the design-build or general
32 contractor/construction manager contracting procedure on a project. A
33 public body seeking approval must submit to the committee an
34 application in a format and manner as prescribed by the committee. The
35 application must include a description of the public body's
36 qualifications, a description of the project, and its intended use of
37 alternative contracting procedures.

1 (2) To approve a proposed project, the committee shall determine
2 that:

3 (a) The alternative contracting procedure will provide a
4 substantial fiscal benefit or the use of the traditional method of
5 awarding contracts in lump sum to the low responsive bidder is not
6 practical for meeting desired quality standards or delivery schedules;

7 (b) The proposed project meets the requirements for using the
8 alternative contracting procedure as described in RCW 39.10.300 or
9 39.10.340;

10 (c) The public body has the necessary experience or qualified team
11 to carry out the alternative contracting procedure including, but not
12 limited to: (i) Project delivery knowledge and experience; (ii)
13 sufficient personnel with construction experience to administer the
14 contract; (iii) a written management plan that shows clear and logical
15 lines of authority; (iv) the necessary and appropriate funding and time
16 to properly manage the job and complete the project; (v) continuity of
17 project management team, including personnel with experience managing
18 projects of similar scope and size to the project being proposed; and
19 (vi) necessary and appropriate construction budget;

20 (d) For design-build projects, ~~((construction))~~ public body
21 ~~personnel ((independent of the design-build team))~~ or consultants are
22 knowledgeable in the design-build process and are able to oversee and
23 administer the contract; and

24 (e) The public body has resolved any audit findings related to
25 previous public works projects in a manner satisfactory to the
26 committee.

27 (3) The committee shall, if practicable, make its determination at
28 the public meeting during which a submittal is reviewed. Public
29 comments must be considered before a determination is made.

30 (4) Within ten business days after the public meeting, the
31 committee shall provide a written determination to the public body, and
32 make its determination available to the public on the committee's web
33 site. If the committee fails to make a written determination within
34 ten business days of the public meeting, the request of the public body
35 to use the alternative contracting procedure on the requested project
36 shall be deemed approved.

37 (5) ~~((The requirements of subsection (1) of this section also apply~~

1 to — certified — public — bodies — seeking — to — use — the — general
2 contractor/construction manager contracting procedure on projects with
3 a total project cost of less than ten million dollars.

4 (6)) Failure of the committee to meet within sixty calendar days
5 of a public body's application to use an alternative contracting
6 procedure on a project shall be deemed an approval of the application.

7 **Sec. 9.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read
8 as follows:

9 (1) Subject to the ((process)) requirements in RCW 39.10.250,
10 39.10.270, or 39.10.280, public bodies may utilize the design-build
11 procedure for public works projects in which the total project cost is
12 over ten million dollars and where:

13 (a) The ((design and construction activities, technologies, or
14 schedule to be used are highly specialized and a design-build approach
15 is critical in developing the construction methodology or implementing
16 the — proposed — technology)) construction activities are highly
17 specialized and a design-build approach is critical in developing the
18 construction methodology; or

19 (b) The ((project design is repetitive in nature and is an
20 incidental part of the installation or construction)) projects selected
21 provide opportunity for greater innovation or efficiencies between the
22 designer and the builder; or

23 (c) ((Regular interaction with and feedback from facilities users
24 and operators during design is not critical to an effective facility
25 design.)) Significant savings in project delivery time would be
26 realized.

27 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
28 bodies may use the design-build procedure for parking garages,
29 regardless of cost.

30 (3) The design-build procedure may be used for the construction or
31 erection of portable facilities as defined in WAC 392-343-018,
32 preengineered metal buildings, or not more than ten prefabricated
33 modular buildings per installation site, regardless of cost and is not
34 subject to approval by the committee.

35 (4) Except for utility projects and approved demonstration
36 projects, the design-build procedure may not be used to procure
37 operations and maintenance services for a period longer than three

1 years. State agency projects that propose to use the design-build-
2 operate-maintain procedure shall submit cost estimates for the
3 construction portion of the project consistent with the office of
4 financial management's capital budget requirements. Operations and
5 maintenance costs must be shown separately and must not be included as
6 part of the capital budget request.

7 (5) Subject to the process in RCW 39.10.280, public bodies may use
8 the design-build procedure for public works projects in which the total
9 project cost is between two million and ten million dollars and that
10 meet one of the criteria in subsection (1)(a), (b), or (c) of this
11 section.

12 (6) Subject to the process in RCW 39.10.280, a public body may seek
13 committee approval for a design-build demonstration project that
14 includes procurement of operations and maintenance services for a
15 period longer than three years.

16 **Sec. 10.** RCW 39.10.320 and 2007 c 494 s 203 are each amended to
17 read as follows:

18 (1) A public body utilizing the design-build contracting procedure
19 shall provide (~~for~~):

20 (a) Reasonable budget contingencies totaling not less than five
21 percent of the anticipated contract value;

22 (b) (~~Employment of~~) Staff or consultants with expertise and prior
23 experience in the management of comparable projects;

24 (c) Contract documents that include alternative dispute resolution
25 procedures to be attempted prior to the initiation of litigation;

26 (d) Submission of project information, as required by the board;
27 and

28 (e) Contract documents that require the contractor, subcontractors,
29 and designers to submit project information required by the board.

