

CERTIFICATION OF ENROLLMENT

SENATE BILL 5032

Chapter 230, Laws of 2021

67th Legislature
2021 Regular Session

ALTERNATIVE PUBLIC WORKS CONTRACTING—VARIOUS PROVISIONS

EFFECTIVE DATE: May 10, 2021

Passed by the Senate April 14, 2021
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 6, 2021
Yeas 98 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 10, 2021 3:26 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5032** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 10, 2021

**Secretary of State
State of Washington**

SENATE BILL 5032

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By Senators Hasegawa, Warnick, Kuderer, and Wilson, C.

Prefiled 12/22/20. Read first time 01/11/21. Referred to Committee on State Government & Elections.

1 AN ACT Relating to the reauthorization and improvements to
2 alternative public works contracting procedures; amending RCW
3 39.10.210, 39.10.220, 39.10.230, 39.10.240, 39.10.250, 39.10.300,
4 39.10.330, 39.10.350, 39.10.360, 39.10.370, 39.10.380, 39.10.385,
5 39.10.390, 39.10.400, 39.10.430, 39.10.440, 39.10.460, 39.10.490,
6 43.131.407, and 43.131.408; adding a new section to chapter 39.10
7 RCW; creating a new section; providing an expiration date; and
8 declaring an emergency.

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

10 **Sec. 1.** RCW 39.10.210 and 2019 c 212 s 1 are each amended to
11 read as follows:

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

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

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

19 (3) "Budget contingencies" means contingencies established by a
20 public body outside of the design-build or general contractor/
21 construction manager contract for payment of project costs that are

1 not the responsibility of the design-builder or general contractor/
2 construction manager under the respective contract.

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

6 ~~((4))~~ (5) "Coefficient" means the job order contractor's
7 competitively bid numerical factor applied to the public body's
8 prices as published in the unit price book.

9 (6) "Committee," unless otherwise noted, means the project review
10 committee.

11 ~~((5))~~ (7) "Design-build procedure" means a contract between a
12 public body and another party in which the party agrees to both
13 design and build the facility, portion of the facility, or other item
14 specified in the contract.

15 ~~((6))~~ (8) "Disadvantaged business enterprise" means any
16 business entity certified with the office of minority and women's
17 business enterprises under chapter 39.19 RCW.

18 ~~((7))~~ (9) "General contractor/construction manager" means a
19 firm with which a public body has selected to provide services during
20 the design phase and negotiated a maximum allowable construction cost
21 to act as construction manager and general contractor during the
22 construction phase.

23 ~~((8))~~ (10) "Heavy civil construction project" means a civil
24 engineering project, the predominant features of which are
25 infrastructure improvements.

26 ~~((9))~~ (11) "Job order contract" means a contract in which the
27 contractor agrees to a fixed period, indefinite quantity delivery
28 order contract which provides for the use of ~~((negotiated,~~
29 ~~definitive))~~ work orders for public works as defined in RCW
30 39.04.010.

31 ~~((10))~~ (12) "Job order contractor" means a registered or
32 licensed contractor awarded a job order contract.

33 ~~((11))~~ (13) "Maximum allowable construction cost" means the
34 maximum cost of the work to construct the project including a
35 percentage for risk contingency, negotiated support services, and
36 approved change orders.

37 ~~((12))~~ (14) "Negotiated support services" means items a general
38 contractor would normally manage or perform on a construction project
39 including, but not limited to surveying, hoisting, safety
40 enforcement, provision of toilet facilities, temporary heat, cleanup,

1 and trash removal, and that are negotiated as part of the maximum
2 allowable construction cost.

3 ~~((13))~~ (15) "Percent fee" means the percentage amount to be
4 earned by the general contractor/construction manager as overhead and
5 profit.

6 ~~((14))~~ (16) "Price-related factor" means an evaluation factor
7 that impacts costs which may include, but is not limited to overhead
8 and profit, lump sum or guaranteed maximum price for the entire or a
9 portion of the project, operating costs, or other similar factors
10 that may apply to the project.

11 ~~((15))~~ (17) "Public body" means any general or special purpose
12 government in the state of Washington, including but not limited to
13 state agencies, institutions of higher education, counties, cities,
14 towns, ports, school districts, and special purpose districts.

15 ~~((16))~~ (18) "Public works project" means any work for a public
16 body within the definition of "public work" in RCW 39.04.010.

17 ~~((17))~~ (19) "Risk contingency" means a contingency for use as
18 defined in the contract and established as part of the maximum
19 allowable construction cost for unexpected cost of work items that
20 have not otherwise been included or addressed in the maximum
21 allowable construction cost.

22 (20) "Small business entity" means a small business as defined in
23 RCW 39.26.010.

24 ~~((18))~~ (21) "Total contract cost" means the fixed amount for
25 the detailed specified general conditions work, the negotiated
26 maximum allowable construction cost, and the percent fee on the
27 negotiated maximum allowable construction cost.

28 ~~((19))~~ (22) "Total project cost" means the cost of the project
29 less financing and land acquisition costs.

30 ~~((20))~~ (23) "Unit price book" means a book containing specific
31 prices, based on generally accepted industry standards and
32 information, where available, for various items of work to be
33 performed by the job order contractor. ~~((The prices may include: All~~
34 ~~the costs of materials; labor; equipment; overhead, including bonding~~
35 ~~costs; and profit for performing the items of work. The unit prices~~
36 ~~for labor must be at the rates in effect at the time the individual~~
37 ~~work order is issued.~~

38 ~~(21))~~ (24) "Work order" means an order issued for a definite
39 scope of work to be performed pursuant to a job order contract.

1 **Sec. 2.** RCW 39.10.220 and 2013 c 222 s 2 are each amended to
2 read as follows:

3 (1) The board is created in the department of enterprise services
4 to provide an evaluation of public capital projects construction
5 processes, including the impact of contracting methods on project
6 outcomes, and to advise the legislature on policies related to public
7 works delivery methods.

8 (2) Members of the board identified in (a) through (f) of this
9 subsection must be knowledgeable or have experience in public works
10 procurement and contracting, including state and federal laws, rules,
11 and best practices concerning public contracting for minority, women,
12 and veteran-owned businesses and small businesses, and are appointed
13 as follows:

14 (a) Two representatives from construction general contracting;
15 one representative from the architectural profession; one
16 representative from the engineering profession; two representatives
17 from construction specialty subcontracting; two representatives from
18 construction trades labor organizations; one representative from the
19 office of minority and women's business enterprises; one
20 representative from a higher education institution; one
21 representative from the department of enterprise services; one
22 individual representing Washington cities; two representatives from
23 private industry; one individual from the private sector representing
24 the interests of the disadvantaged business enterprises community;
25 and one representative of a domestic insurer authorized to write
26 surety bonds for contractors in Washington state, each appointed by
27 the governor. (~~All appointed members must be knowledgeable about~~
28 ~~public works contracting procedures.~~) The board must reflect the
29 gender, racial, ethnic, and geographic diversity of the state,
30 including the interests of persons with disabilities. If a vacancy
31 occurs, the governor shall fill the vacancy for the unexpired term;

32 (b) One member representing counties, selected by the Washington
33 state association of counties;

34 (c) One member representing public ports, selected by the
35 Washington public ports association;

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

38 (e) One member representing school districts, selected by the
39 Washington state school directors' association; (~~and~~)

1 (f) One member representing transit, selected by the Washington
2 state transit association; and

3 (g) Two members of the house of representatives, one from each
4 major caucus, appointed by the speaker of the house of
5 representatives, and two members of the senate, one from each major
6 caucus, appointed by the president of the senate. Legislative members
7 are nonvoting.

8 (3) Members selected under subsection (2)(a) of this section
9 shall serve for terms of four years, with the terms expiring on June
10 30th on the fourth year of the term.

