

**RCW 39.10.908 General contractor/construction manager method for heavy civil construction projects—Requirements. (Effective until July 1, 2024.)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Subject to the limitation of subsection (5) of this section, the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

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

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

(9) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract. The public body shall define the scope of the audit in the contract. [2021 c 230 § 19.]

**Sunset Act application:** See note following chapter digest.

**Effective date—2021 c 230:** See note following RCW 39.10.210.

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

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

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

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

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

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

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

(d) The general contractor/construction manager's updated inclusion plan for business entities certified with the office of minority and women's business enterprises, including small businesses and business entities certified with the department of veterans affairs, and any other underutilized businesses as the public body may

designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

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

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

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

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

(9) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract. The public body shall define the scope of the audit in the contract. [2023 c 395 § 13; 2021 c 230 § 19.]

**Sunset Act application:** See note following chapter digest.

**Effective date—2023 c 395 §§ 1-30, 32-34, 36, and 37:** See note following RCW 39.04.010.

**Findings—Intent—2023 c 395:** See note following RCW 39.04.010.

**Effective date—2021 c 230:** See note following RCW 39.10.210.