30 (2) A public body utilizing the design-build contracting procedure
31 may provide incentive payments to contractors for early completion,
32 cost savings, or other goals if such payments are identified in the
33 request for proposals.

34 **Sec. 11.** RCW 39.10.330 and 2009 c 75 s 5 are each amended to read
35 as follows:

36 (1) Contracts for design-build services shall be awarded through a

1 competitive process using public solicitation of proposals for design-
2 build services. The public body shall publish at least once in a legal
3 newspaper of general circulation published in, or as near as possible
4 to, that part of the county in which the public work will be done, a
5 notice of its request for qualifications from proposers for design-
6 build services, and the availability and location of the request for
7 proposal documents. The request for qualifications documents shall
8 include:

9 (a) A general description of the project that provides sufficient
10 information for proposers to submit qualifications;

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

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

15 (d) A description of the process the public body will use to
16 evaluate qualifications and finalists' proposals, including evaluation
17 factors and the relative weight of factors and any specific forms to be
18 used by the proposers;

19 (i) Evaluation factors for request for qualifications shall
20 include, but not be limited to, technical qualifications, such as
21 specialized experience and technical competence; capability to perform;
22 past performance of the proposers' team, including the architect-
23 engineer and construction members; and other appropriate factors.
24 Evaluation factors may also include: (A) The proposer's past
25 performance in utilization of small business entities; and (B)
26 disadvantaged business enterprises. Cost or price-related factors are
27 not permitted in the request for qualifications phase;

28 (ii) Evaluation factors for finalists' proposals shall include, but
29 not be limited to, the factors listed in (d)(i) of this subsection, as
30 well as technical approach design concept; (~~proposal price~~) ability
31 of professional personnel; past performance on similar projects;
32 ability to meet time and budget requirements; ability to provide a
33 performance and payment bond for the project; recent, current, and
34 projected workloads of the firm; (~~and~~) location; and cost or price-
35 related factors that may include operating costs. The public body may
36 also consider a proposer's outreach plan to include small business
37 entities and disadvantaged business enterprises as subcontractor and
38 suppliers for the project. Alternatively, if the public body

1 determines that all finalists will be capable of producing a design
2 that adequately meets project requirements, the public body may award
3 the contract to the firm that submits the responsive proposal with the
4 lowest price;

5 (e) Protest procedures including time limits for filing a protest,
6 which in no event may limit the time to file a protest to fewer than
7 four business days from the date the proposer was notified of the
8 selection decision;

9 (f) The form of the contract to be awarded;

10 ~~((+f))~~ (g) The ~~((amount))~~ honorarium to be paid to finalists
11 submitting responsive proposals and who are not awarded a design-build
12 contract;

13 ~~((+g))~~ (h) The schedule for the procurement process and the
14 project; and

15 ~~((+h))~~ (i) Other information relevant to the project.

16 (2) The public body shall establish an evaluation committee to
17 evaluate the responses to the request for qualifications based solely
18 on the factors, weighting, and process identified in the request for
19 qualifications and any addenda issued by the public body. Based on the
20 evaluation committee's findings, the public body shall select not more
21 than five responsive and responsible finalists to submit proposals.
22 The public body may, in its sole discretion, reject all proposals and
23 shall provide its reasons for rejection in writing to all proposers.

24 (3) The public body must notify all proposers of the finalists
25 selected to move to the next phase of the selection process. The
26 process may not proceed to the next phase until two business days after
27 all proposers are notified of the committee's selection decision. At
28 the request of a proposer not selected as a finalist, the public body
29 must provide the requesting proposer with a scoring summary of the
30 evaluation factors for its proposal. Proposers filing a protest on the
31 selection of the finalists must file the protest in accordance with the
32 published protest procedures. The selection process may not advance to
33 the next phase of selection until two business days after the final
34 protest decision is transmitted to the protestor.

35 (4) Upon selection of the finalists, the public body shall issue a
36 request for proposals to the finalists, which shall provide the
37 following information:

1 (a) A detailed description of the project including programmatic,
2 performance, and technical requirements and specifications; functional
3 and operational elements; minimum and maximum net and gross areas of
4 any building; and, at the discretion of the public body, preliminary
5 engineering and architectural drawings; and

6 (b) The target budget for the design-build portion of the project.

7 ~~((+4))~~ (5) The public body shall establish an evaluation committee
8 to evaluate the proposals submitted by the finalists. Design-build
9 contracts shall be awarded using the procedures in (a) or (b) of this
10 subsection. The public body must identify in the request for
11 qualifications which procedure will be used.

12 (a) The finalists' proposals shall be evaluated and scored based
13 solely on the factors, weighting, and process identified in the initial
14 request for qualifications and in any addenda published by the public
15 body. Public bodies may request best and final proposals from
16 finalists. The public body ~~((shall))~~ may initiate negotiations with
17 the firm submitting the highest scored proposal. If the public body is
18 unable to execute a contract with the firm submitting the highest
19 scored proposal, negotiations with that firm may be suspended or
20 terminated and the public body may proceed to negotiate with the next
21 highest scored firm. Public bodies shall continue in accordance with
22 this procedure until a contract agreement is reached or the selection
23 process is terminated.