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

13 (5) Legislative members of the board shall be reimbursed for
14 travel expenses in accordance with RCW 44.04.120. Nonlegislative
15 members of the board, project review committee members, and committee
16 chairs shall be reimbursed for travel expenses as provided in RCW
17 43.03.050 and 43.03.060.

18 (6) Vacancies are filled in the same manner as appointed. Members
19 of the board may be removed for malfeasance or misfeasance in office,
20 upon specific written charges by the governor, under chapter 34.05
21 RCW.

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

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

27 (9) The department of enterprise services shall provide staff
28 support as may be required for the proper discharge of the function
29 of the board.

30 (10) The board may establish committees as it desires and may
31 invite nonmembers of the board to serve as committee members.

32 ~~((The board shall encourage participation from persons and~~
33 ~~entities not represented on the board)) The board shall provide
34 opportunities for persons and entities not represented on the board
35 to participate and provide insights on matters of interest to the
36 board, particularly with respect to the experiences of minority,
37 women, and veteran-owned businesses and small businesses.~~

38 **Sec. 3.** RCW 39.10.230 and 2013 c 222 s 3 are each amended to
39 read as follows:

1 The board has the following powers and duties:

2 (1) Develop and recommend to the legislature policies to
3 encourage competition and to further enhance the quality, efficiency,
4 and accountability of and equitable participation by disadvantaged
5 business enterprises in capital construction projects through the use
6 of traditional and alternative delivery methods in Washington, and
7 make recommendations regarding best practices, expansion,
8 continuation, elimination, or modification of the alternative public
9 works contracting methods, including specific recommendations for
10 reducing barriers for and increasing participation by disadvantaged
11 business enterprises;

12 (2) Evaluate the use of existing contracting procedures and the
13 potential future use of other alternative contracting procedures
14 including competitive negotiation contracts;

15 (3) Submit recommendations to the appropriate committees of the
16 legislature evaluating alternative contracting procedures that are
17 not authorized under this chapter;

18 (4) Appoint members of committees; and

19 (5) ~~((Develop and administer questionnaires designed to provide))~~
20 Direct the department of enterprise services to collect quantitative
21 and qualitative data on alternative public works contracting
22 procedures ~~((on which evaluations are based.~~

23 ~~The capital projects advisory review board is directed to review~~
24 ~~current statutes regarding life-cycle cost analysis and energy~~
25 ~~efficiency as related to the design-build procurement method~~
26 ~~performed under chapter 39.10 RCW. Capital projects advisory review~~
27 ~~board shall report to the appropriate committees of the legislature~~
28 ~~by December 31, 2013, with recommendations for statutory changes that~~
29 ~~promote energy efficiency and reduce the total cost to construct,~~
30 ~~operate and maintain public buildings. Recommendation must include~~
31 ~~provisions for postoccupancy validation of estimated energy~~
32 ~~efficiency measures, and operating and maintenance cost estimates.~~
33 ~~Life-cycle estimates of energy use must include estimates of energy~~
34 ~~consumptions for materials used in construction))~~ to support the
35 board's work in meeting the purpose established in RCW 39.10.220(1).

36 **Sec. 4.** RCW 39.10.240 and 2013 c 222 s 4 are each amended to
37 read as follows:

38 (1) The board shall establish a project review committee to
39 review and approve public works projects using the design-build and

1 general contractor/construction manager contracting procedures
2 authorized in RCW 39.10.300 and 39.10.340 and to certify public
3 bodies as provided in RCW 39.10.270.

4 (2) The board shall, by a majority vote of the board, appoint
5 persons to the committee who are knowledgeable in the use of the
6 design-build and general contractor/construction manager contracting
7 procedures. Appointments must represent a balance (~~among the~~
8 ~~industries and public owners on the board~~) of public and private
9 sector representatives of the board listed in RCW 39.10.220, and must
10 include at least one member representing the interests of
11 disadvantaged business enterprises.

12 (a) Each member of the committee shall be appointed for a term of
13 three years. However, for initial appointments, the board shall
14 stagger the appointment of committee members so that the first
15 members are appointed to serve terms of one, two, or three years from
16 the date of appointment. Appointees may be reappointed to serve more
17 than one term.

18 (b) The committee shall, by a majority vote, elect a chair and
19 vice chair for the committee.

20 (c) The committee chair may select a person or persons on a
21 temporary basis as a nonvoting member if project specific expertise
22 is needed to assist in a review.

23 (3) The chair of the committee, in consultation with the vice
24 chair, may appoint one or more panels of at least six committee
25 members to carry out the duties of the committee. Each panel shall
26 have balanced representation of the private and public sector
27 representatives serving on the committee, and shall include a member
28 representing the interests of disadvantaged business enterprises.

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

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

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

37 **Sec. 5.** RCW 39.10.250 and 2019 c 212 s 2 are each amended to
38 read as follows:

39 The committee shall:

1 (1) Certify, or renew certification for, public bodies to use
2 design-build or general contractor/construction manager contracting
3 procedures, or both;

4 (2) Review and approve the use of the design-build or general
5 contractor/construction manager contracting procedures on a project
6 by project basis for public bodies that are not certified under RCW
7 39.10.270;

8 (3) Review and approve the use of alternative subcontractor
9 selection under RCW 39.10.385 on a project-by-project basis for
10 public bodies that are not certified under RCW 39.10.270, which
11 review and approval may be concurrent with project approval; and

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

15 **Sec. 6.** RCW 39.10.300 and 2019 c 212 s 4 are each amended to
16 read as follows:

17 (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or
18 39.10.280, public bodies may utilize the design-build procedure,
19 including progressive design-build, for public works projects in
20 which the total project cost is over (~~two million dollars~~)
21 \$2,000,000 and where:

22 (a) The construction activities are highly specialized and a
23 design-build approach is critical in developing the construction
24 methodology; or

25 (b) The projects selected provide opportunity for greater
26 innovation or efficiencies between the designer and the builder; or

27 (c) Significant savings in project delivery time would be
28 realized.

29 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
30 bodies may use the design-build procedure, including progressive
31 design-build, for parking garages and preengineered metal buildings,
32 regardless of cost.

33 (3) The design-build procedure may be used for the construction
34 or erection of portable facilities as defined in WAC 392-343-018,
35 (~~preengineered metal buildings,~~) or not more than (~~ten~~) 10
36 prefabricated modular buildings per installation site, regardless of
37 cost and is not subject to approval by the committee.

38 (4) Except for utility projects and approved demonstration
39 projects, the design-build procedure may not be used to procure

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

8 (5) Subject to the process in RCW 39.10.280, a public body may
9 seek committee approval for a design-build demonstration project that
10 includes procurement of operations and maintenance services for a
11 period longer than three years.

12 (6) Washington State University may perform design-build
13 demonstration projects with a total project cost under \$2,000,000 to
14 develop best practices in encouraging participation of small business
15 entities and of minority, women, and veteran-owned businesses, and in
16 managing capital projects under \$2,000,000. Washington State
17 University shall provide reports to the board every other year,
18 starting with two years after the effective date of this section.
19 Such reports shall include information on the type of projects
20 performed, the initial and final project cost and schedule of the
21 projects, participation of small business entities and of minority,
22 women, and veteran-owned businesses, and the best practices derived
23 from the projects. The report shall include outreach measures
24 developed in concert with the office of minority and women's business
25 enterprises.

