
SENATE BILL 5223

State of Washington

56th Legislature

1999 Regular Session

By Senators Loveland, Winsley and Patterson; by request of Alternative Public Works Methods Oversight Committee

Read first time 01/18/1999. Referred to Committee on State & Local Government.

1 AN ACT Relating to financial information and building systems for
2 the alternative public works process; and amending RCW 39.10.100 and
3 39.10.050.

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

5 **Sec. 1.** RCW 39.10.100 and 1994 c 132 s 10 are each amended to read
6 as follows:

7 (1) Except as provided in subsection (2) of this section, all
8 proceedings, records, contracts, and other public records relating to
9 alternative public works transactions under this chapter shall be open
10 to the inspection of any interested person, firm, or corporation in
11 accordance with chapter 42.17 RCW.

12 (2) Trade secrets, as defined in RCW 19.108.010, financial
13 information supplied by or on behalf of a person, partnership, joint
14 venture, firm, or corporation for the purpose of qualifying a bidder or
15 offeror submitting a bid or proposal, or other proprietary information
16 submitted by a bidder, offeror, or contractor in connection with an
17 alternative public works transaction under this chapter shall not be
18 subject to chapter 42.17 RCW if the bidder, offeror, or contractor

1 specifically states in writing the reasons why protection is necessary,
2 and identifies the data or materials to be protected.

3 **Sec. 2.** RCW 39.10.050 and 1997 c 376 s 3 are each amended to read
4 as follows:

5 (1) Notwithstanding any other provision of law, and after complying
6 with RCW 39.10.030, the following public bodies may utilize the design-
7 build procedure of public works contracting for public works projects
8 authorized under this section: The state department of general
9 administration; the University of Washington; Washington State
10 University; every city with a population greater than one hundred fifty
11 thousand; every county with a population greater than four hundred
12 fifty thousand; and every port district with a population greater than
13 five hundred thousand. The authority granted to port districts in this
14 section is in addition to and does not affect existing contracting
15 authority under RCW 53.08.120 and 53.08.130. For the purposes of this
16 section, "design-build procedure" means a contract between a public
17 body and another party in which the party agrees to both design and
18 build the facility, portion of the facility, or other item specified in
19 the contract.

20 (2) Public bodies authorized under this section may utilize the
21 design-build procedure for public works projects valued over ten
22 million dollars where:

23 (a) The construction activities or technologies to be used are
24 highly specialized and a design-build approach is critical in
25 developing the construction methodology or implementing the proposed
26 technology;

27 (b) The project design is repetitive in nature and is an incidental
28 part of the installation or construction; or

29 (c) Regular interaction with and feedback from facilities users and
30 operators during design is not critical to an effective facility
31 design.

32 (3) Public bodies authorized under this section may also use the
33 design-build procedure for the following projects that meet the
34 criteria in subsection (2)(a), (b), and (c) of this section:

35 (a) The construction or erection of preengineered metal buildings
36 ~~((or))~~, prefabricated modular buildings, or the design, fabrication,
37 and installation of building engineering systems, regardless of cost;
38 or

1 (b) The construction of new student housing projects valued over
2 five million dollars.

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

11 (a) A detailed description of the project including programmatic,
12 performance, and technical requirements and specifications, functional
13 and operational elements, minimum and maximum net and gross areas of
14 any building, and, at the discretion of the public body, preliminary
15 engineering and architectural drawings;

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

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

20 (d) A description of the process the public body will use to
21 evaluate qualifications and proposals, including evaluation factors and
22 the relative weight of factors. Evaluation factors shall include, but
23 not be limited to: Proposal price; ability of professional personnel;
24 past performance on similar projects; ability to meet time and budget
25 requirements; ability to provide a performance and payment bond for the
26 project; recent, current, and projected work loads of the firm;
27 location; and the concept of the proposal;

28 (e) The form of the contract to be awarded;

29 (f) The maximum allowable construction cost and minority and women
30 enterprise total project goals;

31 (g) The amount to be paid to finalists submitting best and final
32 proposals who are not awarded a design-build contract; and

33 (h) Other information relevant to the project.

34 (5) The public body shall establish a committee to evaluate the
35 proposals based on the factors, weighting, and process identified in
36 the request for proposals. Based on its evaluation, the public body
37 shall select not fewer than three nor more than five finalists to
38 submit best and final proposals. The public body may, in its sole

1 discretion, reject all proposals. Design-build contracts shall be
2 awarded using the procedures in (a) or (b) of this subsection.

3 (a) Best and final proposals shall be evaluated and scored based on
4 the factors, weighting, and process identified in the initial request
5 for proposals. The public body may score the proposals using a system
6 that measures the quality and technical merits of the proposal on a
7 unit price basis. Final proposals may not be considered if the
8 proposal cost is greater than the maximum allowable construction cost
9 identified in the initial request for proposals. The public body shall
10 initiate negotiations with the firm submitting the highest scored best
11 and final proposal. If the public body is unable to execute a contract
12 with the firm submitting the highest scored best and final proposal,
13 negotiations with that firm may be suspended or terminated and the
14 public body may proceed to negotiate with the next highest scored firm.
15 Public bodies shall continue in accordance with this procedure until a
16 contract agreement is reached or the selection process is terminated.

17 (b) If the public body determines that all finalists are capable of
18 producing plans and specifications that adequately meet project
19 requirements, the public body may award the contract to the firm that
20 submits the responsive best and final proposal with the lowest price.

21 (6) The firm awarded the contract shall provide a performance and
22 payment bond for the contracted amount. The public body shall provide
23 appropriate honorarium payments to finalists submitting best and final
24 proposals who are not awarded a design-build contract. Honorarium
25 payments shall be sufficient to generate meaningful competition among
26 potential proposers on design-build projects.

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