24 (b) If the public body determines that all finalists are capable of
25 producing a design that adequately meets project requirements, the
26 public body may award the contract to the firm that submits the
27 responsive proposal with the lowest price.

28 ~~((+5))~~ (6) The public body shall notify all finalists of the
29 selection decision and make a selection summary of the final proposals
30 available to all proposers within two business days of such
31 notification. If the public body receives a timely written protest
32 from a finalist firm, the public body may not execute a contract until
33 two business days after the final protest decision is transmitted to
34 the protestor. The protestor must submit its protest in accordance
35 with the published protest procedures.

36 (7) The firm awarded the contract shall provide a performance and
37 payment bond for the contracted amount.

1 (8) The public body shall provide appropriate honorarium payments
2 to finalists submitting responsive proposals that are not awarded a
3 design-build contract. Honorarium payments shall be sufficient to
4 generate meaningful competition among potential proposers on design-
5 build projects. In determining the amount of the honorarium, the
6 public body shall consider the level of effort required to meet the
7 selection criteria.

8 **Sec. 12.** RCW 39.10.340 and 2007 c 494 s 301 are each amended to
9 read as follows:

10 Subject to the process in RCW 39.10.270 or 39.10.280, public bodies
11 may utilize the general contractor/construction manager procedure for
12 public works projects where at least one of the following is met:

13 (1) Implementation of the project involves complex scheduling,
14 phasing, or coordination;

15 (2) The project involves construction at an occupied facility which
16 must continue to operate during construction;

17 (3) The involvement of the general contractor/construction manager
18 during the design stage is critical to the success of the project;

19 (4) The project encompasses a complex or technical work
20 environment; or

21 (5) The project requires specialized work on a building that has
22 historic significance.

23 **Sec. 13.** RCW 39.10.360 and 2009 c 75 s 6 are each amended to read
24 as follows:

25 (1) Public bodies should select general contractor/construction
26 managers early in the life of public works projects, and in most
27 situations no later than the completion of schematic design.

28 (2) Contracts for the services of a general contractor/
29 construction manager under this section shall be awarded through a
30 competitive process requiring the public solicitation of proposals for
31 general contractor/construction manager services. The public
32 solicitation of proposals shall include:

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

1 (b) The reasons for using the general contractor/construction
2 manager procedure;

3 (c) A description of the qualifications to be required of the firm,
4 including submission of the firm's accident prevention program;

5 (d) A description of the process the public body will use to
6 evaluate qualifications and proposals, including evaluation factors
7 ~~((and))~~, the relative weight of factors, and protest procedures
8 including time limits for filing a protest, which in no event may limit
9 the time to file a protest to fewer than four business days from the
10 date the proposer was notified of the selection decision;

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

13 (f) The estimated maximum allowable construction cost; and

14 (g) The bid instructions to be used by the general contractor/
15 construction manager finalists.

16 (3)(a) Evaluation factors for selection of the general
17 contractor/construction manager shall include, but not be limited to:

18 ~~((a))~~ (i) Ability of the firm's professional personnel;

19 ~~((b))~~ (ii) The firm's past performance in negotiated and complex
20 projects;

21 ~~((c))~~ (iii) The firm's ability to meet time and budget
22 requirements;

23 ~~((d))~~ (iv) The scope of work the firm proposes to self-perform
24 and its ability to perform that work;

25 ~~((e))~~ (v) The firm's proximity to the project location;

26 ~~((f))~~ (vi) Recent, current, and projected workloads of the firm;
27 and

28 ~~((g))~~ (vii) The firm's approach to executing the project.

29 (b) An agency may also consider the firm's outreach plan to include
30 small business entities and disadvantaged business enterprises, and the
31 firm's past performance in the utilization of such firms as an
32 evaluation factor.

33 (4) A public body shall establish a committee to evaluate the
34 proposals. After the committee has selected the most qualified
35 finalists, at the time specified by the public body, these finalists
36 shall submit final proposals, including sealed bids for the percent fee
37 on the estimated maximum allowable construction cost and the fixed
38 amount for the general conditions work specified in the request for

1 proposal. The public body shall establish a time and place for the
2 opening of sealed bids for the percent fee on the estimated maximum
3 allowable construction cost and the fixed amount for the general
4 conditions work specified in the request for proposal. At the time and
5 place named, these bids must be publicly opened and read and the public
6 body shall make all previous scoring available to the public. The
7 public body shall select the firm submitting the highest scored final
8 proposal using the evaluation factors and the relative weight of
9 factors published in the public solicitation of proposals. A public
10 body shall not evaluate or disqualify a proposal based on the terms of
11 a collective bargaining agreement.