26 **Sec. 7.** RCW 39.10.330 and 2019 c 212 s 6 are each amended to
27 read as follows:

28 (1) Contracts for design-build services shall be awarded through
29 a competitive process using public solicitation of proposals for
30 design-build services. ((The)) At a minimum, the public body shall
31 publish at least once in a legal newspaper of general circulation
32 published in, or as near as possible to, that part of the county in
33 which the public work will be done, a notice of its request for
34 qualifications from proposers for design-build services, and the
35 availability and location of the request for proposal documents. The
36 public body is encouraged to post the design-build opportunity in
37 additional areas, such as websites for business associations or the
38 office of minority and women's business enterprises, to further

1 publicize the opportunity for qualified design-build teams. The
2 request for qualifications documents shall include:

3 (a) A description of the project including the estimated design-
4 build contract value and the intended use of the project;

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

6 (c) A description of the qualifications to be required of the
7 proposer;

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

12 (i) Evaluation factors for qualifications shall include technical
13 qualifications, such as specialized experience and technical
14 competence of the firms and the key design and construction
15 personnel; capacity to perform; the proposer's past performance in
16 utilization of (~~the office of minority and women's business~~
17 ~~enterprises—certified—businesses~~) disadvantaged business
18 enterprises, to the extent permitted by law; ability to provide a
19 performance and payment bond for the project; and other appropriate
20 factors. Evaluation factors (~~may~~) must also include, but are not
21 limited to, the proposer's past performance in utilization of small
22 business entities. Cost or price-related factors are not permitted in
23 the request for qualifications phase;

24 (ii) Evaluation factors for finalists' proposals shall include
25 the management plan to meet time and budget requirements and one or
26 more price-related factors. Evaluation factors must include a
27 proposer's inclusion plan for small business entities and
28 disadvantaged business enterprises as subconsultants, subcontractors,
29 and suppliers for the project, to the extent permitted by law.
30 Evaluation factors may also include, but not be limited to, the
31 technical approach(~~, design concept, and the outreach plan to~~
32 ~~include small business entities and disadvantaged business~~
33 ~~enterprises as subconsultants, subcontractors, and suppliers for the~~
34 ~~project~~) or the design concept;

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

39 (f) The proposed contract;

1 (g) The honorarium to be paid to finalists submitting responsive
2 proposals and who are not awarded a design-build contract;

3 (h) The schedule for the procurement process and the project; and

4 (i) Other information relevant to the project.

5 (2) The public body shall establish an evaluation committee to
6 evaluate the responses to the request for qualifications based solely
7 on the factors, weighting, and process identified in the request for
8 qualifications and any addenda issued by the public body. Based on
9 the evaluation committee's findings, the public body shall select not
10 more than five responsive and responsible finalists to submit
11 proposals. The public body may, in its sole discretion, reject all
12 proposals and shall provide its reasons for rejection in writing to
13 all proposers.

14 (3) The public body must notify all proposers of the finalists
15 selected to move to the next phase of the selection process. The
16 process may not proceed to the next phase until two business days
17 after all proposers are notified of the committee's selection
18 decision. At the request of a proposer not selected as a finalist,
19 the public body must provide the requesting proposer with a scoring
20 summary of the evaluation factors for its proposal. Proposers filing
21 a protest on the selection of the finalists must file the protest in
22 accordance with the published protest procedures. The selection
23 process may not advance to the next phase of selection until two
24 business days after the final protest decision is transmitted to the
25 protestor.

26 (4) Upon selection of the finalists, the public body shall issue
27 a request for proposals to the finalists. The request for proposal
28 documents shall include:

29 (a) Any specific forms to be used by the finalists; and

30 (b) Submission of a summary of the finalist's accident prevention
31 program and an overview of its implementation.

32 (5) The public body shall establish an evaluation committee to
33 evaluate the proposals submitted by the finalists. The finalists'
34 proposals shall be evaluated and scored based solely on the factors,
35 weighting, and process identified in the request for qualifications,
36 the request for proposals, and in any addenda published by the public
37 body. Public bodies may request best and final proposals from
38 finalists. The public body may initiate negotiations with the
39 finalist submitting the highest scored proposal. If the public body
40 is unable to execute a contract with the finalist submitting the

1 highest scored proposal, negotiations with that finalist may be
2 suspended or terminated and the public body may proceed to negotiate
3 with the next highest scored finalist. Public bodies shall continue
4 in accordance with this procedure until a contract agreement is
5 reached or the selection process is terminated.

6 (6) The public body shall notify all finalists of the selection
7 decision and make a selection summary of the final proposals
8 available to all proposers within two business days of such
9 notification. If the public body receives a timely written protest
10 from a finalist firm, the public body may not execute a contract
11 until two business days after the final protest decision is
12 transmitted to the protestor. The protestor must submit its protest
13 in accordance with the published protest procedures.

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

16 (8) Any contract must require the firm awarded the contract to
17 track and report to the public body and to the office of minority and
18 women's business enterprises its utilization of the office of
19 minority and women's business enterprises certified businesses and
20 veteran certified businesses.

21 (9) The public body shall provide appropriate honorarium payments
22 to finalists submitting responsive proposals that are not awarded a
23 design-build contract. Honorarium payments shall be sufficient to
24 generate meaningful competition among potential proposers on design-
25 build projects. In determining the amount of the honorarium, the
26 public body shall recognize the level of effort required to meet the
27 selection criteria.

28 **Sec. 8.** RCW 39.10.350 and 2014 c 42 s 4 are each amended to read
29 as follows:

30 (1) A public body using the general contractor/construction
31 manager contracting procedure shall provide for:

32 (a) The preparation of appropriate, complete, and coordinated
33 design documents;

34 (b) Confirmation that a constructability analysis of the design
35 documents has been performed prior to solicitation of a subcontract
36 bid package;

37 (c) Reasonable budget contingencies totaling not less than five
38 percent of the anticipated contract value;

1 (d) To the extent appropriate, on-site architectural or
2 engineering representatives during major construction or installation
3 phases;

4 (e) Employment of staff or consultants with expertise and prior
5 experience in the management of comparable projects, critical path
6 method schedule review and analysis, and the administration, pricing,
7 and negotiation of change orders;

8 (f) Contract documents that include alternative dispute
9 resolution procedures to be attempted before the initiation of
10 litigation;

11 (g) Contract documents that: (i) Obligate the public owner to, in
12 writing, accept, dispute, or reject a request for equitable
13 adjustment, change order request, or claim within a specified time
14 period but no later than (~~sixty~~) 30 calendar days after the receipt
15 by the public body of related documentation; (~~and~~) (ii) provide
16 that, if the request is disputed or rejected, the public owner shall
17 state in writing why part or all of the request is disputed or
18 rejected; and (iii) provide that if the public owner does not respond
19 in writing to a request for equitable adjustment, change order
20 request, or claim within the specified time period, the (~~request is~~
21 deemed denied)) contractor shall not be deemed to have waived any
22 right to the claims process;

23 (h) Submission of project information, as required by the board;
24 and

25 (i) Contract documents that require the contractor,
26 subcontractors, and designers to submit project information required
27 by the board.

28 (2) A public body using the general contractor/construction
29 manager contracting procedure may include an incentive clause for
30 early completion, cost savings, or other performance goals if such
31 incentives are identified in the request for proposals. No incentives
32 granted may exceed five percent of the maximum allowable construction
33 cost. No incentives may be paid from any contingency fund established
34 for coordination of the construction documents or coordination of the
35 work.

36 (3) If the construction is completed for less than the maximum
37 allowable construction cost, any savings not otherwise negotiated as
38 part of an incentive clause shall accrue to the public body. If the
39 construction is completed for more than the maximum allowable

1 construction cost, the additional cost is the responsibility of the
2 general contractor/construction manager.

3 (4) If the public body and the general contractor/construction
4 manager agree, in writing, on a price for additional work, the public
5 body must issue a change order within ~~((thirty))~~ 30 days of the
6 written agreement. If the public body does not issue a change order
7 within the ~~((thirty))~~ 30 days, interest shall accrue on the dollar
8 amount of the additional work satisfactorily completed until a change
9 order is issued. The public body shall pay this interest at a rate of
10 one percent per month.

11 ~~((5) For a project procured as a heavy civil construction
12 project, an independent audit, paid for by the public body, must be
13 conducted to confirm the proper accrual of costs as outlined in the
14 contract.))~~

15 **Sec. 9.** RCW 39.10.360 and 2014 c 42 s 5 are each amended to read
16 as follows:

17 (1) 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))~~ at a
20 time in the project when the general contractor/construction
21 manager's participation provides value.

