

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2536

56th Legislature
2000 Regular Session

Passed by the House February 10, 2000
Yeas 96 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate March 2, 2000
Yeas 45 Nays 2

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2536** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2536

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By Representatives Miloscia, D. Schmidt and Haigh

Read first time 01/17/2000. Referred to Committee on State Government.

1 AN ACT Relating to general contractor/construction manager self-
2 performance; and amending RCW 39.10.060.

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

4 **Sec. 1.** RCW 39.10.060 and 1997 c 376 s 4 are each amended to read
5 as follows:

6 (1) Notwithstanding any other provision of law, and after complying
7 with RCW 39.10.030, the following public bodies may utilize the general
8 contractor/construction manager procedure of public works contracting
9 for public works projects authorized under subsection (2) of this
10 section: The state department of general administration; the
11 University of Washington; Washington State University; every city with
12 a population greater than one hundred fifty thousand; every county with
13 a population greater than four hundred fifty thousand; and every port
14 district with a population greater than five hundred thousand. For the
15 purposes of this section, "general contractor/construction manager"
16 means a firm with which a public body has selected and negotiated a
17 maximum allowable construction cost to be guaranteed by the firm, after
18 competitive selection through formal advertisement and competitive
19 bids, to provide services during the design phase that may include

1 life-cycle cost design considerations, value engineering, scheduling,
2 cost estimating, constructability, alternative construction options for
3 cost savings, and sequencing of work, and to act as the construction
4 manager and general contractor during the construction phase.

5 (2) Public bodies authorized under this section may utilize the
6 general contractor/construction manager procedure for public works
7 projects valued over ten million dollars where:

8 (a) Implementation of the project involves complex scheduling
9 requirements;

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

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

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

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

1 After the committee has selected the most qualified finalists, these
2 finalists shall submit final proposals, including sealed bids for the
3 percent fee, which is the percentage amount to be earned by the general
4 contractor/construction manager as overhead and profit, on the
5 estimated maximum allowable construction cost and the fixed amount for
6 the detailed specified general conditions work. The public body shall
7 select the firm submitting the highest scored final proposal using the
8 evaluation factors and the relative weight of factors published in the
9 public solicitation of proposals.

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

28 (6) All subcontract work shall be competitively bid with public bid
29 openings. Subcontract work shall not be issued for bid until the
30 public body has approved, in consultation with the office of minority
31 and women's business enterprises or the equivalent local agency, a plan
32 prepared by the general contractor/construction manager for attaining
33 applicable minority and women business enterprise total project goals
34 that equitably spreads women and minority enterprise opportunities to
35 as many firms in as many bid packages as is practicable. When critical
36 to the successful completion of a subcontractor bid package the owner
37 and general contractor/construction manager may evaluate for bidding
38 eligibility a subcontractor's ability, time, budget, and specification
39 requirements based on the subcontractor's performance of those items on

1 previous projects. Subcontract bid packages shall be awarded to the
2 responsible bidder submitting the low responsive bid. The requirements
3 of RCW 39.30.060 apply to each subcontract bid package. All
4 subcontractors who bid work over three hundred thousand dollars shall
5 post a bid bond and all subcontractors who are awarded a contract over
6 three hundred thousand dollars shall provide a performance and payment
7 bond for their contract amount. All other subcontractors shall provide
8 a performance and payment bond if required by the general
9 contractor/construction manager. A low bidder who claims error and
10 fails to enter into a contract is prohibited from bidding on the same
11 project if a second or subsequent call for bids is made for the
12 project. Except as provided for under subsection (7) of this section,
13 bidding on subcontract work by the general contractor/construction
14 manager or its subsidiaries is prohibited. The general
15 contractor/construction manager may negotiate with the low-responsive
16 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such
17 negotiations, rebid.

18 (7) The general contractor/construction manager, or its
19 subsidiaries, may bid on subcontract work (~~on projects valued over~~
20 ~~twenty million dollars~~) if:

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

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

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

27 In no event may the value of subcontract work performed by the
28 general contractor/construction manager exceed (~~twenty~~) thirty
29 percent of the negotiated maximum allowable construction cost.

30 (8) A public body may include an incentive clause in any contract
31 awarded under this section for savings of either time or cost or both
32 from that originally negotiated. No incentives granted may exceed five
33 percent of the maximum allowable construction cost. If the project is
34 completed for less than the agreed upon maximum allowable construction
35 cost, any savings not otherwise negotiated as part of an incentive
36 clause shall accrue to the public body. If the project is completed
37 for more than the agreed upon maximum allowable construction cost,
38 excepting increases due to any contract change orders approved by the

1 public body, the additional cost shall be the responsibility of the
2 general contractor/construction manager.

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