12 (5) The public body shall notify all finalists of the selection
13 decision and make a selection summary of the final proposals available
14 to all proposers within two business days of such notification. If the
15 public body receives a timely written protest from a proposer, the
16 public body may not execute a contract until two business days after
17 the final protest decision is transmitted to the protestor. The
18 protestor must submit its protest in accordance with the published
19 protest procedures.

20 (6) Public bodies may contract with the selected firm to provide
21 services during the design phase that may include life-cycle cost
22 design considerations, value engineering, scheduling, cost estimating,
23 constructability, alternative construction options for cost savings,
24 and sequencing of work, and to act as the construction manager and
25 general contractor during the construction phase.

26 **Sec. 14.** RCW 39.10.380 and 2007 c 494 s 305 are each amended to
27 read as follows:

28 (1) All subcontract work and equipment and material purchases shall
29 be competitively bid with public bid openings. Subcontract bid
30 packages and equipment and materials purchases shall be awarded to the
31 responsible bidder submitting the lowest responsive bid. In preparing
32 subcontract bid packages, the general contractor/construction manager
33 shall not be required to violate or waive terms of a collective
34 bargaining agreement.

35 (2) All subcontract bid packages in which bidder eligibility was
36 not determined in advance shall include the specific objective criteria
37 that will be used by the general contractor/construction manager and

1 the public body to evaluate bidder responsibility. If the lowest
2 bidder submitting a responsive bid is determined by the general
3 contractor/construction manager and the public body not to be
4 responsible, the general contractor/construction manager and the public
5 body must provide written documentation to that bidder explaining their
6 intent to reject the bidder as not responsible and afford the bidder
7 the opportunity to establish that it is a responsible bidder.
8 Responsibility shall be determined in accordance with criteria listed
9 in the bid documents. Protests concerning bidder responsibility
10 determination by the general contractor/construction manager and the
11 public body shall be in accordance with subsection (4) of this section.

12 (3) All subcontractors who bid work over three hundred thousand
13 dollars shall post a bid bond. All subcontractors who are awarded a
14 contract over three hundred thousand dollars shall provide a
15 performance and payment bond for the contract amount. All other
16 subcontractors shall provide a performance and payment bond if required
17 by the general contractor/construction manager.

18 (4) If the general contractor/construction manager receives a
19 written protest from a subcontractor bidder or an equipment or material
20 supplier, the general contractor/construction manager shall not execute
21 a contract for the subcontract bid package or equipment or material
22 purchase order with anyone other than the protesting bidder without
23 first providing at least two full business days' written notice to all
24 bidders of the intent to execute a contract for the subcontract bid
25 package. The protesting bidder must submit written notice of its
26 protest no later than two full business days following the bid opening.
27 Intermediate Saturdays, Sundays, and legal holidays are not counted.

28 (5) A low bidder who claims error and fails to enter into a
29 contract is prohibited from bidding on the same project if a second or
30 subsequent call for bids is made for the project.

31 (6) The general contractor/construction manager may negotiate with
32 the lowest responsible and responsive bidder to negotiate an adjustment
33 to the lowest bid or proposal price based upon agreed changes to the
34 contract plans and specifications under the following conditions:

35 (a) All responsive bids or proposal prices exceed the available
36 funds(~~(, as certified by an appropriate fiscal officer)~~);

37 (b) The apparent low responsive bid or proposal does not exceed the

1 available funds by the greater of one hundred twenty-five thousand
2 dollars or two percent for projects valued over ten million dollars;
3 and

4 (c) The negotiated adjustment will bring the bid or proposal price
5 within the amount of available funds.

6 (7) If the negotiation is unsuccessful, the subcontract work or
7 equipment or material purchases must be rebid.

8 (8) The general contractor/construction manager must provide a
9 written explanation if all bids are rejected.

10 **Sec. 15.** RCW 39.10.385 and 2010 c 163 s 1 are each amended to read
11 as follows:

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

21 (1) In order to use this alternative selection process, the general
22 contractor/construction manager and the public body must determine that
23 it is in the best interest of the public. In making this determination
24 the general contractor/construction manager and the public body must:

25 (a) Publish a notice of intent to use this alternative selection
26 process in a legal newspaper published in or as near as possible to
27 that part of the county where the public work will be constructed.
28 Notice must be published at least fourteen calendar days before
29 conducting a public hearing. The notice must include the date, time,
30 and location of the hearing; a statement justifying the basis and need
31 for the alternative selection process; ((and)) how interested parties
32 may, prior to the hearing, obtain the evaluation criteria and
33 applicable weight given to each criteria that will be used for
34 evaluation; and protest procedures including time limits for filing a
35 protest, which may in no event, limit the time to file a protest to
36 fewer than four business days from the date the proposer was notified
37 of the selection decision;

1 (b) Conduct a hearing and provide an opportunity for any interested
2 party to submit written and verbal comments regarding the justification
3 for using this selection process, the evaluation criteria, ~~((and))~~
4 weights for each criteria, and protest procedures;

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

8 (d) Issue a written final determination to all interested parties.
9 All protests of the decision to use the alternative selection process
10 must be in writing and submitted to the public body within seven
11 calendar days of the final determination. Any modifications to the
12 criteria ~~((and))~~, weights, and protest procedures based on comments
13 received during the public hearing process must be included in the
14 final determination.