22 (2) Contracts for the services of a general contractor/
23 construction manager under this section shall be awarded through a
24 competitive process requiring the public solicitation of proposals
25 for general contractor/construction manager services. At a minimum,
26 the public body shall publish at least once in a legal newspaper of
27 general circulation published in, or as near as possible to, that
28 part of the county in which the public work will be performed, a
29 notice of its request for qualifications from proposers for general
30 contractor/construction manager services, and the availability and
31 location of the request for proposal documents. The public body is
32 encouraged to post the general contractor/construction manager
33 opportunity in additional areas, such as websites for business
34 associations or the office of minority and women's business
35 enterprises, to further publicize the opportunity for qualified
36 general contractors/construction managers. The public solicitation of
37 proposals shall include:

1 (a) A description of the project, including programmatic,
2 performance, and technical requirements and specifications when
3 available;

4 (b) The reasons for using the general contractor/construction
5 manager procedure (~~including, if applicable, a clear statement that~~
6 ~~the public body is electing to procure the project as a heavy civil~~
7 ~~construction project, in which case the solicitation must~~
8 ~~additionally:~~

9 ~~(i) Indicate the minimum percentage of the cost of the work to~~
10 ~~construct the project that will constitute the negotiated self-~~
11 ~~perform portion of the project;~~

12 ~~(ii) Indicate whether the public body will allow the price to be~~
13 ~~paid for the negotiated self-perform portion of the project to be~~
14 ~~deemed a cost of the work to which the general contractor/~~
15 ~~construction manager's percent fee applies; and~~

16 ~~(iii) Require proposals to indicate the proposer's fee for the~~
17 ~~negotiated self-perform portion of the project));~~

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

20 (d) A description of the process the public body will use to
21 evaluate qualifications and proposals, including evaluation factors,
22 the relative weight of factors, and protest procedures including time
23 limits for filing a protest, which in no event may limit the time to
24 file a protest to fewer than four business days from the date the
25 proposer was notified of the selection decision;

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

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

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

31 (3) ~~((a))~~ Evaluation factors for ~~((selection))~~ qualifications of
32 the general contractor/construction manager shall include, but not be
33 limited to:

34 ~~((i) Ability of the firm's professional))~~ (a) Experience and
35 technical competence of key personnel;

36 ~~((ii))~~ (b) The ((firm's)) proposer's past performance ((in))
37 with negotiated ((and)) or similarly complex projects;

38 ~~((iii))~~ (c) The ((firm's ability to meet time and budget
39 requirements)) proposer's capacity to perform the work;

1 ~~((iv))~~ (d) The scope of work the firm proposes to self-perform
2 and its ~~((ability to perform))~~ past performance of that scope of
3 work;

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

5 ~~(vi) Recent, current, and projected workloads of the firm; and~~

6 ~~(vii))~~ (e) The ~~((firm's))~~ proposer's approach to executing the
7 project, including ability to meet the project time and budget
8 requirements; and

9 (f) The proposer's past performance in utilization of
10 disadvantaged business enterprises and small business entities and
11 the inclusion plan for small business entities and disadvantaged
12 business enterprises as subconsultants, subcontractors, and suppliers
13 for the project, to the extent permitted by law.

14 ~~((b) An agency may also consider the firm's outreach plan to~~
15 ~~include small business entities and disadvantaged business~~
16 ~~enterprises, and the firm's past performance in the utilization of~~
17 ~~such firms as an evaluation factor.))~~

18 (4) A public body shall establish a committee to evaluate the
19 proposals. After the committee has selected the most qualified
20 finalists, at the time specified by the public body, these finalists
21 shall submit final proposals, ~~((including))~~ which must include sealed
22 bids for the percent fee on the estimated maximum allowable
23 construction cost and ~~((the fixed amount for the general conditions~~
24 ~~work specified))~~ which may include other price-related factors
25 identified in the request for proposal. In no event shall a price-
26 related factor include a request for overall project budget,
27 estimate, or bid. The public body shall establish a time and place
28 for the opening of sealed bids ~~((for the percent fee on the estimated~~
29 ~~maximum allowable construction cost and the fixed amount for the~~
30 ~~general conditions work specified in the request for proposal))~~. At
31 the time and place named, these bids must be publicly opened and read
32 and the public body shall make all previous scoring available to the
33 public. The public body shall select the firm submitting the highest
34 scored final proposal using the evaluation factors and the relative
35 weight of factors published in the public solicitation of proposals.
36 A public body shall not evaluate or disqualify a proposal based on
37 the terms of a collective bargaining agreement.

38 (5) The public body shall notify all finalists of the selection
39 decision and make a selection summary of the final proposals
40 available to all proposers within two business days of such

1 notification. If the public body receives a timely written protest
2 from a proposer, the public body may not execute a contract until two
3 business days after the final protest decision is transmitted to the
4 protestor. The protestor must submit its protest in accordance with
5 the published protest procedures.

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

12 **Sec. 10.** RCW 39.10.370 and 2014 c 42 s 6 are each amended to
13 read as follows:

14 (1) The maximum allowable construction cost shall be used to
15 establish a total contract cost for which the general contractor/
16 construction manager shall provide a performance and payment bond.
17 The maximum allowable construction cost shall be negotiated between
18 the public body and the selected firm when the construction documents
19 and specifications are at least ninety percent complete.

20 (2) Major bid packages may be bid in accordance with RCW
21 39.10.380 before agreement on the maximum allowable construction cost
22 between the public body and the selected general contractor/
23 construction manager. The general contractor/construction manager may
24 issue an intent to award to the responsible bidder submitting the
25 lowest responsive bid.

26 (3) The public body may, at its option, authorize the general
27 contractor/construction manager to proceed with the bidding and award
28 of bid packages and construction before receipt of complete project
29 plans and specifications. Any contracts awarded under this subsection
30 shall be incorporated in the negotiated maximum allowable
31 construction cost.

32 (4) The total contract cost includes the fixed amount for the
33 detailed specified general conditions work, the negotiated maximum
34 allowable construction cost, the negotiated support services, and the
35 percent fee on the negotiated maximum allowable construction cost.
36 (~~Negotiated support services may be included in the specified~~
37 ~~general conditions at the discretion of the public body.~~) Unless
38 portions or all are converted to lump sum, negotiated support

1 services shall be treated as a contractual allowance, subject to
2 reconciliation at the conclusion of work.

3 (5) If the public body is unable to negotiate a satisfactory
4 maximum allowable construction cost with the firm selected that the
5 public body determines to be fair, reasonable, and within the
6 available funds, negotiations with that firm shall be formally
7 terminated and the public body shall negotiate with the next highest
8 scored firm and continue until an agreement is reached or the process
9 is terminated.

10 (6) If the maximum allowable construction cost varies more than
11 ~~((fifteen))~~ 15 percent from the bid estimated maximum allowable
12 construction cost due to requested and approved changes in the scope
13 by the public body, the percent fee shall be renegotiated.