15 (2) Contracts for the services of a subcontractor under this
16 section must be awarded through a competitive process requiring a
17 public solicitation of proposals. Notice of the public solicitation of
18 proposals must be provided to the office of minority and women's
19 business enterprises. The public solicitation of proposals must
20 include:

21 (a) A description of the project, including programmatic,
22 performance, and technical requirements and specifications when
23 available;

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

25 (c) A description of the minimum qualifications required of the
26 firm;

27 (d) A description of the process used to evaluate qualifications
28 and proposals, including evaluation factors and the relative weight of
29 factors;

30 (e) Protest procedures;

31 (f) The form of the contract, including any contract for
32 preconstruction services, to be awarded;

33 ~~((+f))~~ (g) The estimated maximum allowable subcontract cost; and

34 ~~((+g))~~ (h) The bid instructions to be used by the finalists.

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

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

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

- 1 (c) The firm's ability to meet time and budget requirements;
2 (d) The scope of work the firm proposes to perform with its own
3 forces and its ability to perform that work;
4 (e) The firm's plan for outreach to minority and women-owned
5 businesses;
6 (f) The firm's proximity to the project location;
7 (g) The firm's capacity to successfully complete the project;
8 (h) The firm's approach to executing the project;
9 (i) The firm's approach to safety on the project;
10 (j) The firm's safety history; and
11 (k) If the firm is selected as one of the most qualified finalists,
12 the firm's fee and cost proposal.

13 (4) The general contractor/construction manager shall establish a
14 committee to evaluate the proposals. At least one representative from
15 the public body shall serve on the committee. Final proposals,
16 including sealed bids for the percent fee on the estimated maximum
17 allowable subcontract cost, and the fixed amount for the subcontract
18 general conditions work specified in the request for proposal, will be
19 requested from the most qualified firms.

20 (5) The general contractor/construction manager must notify all
21 proposers of the most qualified firms that will move to the next phase
22 of the selection process. The process may not proceed to the next
23 phase until two business days after all proposers are notified of the
24 committee's selection decision. At the request of a proposer, the
25 general contractor/construction manager must provide the requesting
26 proposer with a scoring summary of the evaluation factors for its
27 proposal. Proposers filing a protest on the selection of the most
28 qualified finalists must file the protest with the public body in
29 accordance with the published protest procedures. The selection
30 process may not advance to the next phase of selection until two
31 business days after the final protest decision issued by the public
32 body is transmitted to the protestor.

33 (6) The general contractor/construction manager and the public body
34 shall select the firm submitting the highest scored final proposal
35 using the evaluation factors and the relative weight of factors
36 identified in the solicitation of proposals. The scoring of the
37 nonprice factors must be made available at the opening of the fee and
38 cost proposals. The general contractor/construction manager shall

1 notify all proposers of the selection decision and make a selection
2 summary of the final proposals, which shall be available to all
3 proposers within two business days of such notification. The general
4 contractor/construction manager may not evaluate or disqualify a
5 proposal based on the terms of a collective bargaining agreement.

6 ~~((+5))~~ (7) If the public body receives a timely written protest
7 from a "most qualified firm," the general contractor/construction
8 manager may not execute a contract for the protested subcontract work
9 until two business days after the final protest decision issued by the
10 public body is transmitted to the protestor. The protestor must submit
11 its protest in accordance with the published protest procedures.

12 (8) If the general contractor/construction manager is unable to
13 negotiate a satisfactory maximum allowable subcontract cost with the
14 firm selected deemed by public body and the general
15 contractor/construction manager to be fair, reasonable, and within the
16 available funds, negotiations with that firm must be formally
17 terminated and the general contractor/construction manager may
18 negotiate with the next highest scored firm until an agreement is
19 reached or the process is terminated.

20 ~~((+6)-If-the-general-contractor/construction-manager-receives-a~~
21 ~~written-protest-from-a-bidder,-it-may-not-execute-a-contract-for-the~~
22 ~~subject-work-with-anyone-other-than-the-protesting-bidder,-without~~
23 ~~first-providing-at-least-two-full-business-days'-written-notice-to-all~~
24 ~~bidders-of-the-intent-to-execute-a-contract-for-the-subcontract-bid~~
25 ~~package.-The-protesting-bidder-must-submit-written-notice-to-the~~
26 ~~general-contractor/construction-manager-of-its-protest-no-later-than~~
27 ~~two-full-business-days-following-the-bid-opening.~~

28 ~~(+7))~~ (9) With the approval of the public body, the general
29 contractor/construction manager may contract with the selected firm to
30 provide preconstruction services during the design phase that may
31 include life-cycle cost design considerations, value engineering,
32 scheduling, cost estimating, constructability, alternative construction
33 options for cost savings, and sequencing of work; and to act as the
34 mechanical or electrical subcontractor during the construction phase.

35 ~~((+8))~~ (10) The maximum allowable subcontract cost must be used to
36 establish a total subcontract cost for purposes of a performance and
37 payment bond. Total subcontract cost means the fixed amount for the
38 detailed specified general conditions work, the negotiated maximum

1 allowable subcontract cost, and the percent fee on the negotiated
2 maximum allowable subcontract cost. Maximum allowable subcontract cost
3 means the maximum cost to complete the work specified for the
4 subcontract, including the estimated cost of work to be performed by
5 the subcontractor's own forces, a percentage for risk contingency,
6 negotiated support services, and approved change orders. The maximum
7 allowable subcontract cost must be negotiated between the general
8 contractor/construction manager and the selected firm when the
9 construction documents and specifications are at least ninety percent
10 complete. Final agreement on the maximum allowable subcontract cost is
11 subject to the approval of the public body.

12 ~~((+9))~~ (11) If the work of the mechanical contractor or electrical
13 contractor is completed for less than the maximum allowable subcontract
14 cost, any savings not otherwise negotiated as part of an incentive
15 clause becomes part of the risk contingency included in the general
16 contractor/construction manager's maximum allowable construction cost.
17 If the work of the mechanical contractor or the electrical contractor
18 is completed for more than the maximum allowable subcontract cost, the
19 additional cost is the responsibility of that subcontractor. An
20 independent audit, paid for by the public body, must be conducted
21 ~~((upon completion of the contract))~~ to confirm the proper accrual of
22 costs as outlined in the contract.

23 ~~((+10))~~ (12) A mechanical or electrical contractor selected under
24 this section may perform work with its own forces. In the event it
25 elects to subcontract some of its work, it must select a subcontractor
26 utilizing the procedure outlined in RCW 39.10.380.

27 **Sec. 16.** RCW 39.10.390 and 2007 c 494 s 306 are each amended to
28 read as follows:

29 (1) Except as provided in this section, bidding on subcontract work
30 or for the supply of equipment or materials by the general
31 contractor/construction manager or its subsidiaries is prohibited.

32 (2) The general contractor/construction manager, or its
33 subsidiaries, may bid on subcontract work or for the supply of
34 equipment or materials if:

35 (a) The work within the subcontract bid package or equipment or
36 materials is customarily performed or supplied by the general
37 contractor/construction manager;

1 (b) The bid opening is managed by the public body and is in
2 compliance with RCW 39.10.380; and

3 (c) Notification of the general contractor/construction manager's
4 intention to bid is included in the public solicitation of bids for the
5 bid package or for the equipment or materials.

6 (3) In no event may the general contractor/construction manager or
7 its subsidiaries (~~((purchase equipment or materials for assignment to
8 subcontract bid package bidders for installation or warranty))~~) assign
9 warranty responsibility or the terms of its contract or purchase order
10 with vendors for equipment or material purchases to subcontract bid
11 package bidders or subcontractors who have been awarded a contract.

12 The value of subcontract work performed and equipment and materials
13 supplied by the general contractor/construction manager may not exceed
14 thirty percent of the negotiated maximum allowable construction cost.
15 Negotiated support services performed by the general
16 contractor/construction manager shall not be considered subcontract
17 work for purposes of this subsection.

18 **Sec. 17.** RCW 39.10.400 and 2007 c 494 s 307 are each amended to
19 read as follows:

20 (1) If determination of subcontractor eligibility prior to seeking
21 bids is in the best interest of the project and critical to the
22 successful completion of a subcontract bid package, the general
23 contractor/construction manager and the public body may determine
24 subcontractor eligibility to bid. The general contractor/construction
25 manager and the public body must:

26 (a) Conduct a hearing and provide an opportunity for any interested
27 party to submit written and verbal comments regarding the justification
28 for conducting bidder eligibility, the evaluation criteria, and weights
29 for each criteria and subcriteria;

30 (b) Publish a notice of intent to evaluate and determine bidder
31 eligibility in a legal newspaper published in or as near as possible to
32 that part of the county where the public work will be constructed at
33 least fourteen calendar days before conducting a public hearing;

34 (c) Ensure the public hearing notice includes the date, time, and
35 location of the hearing, a statement justifying the basis and need for
36 performing eligibility analysis before bid opening, and how interested

1 parties may, at least five days before the hearing, obtain the specific
2 eligibility criteria and applicable weights given to each criteria and
3 subcriteria that will be used during evaluation;

4 (d) After the public hearing, consider written and verbal comments
5 received and determine if establishing bidder eligibility in advance of
6 seeking bids is in the best interests of the project and critical to
7 the successful completion of a subcontract bid package; and

8 (e) Issue a written final determination to all interested parties.
9 All protests of the decision to establish bidder eligibility before
10 issuing a subcontractor bid package must be filed with the superior
11 court within seven calendar days of the final determination. Any
12 modifications to the eligibility criteria and weights shall be based on
13 comments received during the public hearing process and shall be
14 included in the final determination.

15 (2) Determinations of bidder eligibility shall be in accordance
16 with the evaluation criteria and weights for each criteria established
17 in the final determination and shall be provided to interested persons
18 upon request. Any potential bidder determined not to meet eligibility
19 criteria must be afforded ((the)) one opportunity to establish its
20 eligibility. Protests concerning bidder eligibility determinations
21 shall be in accordance with subsection (1) of this section.