14 ~~((7) As part of the negotiation of the maximum allowable~~
15 ~~construction cost under subsection (1) of this section, on a project~~
16 ~~that the public body has elected to procure as a heavy civil~~
17 ~~construction project:~~

18 ~~(a) The general contractor/construction manager shall submit a~~
19 ~~proposed construction management and contracting plan, which must~~
20 ~~include, at a minimum:~~

21 ~~(i) The scope of work and cost estimates for each bid package;~~

22 ~~(ii) A proposed price and scope of work for the negotiated self-~~
23 ~~perform portion of the project;~~

24 ~~(iii) The bases used by the general contractor/construction~~
25 ~~manager to develop all cost estimates, including the negotiated self-~~
26 ~~perform portion of the project; and~~

27 ~~(iv) The general contractor/construction manager's updated~~
28 ~~outreach plan to include small business entities, disadvantaged~~
29 ~~business entities, and any other disadvantaged or underutilized~~
30 ~~businesses as the public body may designate in the public~~
31 ~~solicitation of proposals, as subcontractors and suppliers for the~~
32 ~~project;~~

33 ~~(b) The public body and general contractor/construction manager~~
34 ~~may negotiate the scopes of work to be procured by bid and the price~~
35 ~~and scope of work for the negotiated self-perform portion of the~~
36 ~~project, if any;~~

37 ~~(c) The negotiated self-perform portion of the project must not~~
38 ~~exceed fifty percent of the cost of the work to construct the~~
39 ~~project;~~

1 ~~(d) Subject to the limitation of RCW 39.10.390(4), the public~~
2 ~~body may additionally negotiate with the general contractor/~~
3 ~~construction manager to determine on which scopes of work the general~~
4 ~~contractor/construction manager will be permitted to bid, if any;~~

5 ~~(e) The public body and general contractor/construction manager~~
6 ~~shall negotiate, to the public body's satisfaction, a fair and~~
7 ~~reasonable outreach plan;~~

8 ~~(f) If the public body is unable to negotiate to its reasonable~~
9 ~~satisfaction a component of this subsection (7), negotiations with~~
10 ~~the firm must be terminated and the public body shall negotiate with~~
11 ~~the next highest scored firm and continue until an agreement is~~
12 ~~reached or the process is terminated.)~~

13 **Sec. 11.** RCW 39.10.380 and 2013 c 222 s 14 are each amended to
14 read as follows:

15 (1) All subcontract work and equipment and material purchases
16 shall be competitively bid with public bid openings and require the
17 public solicitation of the bid documents. At a minimum, the general
18 contractor/construction manager shall publish at least once in a
19 legal newspaper of general circulation published in, or as near as
20 possible to, that part of the county in which the subcontract work
21 will be performed, a notice of its request for bid, and the
22 availability and location of the bid documents. The general
23 contractor/construction manager is encouraged to post the subcontract
24 opportunity in additional areas beyond the legal newspaper as
25 required by this subsection, such as websites for business
26 associations, the office of minority and women's business
27 enterprises, and other locations and mediums that will further
28 publicize the opportunity for qualified subcontractors. Subcontract
29 bid packages and equipment and materials purchases shall be awarded
30 to the responsible bidder submitting the lowest responsive bid. In
31 preparing subcontract bid packages, the general contractor/
32 construction manager shall not be required to violate or waive terms
33 of a collective bargaining agreement. Individual bid packages are to
34 be prepared with trades separated in the manner consistent with
35 industry practice to maximize participation and competition across
36 all trades. Bundling of trades not normally combined into one bid
37 package is not allowed without justification and specific approval by
38 the public body. Bid packages must be prepared to reduce barriers for
39 and increase participation by disadvantaged business enterprises.

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

16 (3) All subcontractors who bid work over (~~three hundred thousand~~
17 ~~dollars~~) \$300,000 shall post a bid bond. All subcontractors who are
18 awarded a contract over (~~three hundred thousand dollars~~) \$300,000
19 shall provide a performance and payment bond for the contract amount.
20 All other subcontractors shall provide a performance and payment bond
21 if required by the general contractor/construction manager.

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

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

36 (6) The general contractor/construction manager may negotiate
37 with the lowest responsible and responsive bidder to negotiate an
38 adjustment to the lowest bid or proposal price to reduce cost based
39 upon agreed changes to the contract plans and specifications under
40 the following conditions:

1 (a) All responsive bids or proposal prices exceed the ((available
2 funds)) published bid package estimates; and

3 (b) The apparent low responsive bid or proposal does not exceed
4 the ((available funds by the greater of one hundred twenty-five
5 thousand dollars or two percent for projects valued over ten million
6 dollars; and

7 ~~(c) The negotiated adjustment will bring the bid or proposal~~
8 ~~price within the amount of available funds)) published bid package~~
9 ~~estimates by more than 10 percent.~~

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

12 (8) The general contractor/construction manager must provide a
13 written explanation to the public body if all bids are rejected.

14 **Sec. 12.** RCW 39.10.385 and 2013 c 222 s 15 are each amended to
15 read as follows:

16 The selection process in this section may be used by public
17 bodies certified under RCW 39.10.270. It may also be used by
18 noncertified public bodies if this selection process has been
19 approved for the project by the project review committee. As an
20 alternative to the subcontractor selection process outlined in RCW
21 39.10.380, a general contractor/construction manager may, with the
22 approval of the public body, select ~~((mechanical subcontractors,~~
23 ~~electrical)) one or more subcontractors~~((, or both,))~~ using the
24 process outlined in this section. This alternative selection process
25 may only be used when the anticipated value of the subcontract will
26 exceed three million dollars. When using the alternative selection
27 process, the general contractor/construction manager should select
28 the subcontractor early in the life of the public works project.~~

29 (1) In order to use this alternative selection process, the
30 general contractor/construction manager and the public body must
31 determine that it is in the best interest of the public. In making
32 this determination the general contractor/construction manager and
33 the public body must:

34 (a) Publish a notice of intent to use this alternative selection
35 process in ((a)) the same legal newspaper where the public
36 solicitation of proposals is published ~~((in or as near as possible to~~
37 ~~that part of the county where the public work will be constructed)).~~
38 The general contractor/construction manager and public body are
39 encouraged to post the notice in additional areas beyond the legal

1 newspaper as required under this subsection, such as websites for
2 business associations, the office of minority and women's business
3 enterprises, and other locations and mediums that will further
4 publicize the intent to use this alternative selection process.
5 Notice must be published at least fourteen calendar days before
6 conducting a public hearing. The notice must include the date, time,
7 and location of the hearing; a statement justifying the basis and
8 need for the alternative selection process; how interested parties
9 may, prior to the hearing, obtain the following: (i) The evaluation
10 criteria and applicable weight given to each criteria that will be
11 used for evaluation, including clear definitions of what should be
12 considered specified general conditions work and what should be
13 considered the fee; and (ii) protest procedures including time limits
14 for filing a protest, which may, in no event, limit the time to file
15 a protest to fewer than four business days from the date the proposer
16 was notified of the selection decision. The evaluation criteria,
17 weights assigned to each criteria, and justification for using this
18 selection process must be made available upon request at least seven
19 calendar days before the public hearing;

20 (b) Conduct a hearing and provide an opportunity for any
21 interested party to submit written and verbal comments regarding the
22 justification for using this selection process, the evaluation
23 criteria, weights for each criteria, and protest procedures;

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

27 (d) Issue a written final determination to all interested
28 parties. (~~All protests of the decision to use the alternative~~
29 ~~selection process must be in writing and submitted to the public body~~
30 ~~within seven calendar days of the final determination.)) The final
31 determination shall state the reasons the alternative selection
32 process is determined to be in the best interests of the public and
33 shall reasonably address the comments received regarding the criteria
34 and weights for each criterion. Any modifications to the criteria,
35 weights, and protest procedures based on comments received during the
36 public hearing process must be included in the final determination.
37 All protests of the decision to use the alternative selection process
38 must be in writing and submitted to the public body within seven
39 calendar days of the final determination. The public body shall not~~

1 proceed with the selection process until after responding in writing
2 to the protest.

3 (2) Contracts for the services of a subcontractor under this
4 section must be awarded through a competitive process requiring a
5 public solicitation of proposals. Notice of the public solicitation
6 of proposals must be provided to the office of minority and women's
7 business enterprises. The public solicitation of proposals must
8 include:

9 (a) A description of the project, including programmatic,
10 performance, and technical requirements and specifications when
11 available, along with a description of the project's unique aspects,
12 complexities, and challenges;

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

14 (c) A description of the minimum qualifications required of the
15 firm;

16 (d) A description of the process used to evaluate qualifications
17 and proposals, including evaluation factors and the relative weight
18 of factors;

19 (e) Protest procedures;

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

22 (g) The estimated maximum allowable subcontract cost; and

23 (h) The bid instructions to be used by the finalists.

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

26 (a) Ability of the firm's professional personnel to deliver
27 projects similar in size, scope, or complexity;

28 (b) The firm's past performance on ~~((similar))~~ projects similar
29 in size, scope, or complexity;

30 (c) The firm's ability to meet time and budget requirements on
31 projects similar in size, scope, or complexity;

32 (d) The scope of work the firm proposes to perform with its own
33 forces and its ability to perform that work;

34 (e) The firm's plan for ~~((outreach to minority and women-owned~~
35 ~~businesses))~~ inclusion of disadvantaged business enterprises, to the
36 extent permitted by law;

37 (f) The firm's proximity to the project location;

38 (g) ~~((The firm's capacity to successfully complete the project;~~

39 ~~-h-))~~ The firm's approach to executing the project based on its
40 delivery of other projects similar in size, scope, or complexity;

1 ~~((i))~~ (h) The firm's approach to safety on the project;

2 ~~((j))~~ (i) The firm's safety history;

3 (j) If interviews are part of the selection process, the
4 solicitation shall describe how interviews will be scored or
5 evaluated, and evaluations shall be included in the written selection
6 summary; and

7 (k) If the firm is selected as one of the most qualified
8 finalists, the firm's fee and cost proposal.

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

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

29 (6) The general contractor/construction manager and the public
30 body shall select the firm submitting the highest scored final
31 proposal using the evaluation factors and the relative weight of
32 factors identified in the solicitation of proposals. Scoring of the
33 nonprice factors shall be added to the scoring of the fee and cost
34 proposals to determine the highest scored firm. The scoring of the
35 nonprice factors must be made available at the public opening of the
36 fee and cost proposals. The general contractor/construction manager
37 shall notify all proposers of the selection decision and make a
38 selection summary of the final proposals, which shall be available to
39 all proposers within two business days of such notification. The
40 general contractor/construction manager may not evaluate or

1 disqualify a proposal based on the terms of a collective bargaining
2 agreement.

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

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

18 (9) With the approval of the public body, the general contractor/
19 construction manager may contract with the selected firm to provide
20 preconstruction services during the design phase that may include
21 life-cycle cost design considerations, value engineering, scheduling,
22 cost estimating, constructability, alternative construction options
23 for cost savings, and sequencing of work; and to act as the
24 (~~mechanical or electrical~~) subcontractor during the construction
25 phase.

26 (10) The maximum allowable subcontract cost must be used to
27 establish a total subcontract cost for purposes of a performance and
28 payment bond. Total subcontract cost means the fixed amount for the
29 detailed specified general conditions work, the negotiated maximum
30 allowable subcontract cost, and the percent fee on the negotiated
31 maximum allowable subcontract cost. Maximum allowable subcontract
32 cost means the maximum cost to complete the work specified for the
33 subcontract, including the estimated cost of work to be performed by
34 the subcontractor's own forces, a percentage for risk contingency,
35 negotiated support services, and approved change orders. The maximum
36 allowable subcontract cost must be negotiated between the general
37 contractor/construction manager and the selected firm when the
38 construction documents and specifications are at least ninety percent
39 complete. Final agreement on the maximum allowable subcontract cost
40 is subject to the approval of the public body.

1 (11) If the work of the (~~mechanical contractor or electrical~~
2 ~~contractor~~) subcontractor is completed for less than the maximum
3 allowable subcontract cost, any savings not otherwise negotiated as
4 part of an incentive clause becomes part of the risk contingency
5 included in the general contractor/construction manager's maximum
6 allowable construction cost. If the work of the (~~mechanical~~
7 ~~contractor or the electrical contractor~~) subcontractor is completed
8 for more than the maximum allowable subcontract cost, the additional
9 cost is the responsibility of that subcontractor. An independent
10 audit, paid for by the public body, must be conducted to confirm the
11 proper accrual of costs (~~as outlined in the contract~~). The public
12 body or general contractor/construction manager shall define the
13 scope of the audit in the contract.

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

18 **Sec. 13.** RCW 39.10.390 and 2014 c 42 s 7 are each amended to
19 read as follows:

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

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

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

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

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

34 (3) In no event may the general contractor/construction manager
35 or its subsidiaries assign warranty responsibility or the terms of
36 its contract or purchase order with vendors for equipment or material
37 purchases to subcontract bid package bidders or subcontractors who
38 have been awarded a contract. The value of subcontract work performed
39 and equipment and materials supplied by the general contractor/

1 construction manager may not exceed (~~thirty~~) 30 percent of the
2 negotiated maximum allowable construction cost, unless procured as a
3 heavy civil construction project under this chapter. Negotiated
4 support services performed by the general contractor/construction
5 manager shall not be considered subcontract work for purposes of this
6 subsection.

7 ~~((4) Notwithstanding any contrary provision of this chapter, for
8 a project that a public body has elected to procure as a heavy civil
9 construction project under this chapter, at least thirty percent of
10 the cost of the work to construct the project included in the
11 negotiated maximum allowable construction cost must be procured
12 through competitive sealed bidding in which bidding by the general
13 contractor/construction manager or its subsidiaries is prohibited.))~~

14 **Sec. 14.** RCW 39.10.400 and 2013 c 222 s 17 are each amended to
15 read as follows:

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

22 (a) Conduct a hearing and provide an opportunity for any
23 interested party to submit written and verbal comments regarding the
24 justification for conducting bidder eligibility, the evaluation
25 criteria, and weights for each criteria and subcriteria;

26 (b) Publish a notice of intent to evaluate and determine bidder
27 eligibility in a legal newspaper published in or as near as possible
28 to that part of the county where the public work will be constructed
29 at least (~~fourteen~~) 14 calendar days before conducting a public
30 hearing. The general contractor/construction manager and public body
31 are encouraged to post the notice in additional areas beyond the
32 legal newspaper as required under this subsection, such as websites
33 for business associations, the office of minority and women's
34 business enterprises, and other locations and mediums that will
35 further publicize the intent to use subcontractor eligibility prior
36 to seeking bids;

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

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

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

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

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

24 **Sec. 15.** RCW 39.10.430 and 2019 c 212 s 8 are each amended to
25 read as follows:

26 (1) Job order contracts shall be awarded through a competitive
27 process using public requests for proposals.

28 (2) The public body shall (~~make an effort~~) prioritize efforts
29 to solicit proposals from certified minority or certified woman-owned
30 contractors to the extent permitted by the Washington state civil
31 rights act, RCW 49.60.400.

32 (3) The public body shall publish, at least once in a statewide
33 publication and legal newspaper of general circulation published in
34 every county in which the public works project is anticipated, a
35 request for proposals for job order contracts and the availability
36 and location of the request for proposal documents. The public body
37 is encouraged to post the request for proposals for job order
38 contracts and the availability and location of the request for
39 proposal documents in other areas, such as websites for business

1 associations, the office of minority and women's business
2 enterprises, and other locations and mediums that will further
3 publicize the opportunities. The public body shall ensure that the
4 request for proposal documents at a minimum includes:

5 (a) A detailed description of the scope of the job order contract
6 including performance, technical requirements and specifications,
7 functional and operational elements, minimum and maximum work order
8 amounts, duration of the contract, and options to extend the job
9 order contract;

10 (b) The reasons for using job order contracts;

11 (c) A description of the qualifications required of the proposer;

12 (d) The identity of the specific unit price book to be used and a
13 description of which elements shall be included in the coefficient as
14 necessary to establish a firm fixed price on work orders to be
15 awarded under the job order contract;

16 (e) The minimum contracted amount committed to the selected job
17 order contractor;

18 (f) A description of the process the public body will use to
19 evaluate qualifications and proposals, including evaluation factors
20 and the relative weight of factors. The public body shall ensure that
21 evaluation factors include, but are not limited to, (~~proposal~~
22 ~~price~~) the coefficient and the ability of the proposer to perform
23 the job order contract. In evaluating the ability of the proposer to
24 perform the job order contract, the public body may consider: The
25 ability of the professional personnel who will work on the job order
26 contract; past performance on similar contracts; ability to meet time
27 and budget requirements; past performance on approved subcontractor
28 inclusion plans; ability to provide a performance and payment bond
29 for the job order contract; recent, current, and projected workloads
30 of the proposer; location; and the concept of the proposal;

31 (g) The form of the contract to be awarded;

32 (h) The method for pricing renewals of or extensions to the job
33 order contract;

34 (i) A notice that the proposals are subject to RCW 39.10.470; and

35 (j) Other relevant information (~~relevant to the project~~).