22 **Sec. 18.** RCW 39.10.420 and 2012 c 102 s 1 are each amended to read
23 as follows:

24 (1) The following public bodies of the state of Washington are
25 authorized to award job order contracts and use the job order
26 contracting procedure:

27 (a) The department of enterprise services;

28 (b) The state universities, regional universities, and The
29 Evergreen State College;

30 (c) Sound transit (central Puget Sound regional transit authority);

31 (d) Every city with a population greater than seventy thousand and
32 any public authority chartered by such city under RCW 35.21.730 through
33 35.21.755;

34 (e) Every county with a population greater than four hundred fifty
35 thousand;

36 (f) Every port district with total revenues greater than fifteen
37 million dollars per year;

1 (g) Every public utility district with revenues from energy sales
2 greater than twenty-three million dollars per year;

3 (h) Every school district; and

4 (i) The state ferry system.

5 (2)(a) The department of enterprise services may issue job order
6 contract work orders for Washington state parks department projects.

7 (b) The department of enterprise services, the University of
8 Washington, and Washington State University may issue job order
9 contract work orders for the state regional universities and The
10 Evergreen State College.

11 (3) Public bodies may use a job order contract for public works
12 projects when a determination is made that the use of job order
13 contracts will benefit the public by providing an effective means of
14 reducing the total lead-time and cost for the construction of public
15 works projects for repair and renovation required at public facilities
16 through the use of unit price books and work orders by eliminating
17 time-consuming, costly aspects of the traditional public works process,
18 which require separate contracting actions for each small project.

19 **Sec. 19.** RCW 39.10.440 and 2007 c 494 s 403 are each amended to
20 read as follows:

21 (1) The maximum total dollar amount that may be awarded under a job
22 order contract is four million dollars per year for a maximum of three
23 years. The maximum total dollar amount that may be awarded under a job
24 order contract for counties with a population of more than one million
25 is six million dollars per year for a maximum of three years.

26 (2) Job order contracts may be executed for an initial contract
27 term of not to exceed two years, with the option of extending or
28 renewing the job order contract for one year. All extensions or
29 renewals must be priced as provided in the request for proposals. The
30 extension or renewal must be mutually agreed to by the public body and
31 the job order contractor.

32 (3) A public body may have no more than two job order contracts in
33 effect at any one time, with the exception of the department of
34 (~~general administration~~) enterprise services, which may have four job
35 order contracts in effect at any one time.

36 (4) At least ninety percent of work contained in a job order
37 contract must be subcontracted to entities other than the job order

1 contractor. The job order contractor must distribute contracts as
2 equitably as possible among qualified and available subcontractors
3 including minority and woman-owned subcontractors to the extent
4 permitted by law.

5 (5) The job order contractor shall publish notification of intent
6 to perform public works projects at the beginning of each contract year
7 in a statewide publication and in a legal newspaper of general
8 circulation in every county in which the public works projects are
9 anticipated.

10 (6) Job order contractors shall pay prevailing wages for all work
11 that would otherwise be subject to the requirements of chapter 39.12
12 RCW. Prevailing wages for all work performed pursuant to each work
13 order must be the rates in effect at the time the individual work order
14 is issued.

15 (7) If, in the initial contract term, the public body, at no fault
16 of the job order contractor, fails to issue the minimum amount of work
17 orders stated in the public request for proposals, the public body
18 shall pay the contractor an amount equal to the difference between the
19 minimum work order amount and the actual total of the work orders
20 issued multiplied by an appropriate percentage for overhead and profit
21 contained in the contract award coefficient for services as specified
22 in the request for proposals. This is the contractor's sole remedy.

23 (8) All job order contracts awarded under this section must be
24 signed before July 1, (~~2013~~) 2021; however the job order contract may
25 be extended or renewed as provided for in this section.

26 (9) Public bodies may amend job order contracts awarded prior to
27 July 1, 2007, in accordance with this chapter.

28 **Sec. 20.** RCW 39.10.490 and 2007 c 494 s 501 are each amended to
29 read as follows:

30 The alternative public works contracting procedures authorized
31 under this chapter are limited to public works contracts signed before
32 July 1, (~~2013~~) 2021. Methods of public works contracting authorized
33 under this chapter shall remain in full force and effect until
34 completion of contracts signed before July 1, (~~2013~~) 2021.

35 **Sec. 21.** RCW 43.131.407 and 2007 c 494 s 506 are each amended to
36 read as follows:

1 The alternative (~~(public)~~) public works contracting procedures
2 under chapter 39.10 RCW shall be terminated June 30, (~~(2013)~~) 2021, as
3 provided in RCW 43.131.408.