36 (4) A public body shall establish a committee, including a member
37 with knowledge and experience in state and federal laws, rules, and
38 best practices concerning public contracting for minority, women, and
39 veteran-owned businesses and small businesses, to evaluate the
40 proposals. After the committee has selected the most qualified

1 finalists, the finalists shall submit (~~final proposals, including~~
2 ~~sealed bids based upon the identified unit price book~~) a sealed bid
3 including, but not limited to, coefficient(s). Such bids may be in
4 the form of coefficient (~~markups from~~) adjustments to the listed
5 unit price book (~~costs~~). The public body shall award the contract
6 to the firm submitting the highest scored final proposal using the
7 evaluation factors and the relative weight of factors published in
8 the public request for proposals and will notify the board of the
9 award of the contract.

10 (5) The public body shall provide a protest period of at least
11 ten business days following the day of the announcement of the
12 apparent successful proposal to allow a protester to file a detailed
13 statement of the grounds of the protest. The public body shall
14 promptly make a determination on the merits of the protest and
15 provide to all proposers a written decision of denial or acceptance
16 of the protest. The public body shall not execute the contract until
17 two business days following the public body's decision on the
18 protest.

19 (6) The requirements of RCW 39.30.060 do not apply to requests
20 for proposals for job order contracts.

21 **Sec. 16.** RCW 39.10.440 and 2019 c 212 s 9 are each amended to
22 read as follows:

23 (1) The maximum total dollar amount that may be awarded under a
24 job order contract is (~~four million dollars~~) \$4,000,000 per year
25 for a maximum of three years. Any unused capacity from the previous
26 year may be carried over for one year and added to the immediate
27 following year's limit. The maximum annual volume including unused
28 capacity shall not exceed the limit of two years. The maximum total
29 dollar amount that may be awarded under a job order contract for the
30 department of enterprise services, counties with a population of more
31 than (~~one million~~) 1,000,000, and cities with a population of more
32 than (~~four hundred thousand~~) 400,000 is (~~six million dollars~~)
33 \$6,000,000 per year for a maximum of three years. The maximum total
34 dollar amounts are exclusive of Washington state sales and use tax.

35 (2) Job order contracts may be executed for an initial contract
36 term of not to exceed two years, with the option of extending or
37 renewing the job order contract for one year. All extensions or
38 renewals must be priced as provided in the request for proposals. The

1 extension or renewal must be mutually agreed to by the public body
2 and the job order contractor.

3 (3) A public body may have no more than three job order contracts
4 in effect at any one time, with the exception of the department of
5 enterprise services, which may have six job order contracts in effect
6 at any one time.

7 (4) At least (~~ninety~~) 90 percent of work contained in a job
8 order contract must be subcontracted to entities other than the job
9 order contractor. The job order contractor must distribute contracts
10 as equitably as possible among qualified and available subcontractors
11 including certified minority and woman-owned subcontractors to the
12 extent permitted by law as demonstrated on the subcontractor and
13 supplier project submission, and shall limit subcontractor bonding
14 requirements to the greatest extent possible.

15 (5) The job order contractor shall publish notification of intent
16 to perform public works projects at the beginning of each contract
17 year in a statewide publication and in a legal newspaper of general
18 circulation in every county in which the public works projects are
19 anticipated. The job order contractor is encouraged to post the
20 notification of intent to perform public works projects in other
21 areas, such as websites for business associations, the office of
22 minority and women's business enterprises, and other locations and
23 mediums that will further publicize subcontractor opportunities.

24 (6) Job order contractors shall pay prevailing wages for all work
25 that would otherwise be subject to the requirements of chapter 39.12
26 RCW. Prevailing wages for all work performed pursuant to each work
27 order must be the rates in effect at the time the individual work
28 order is issued.

29 (7) If, in the initial contract term, the public body, at no
30 fault of the job order contractor, fails to issue the minimum amount
31 of work orders stated in the public request for proposals, the public
32 body shall pay the contractor an amount equal to the difference
33 between the minimum work order amount and the actual total of the
34 work orders issued multiplied by an appropriate percentage for
35 overhead and profit contained in the contract award coefficient for
36 services as specified in the request for proposals. This is the
37 contractor's sole remedy.

38 (8) All job order contracts awarded under this section must be
39 signed before July 1, (~~2021~~) 2031; however the job order contract
40 may be extended or renewed as provided for in this section.

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

3 **Sec. 17.** RCW 39.10.460 and 2012 c 102 s 3 are each amended to
4 read as follows:

5 Each (~~year, a~~) public body shall (~~provide to the board~~)
6 maintain and make available the following information for each job
7 order contract (~~for the period July 1st through June 30th~~):

8 (1) A list of work orders issued;

9 (2) The cost of each work order;

10 (3) A list of subcontractors hired under each work order,
11 including whether those subcontractors were certified small,
12 minority, women, or veteran-owned businesses; and

13 (4) (~~If requested by the board, a~~) A copy of the intent to pay
14 prevailing wage and the affidavit of wages paid for each work order
15 subcontract (~~and~~

16 ~~(5) Any other information requested by the board).~~

17 **Sec. 18.** RCW 39.10.490 and 2013 c 222 s 20 are each amended to
18 read as follows:

19 The alternative public works contracting procedures authorized
20 under this chapter are limited to public works contracts signed
21 before July 1, (~~2021~~) 2031. Methods of public works contracting
22 authorized under this chapter shall remain in full force and effect
23 until completion of contracts signed before July 1, (~~2021~~) 2031.

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

26 In addition to the general contractor/construction manager
27 requirements established in this chapter, public bodies utilizing the
28 general contractor/construction manager method for a heavy civil
29 construction project must also comply with the following
30 requirements:

31 (1) The heavy civil construction general contractor/construction
32 manager contract solicitation must:

33 (a) Provide the reasons for using the general contractor/
34 construction manager procedure, including a clear statement that the
35 public body is electing to procure the project as a heavy civil
36 construction project;

1 (b) Indicate the minimum percentage of the cost of the work to
2 construct the project that will constitute the negotiated self-
3 perform portion of the project;

4 (c) Indicate whether the public body will allow the price to be
5 paid for the negotiated self-perform portion of the project to be
6 deemed a cost of the work to which the general contractor/
7 construction manager's percent fee applies; and

8 (d) Require proposals to indicate the proposer's fee for the
9 negotiated self-perform portion of the project;

10 (2) As part of the negotiation of the maximum allowable
11 construction cost established in RCW 39.10.370(1), the general
12 contractor/construction manager shall submit a proposed construction
13 management and contracting plan, which must include, at a minimum:

14 (a) The scope of work and cost estimates for each bid package;

15 (b) A proposed price and scope of work for the negotiated self-
16 perform portion of the project;

17 (c) The bases used by the general contractor/construction manager
18 to develop all cost estimates, including the negotiated self-perform
19 portion of the project; and

20 (d) The general contractor/construction manager's updated
21 inclusion plan for small business entities, disadvantaged business
22 enterprises, and any other disadvantaged or underutilized businesses
23 as the public body may designate in the public solicitation of
24 proposals, as subcontractors and suppliers for the project;

25 (3) The public body and general contractor/construction manager
26 may negotiate the scopes of work to be procured by bid and the price
27 and scope of work for the negotiated self-perform portion of the
28 project, if any;

29 (4) The negotiated self-perform portion of the project must not
30 exceed 50 percent of the cost of the work to construct the project;

31 (5) Notwithstanding any contrary provision of this chapter, for a
32 project that a public body has elected to procure as a heavy civil
33 construction project under this chapter, at least 30 percent of the
34 cost of the work to construct the project included in the negotiated
35 maximum allowable construction cost must be procured through
36 competitive sealed bidding in which bidding by the general
37 contractor/construction manager or its subsidiaries is prohibited;

38 (6) Subject to the limitation of subsection (5) of this section,
39 the public body may additionally negotiate with the general
40 contractor/construction manager to determine on which scopes of work

1 the general contractor/construction manager will be permitted to bid,
2 if any;

3 (7) The public body and general contractor/construction manager
4 shall negotiate, to the public body's satisfaction, a fair and
5 reasonable inclusion plan;

6 (8) If the public body is unable to negotiate to its reasonable
7 satisfaction a component of this section, negotiations with the firm
8 must be terminated and the public body shall negotiate with the next
9 highest scored firm and continue until an agreement is reached or the
10 process is terminated; and

11 (9) For a project procured as a heavy civil construction project,
12 an independent audit, paid for by the public body, must be conducted
13 to confirm the proper accrual of costs as outlined in the contract.
14 The public body shall define the scope of the audit in the contract.

15 NEW SECTION. **Sec. 20.** (1) The capital projects advisory review
16 board shall coordinate and consult with the office of minority and
17 women's business enterprises, the department of enterprise services,
18 the office of equity, community stakeholders and advocates, and
19 subject matter experts to create best practices guidelines for
20 increasing and sustaining access to contracting opportunities in
21 alternative public works for minority, women, and veteran-owned
22 businesses, and small businesses. In creating the guidelines, the
23 board shall take into consideration the barriers to participation
24 identified in the local government contracting report produced
25 pursuant to section 16, chapter 434, Laws of 2019, information and
26 recommendations from the 2019 Washington state disparity study and
27 disparity studies of any other public body in Washington state, and
28 successful diversity and inclusion policies being implemented by
29 state and local governmental agencies. The best practices shall
30 address, at a minimum, guidelines for use of race-neutral and race-
31 conscious programs, elements of successful inclusion plans, the use
32 of aspirational inclusion goals, evaluation of inclusion plans in the
33 contract award process, and the evaluation of inclusion plans and
34 past performance in public body certification and project approval
35 processes under RCW 39.10.270 and 39.10.280. The board shall make the
36 best practices guidelines available on its website by June 30, 2022,
37 and should have a plan to update the practices to keep them relevant
38 for use. Additionally, by June 30, 2022, the board shall report to
39 the appropriate committees of the legislature regarding any

1 recommendations for changes to state law that are advisable based
2 upon the best practices guidelines.

3 (2) This section expires July 1, 2023.

4 **Sec. 21.** RCW 43.131.407 and 2013 c 222 s 21 are each amended to
5 read as follows:

6 The alternative public works contracting procedures under chapter
7 39.10 RCW shall be terminated June 30, (~~2021~~) 2031, as provided in
8 RCW 43.131.408.

9 **Sec. 22.** RCW 43.131.408 and 2019 c 212 s 13 are each amended to
10 read as follows:

11 The following acts or parts of acts, as now existing or hereafter
12 amended, are each repealed, effective June 30, (~~2022~~) 2032:

13 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
14 1994 c 132 s 1;

15 (2) RCW 39.10.210 and 2021 c ... s 1 (section 1 of this act),
16 2019 c 212 s 1, 2014 c 42 s 1, & 2013 c 222 s 1;

17 (3) RCW 39.10.220 and 2021 c ... s 2 (section 2 of this act),
18 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

19 (4) RCW 39.10.230 and 2021 c ... s 3 (section 3 of this act),
20 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s
21 103, & 2005 c 377 s 2;

22 (5) RCW 39.10.240 and 2021 c ... s 4 (section 4 of this act),
23 2013 c 222 s 4, & 2007 c 494 s 104;

24 (6) RCW 39.10.250 and 2021 c ... s 5 (section 5 of this act),
25 2019 c 212 s 2, 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

26 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

27 (8) RCW 39.10.270 and 2019 c 212 s 3, 2017 c 211 s 1, 2013 c 222
28 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

29 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494
30 s 108;

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

32 (11) RCW 39.10.300 and 2021 c ... s 6 (section 6 of this act),
33 2019 c 212 s 4, 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

34 (12) RCW 39.10.320 and 2019 c 212 s 5, 2013 c 222 s 10, 2007 c
35 494 s 203, & 1994 c 132 s 7;

36 (13) RCW 39.10.330 and 2021 c ... s 7 (section 7 of this act),
37 2019 c 212 s 6, 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007
38 c 494 s 204;

1 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c
2 494 s 301;

3 (15) RCW 39.10.350 and 2021 c ... s 8 (section 8 of this act),
4 2014 c 42 s 4, & 2007 c 494 s 302;

5 (16) RCW 39.10.360 and 2021 c ... s 9 (section 9 of this act),
6 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

7 (17) RCW 39.10.370 and 2021 c ... s 10 (section 10 of this act),
8 2014 c 42 s 6, & 2007 c 494 s 304;

9 (18) RCW 39.10.380 and 2021 c ... s 11 (section 11 of this act),
10 2013 c 222 s 14, & 2007 c 494 s 305;

11 (19) RCW 39.10.385 and 2021 c ... s 12 (section 12 of this act),
12 2013 c 222 s 15, & 2010 c 163 s 1;

13 (20) RCW 39.10.390 and 2021 c ... s 13 (section 13 of this act),
14 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;

15 (21) RCW 39.10.400 and 2021 c ... s 14 (section 14 of this act),
16 2013 c 222 s 17, & 2007 c 494 s 307;

17 (22) RCW 39.10.410 and 2007 c 494 s 308;

18 (23) RCW 39.10.420 and 2019 c 212 s 7, 2017 c 136 s 1, & 2016 c
19 52 s 1;

20 (24) RCW 39.10.430 and 2021 c ... s 15 (section 15 of this act),
21 2019 c 212 s 8, & 2007 c 494 s 402;

22 (25) RCW 39.10.440 and 2021 c ... s 16 (section 16 of this act),
23 2019 c 212 s 9, 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;

24 (26) RCW 39.10.450 and 2019 c 212 s 10, 2012 c 102 s 2, & 2007 c
25 494 s 404;

26 (27) RCW 39.10.460 and 2021 c ... s 17 (section 17 of this act),
27 2012 c 102 s 3, & 2007 c 494 s 405;

28 (28) RCW 39.10.470 and 2019 c 212 s 11, 2014 c 19 s 2, 2005 c 274
29 s 275, & 1994 c 132 s 10;

30 (29) RCW 39.10.480 and 1994 c 132 s 9;

31 (30) RCW 39.10.490 and 2021 c ... s 18 (section 18 of this act),
32 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

33 (31) RCW 39.10.900 and 1994 c 132 s 13;

34 (32) RCW 39.10.901 and 1994 c 132 s 14;

35 (33) RCW 39.10.903 and 2007 c 494 s 510;

36 (34) RCW 39.10.904 and 2007 c 494 s 512; ((and))

37 (35) RCW 39.10.905 and 2007 c 494 s 513; and

38 (36) RCW 39.10.--- and 2021 c ... s 19 (section 19 of this act).

1 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

Passed by the Senate April 14, 2021.

Passed by the House April 6, 2021.

Approved by the Governor May 10, 2021.

Filed in Office of Secretary of State May 10, 2021.

--- **END** ---