4 **Sec. 22.** RCW 43.131.408 and 2012 c 102 s 4 are each amended to
5 read as follows:

6 The following acts or parts of acts, as now existing or hereafter
7 amended, are each repealed, effective June 30, (~~(2014)~~) 2022:

8 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
9 1994 c 132 s 1;

10 (2) RCW 39.10.210 and 2013 c ... s 1 (section 1 of this act), 2010
11 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

12 (3) RCW 39.10.220 and 2013 c ... s 2 (section 2 of this act), 2007
13 c 494 s 102, & 2005 c 377 s 1;

14 (4) RCW 39.10.230 and 2013 c ... s 3 (section 3 of this act), 2010
15 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

16 (5) RCW 39.10.240 and 2013 c ... s 4 (section 4 of this act) & 2007
17 c 494 s 104;

18 (6) RCW 39.10.250 and 2013 c ... s 5 (section 5 of this act), 2009
19 c 75 s 2, & 2007 c 494 s 105;

20 (7) RCW 39.10.260 and 2013 c ... s 6 (section 6 of this act) & 2007
21 c 494 s 106;

22 (8) RCW 39.10.270 and 2013 c ... s 7 (section 7 of this act), 2009
23 c 75 s 3, & 2007 c 494 s 107;

24 (9) RCW 39.10.280 and 2013 c ... s 8 (section 8 of this act) & 2007
25 c 494 s 108;

26 (10) RCW 39.10.290 and 2007 c 494 s 109;

27 (11) RCW 39.10.300 and 2013 c ... s 9 (section 9 of this act), 2009
28 c 75 s 4, & 2007 c 494 s 201;

29 (12) RCW 39.10.320 and 2013 c ... s 10 (section 10 of this act),
30 2007 c 494 s 203, & 1994 c 132 s 7;

31 (13) RCW 39.10.330 and 2013 c ... s 11 (section 11 of this act),
32 2009 c 75 s 5, & 2007 c 494 s 204;

33 (14) RCW 39.10.340 and 2013 c ... s 12 (section 12 of this act) &
34 2007 c 494 s 301;

35 (15) RCW 39.10.350 and 2007 c 494 s 302;

36 (16) RCW 39.10.360 and 2013 c ... s 13 (section 13 of this act),
37 2009 c 75 s 6, & 2007 c 494 s 303;

- 1 (17) RCW 39.10.370 and 2007 c 494 s 304;
2 (18) RCW 39.10.380 and 2013 c ... s 14 (section 14 of this act) &
3 2007 c 494 s 305;
4 (19) RCW 39.10.385 and 2013 c ... s 15 (section 15 of this act) &
5 2010 c 163 s 1;
6 (20) RCW 39.10.390 and 2013 c ... s 16 (section 16 of this act) &
7 2007 c 494 s 306;
8 (21) RCW 39.10.400 and 2013 c ... s 17 (section 17 of this act) &
9 2007 c 494 s 307;
10 (22) RCW 39.10.410 and 2007 c 494 s 308;
11 (23) RCW 39.10.420 and 2013 c ... s 18 (section 18 of this act),
12 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;
13 (24) RCW 39.10.430 and 2007 c 494 s 402;
14 (25) RCW 39.10.440 and 2013 c ... s 19 (section 19 of this act) &
15 2007 c 494 s 403;
16 (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
17 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
18 (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;
19 (29) RCW 39.10.480 and 1994 c 132 s 9;
20 (30) RCW 39.10.490 and 2013 c ... s 20 (section 20 of this act),
21 2007 c 494 s 501, & 2001 c 328 s 5;
22 (31) (~~RCW 39.10.500 and 2007 c 494 s 502;~~
23 ~~(32) RCW 39.10.510 and 2007 c 494 s 503;~~
24 ~~(33)~~) RCW 39.10.900 and 1994 c 132 s 13;
25 ((~~34~~)) (32) RCW 39.10.901 and 1994 c 132 s 14;
26 ((~~35~~)) (33) RCW 39.10.903 and 2007 c 494 s 510;
27 ((~~36~~)) (34) RCW 39.10.904 and 2007 c 494 s 512; and
28 ((~~37~~)) (35) RCW 39.10.905 and 2007 c 494 s 513.

29 NEW SECTION. Sec. 23. The following acts or parts of acts are
30 each repealed:

- 31 (1) RCW 39.10.500 (Exemptions) and 2007 c 494 s 502; and
32 (2) RCW 39.10.510 (Previously advertised projects) and 2007 c 494
33 s 503.

34 NEW SECTION. Sec. 24. A new section is added to chapter 43.131
35 RCW to read as follows:

- 36 (1) If the sunset review process in RCW 43.131.010 through

1 43.131.150 expires before June 30, 2021, the joint legislative audit
2 and review committee must conduct a program and fiscal review of the
3 alternative public works contracting procedures authorized in chapter
4 39.10 RCW. The review must be completed by June 30, 2021, and findings
5 reported to the office of financial management and any affected
6 entities. The report must be prepared in the manner set forth in RCW
7 44.28.071 and 44.28.075.

8 (2) This section expires July 1, 2022.

9 NEW SECTION. **Sec. 25.** Section 24 of this act takes effect upon
10 the expiration of RCW 43.131.051.

11 NEW SECTION. **Sec. 26.** Sections 1 through 23 of this act are
12 necessary for the immediate preservation of the public peace, health,
13 or safety, or support of the state government and its existing public
14 institutions, and take effect June 30, 2013.

Passed by the House April 23, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.