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SENATE BILL 5225

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State of Washington

56th Legislature

1999 Regular Session

By Senators Patterson and Winsley; 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 the general contractor/construction manager  
2 procedure for school districts; amending RCW 39.10.020 and 39.10.060;  
3 and adding new sections to chapter 39.10 RCW.

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

5 **Sec. 1.** RCW 39.10.020 and 1997 c 376 s 1 are each amended to read  
6 as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Alternative public works contracting procedure" means the  
10 design-build and the general contractor/construction manager  
11 contracting procedures authorized in RCW 39.10.050 and 39.10.060,  
12 respectively.

13 (2) "Public body" means the state department of general  
14 administration; the University of Washington; Washington State  
15 University; every city with a population greater than one hundred fifty  
16 thousand; every city authorized to use the design-build procedure for  
17 a water system demonstration project under RCW 39.10.065(3); every  
18 county with a population greater than four hundred fifty thousand;  
19 ((and)) every port district with a population greater than five hundred

1 thousand; and those school districts proposing projects that are  
2 considered and approved by the school district project review board  
3 under section 4 of this act.

4 (3) "Public works project" means any work for a public body within  
5 the definition of the term public work in RCW 39.04.010.

6 **Sec. 2.** RCW 39.10.060 and 1997 c 376 s 4 are each amended to read  
7 as follows:

8 (1) Notwithstanding any other provision of law, and after complying  
9 with RCW 39.10.030, the following public bodies may utilize the general  
10 contractor/construction manager procedure of public works contracting  
11 for public works projects authorized under subsection (2) of this  
12 section: The state department of general administration; the  
13 University of Washington; Washington State University; every city with  
14 a population greater than one hundred fifty thousand; every county with  
15 a population greater than four hundred fifty thousand; ~~((and))~~ every  
16 port district with a population greater than five hundred thousand; and  
17 those school districts proposing projects that are considered and  
18 approved by the school district project review board under section 4 of  
19 this act. For the purposes of this section, "general  
20 contractor/construction manager" means a firm with which a public body  
21 has selected and negotiated a maximum allowable construction cost to be  
22 guaranteed by the firm, after competitive selection through formal  
23 advertisement and competitive bids, to provide services during the  
24 design phase that may include life-cycle cost design considerations,  
25 value engineering, scheduling, cost estimating, constructability,  
26 alternative construction options for cost savings, and sequencing of  
27 work, and to act as the construction manager and general contractor  
28 during the construction phase.

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

32 (a) Implementation of the project involves complex scheduling  
33 requirements;

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

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

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

4 (4) Contracts for the services of a general contractor/construction  
5 manager under this section shall be awarded through a competitive  
6 process requiring the public solicitation of proposals for general  
7 contractor/construction manager services. The public solicitation of  
8 proposals shall include: A description of the project, including  
9 programmatic, performance, and technical requirements and  
10 specifications when available; the reasons for using the general  
11 contractor/construction manager procedure; a description of the  
12 qualifications to be required of the proposer, including submission of  
13 the proposer's accident prevention program; a description of the  
14 process the public body will use to evaluate qualifications and  
15 proposals, including evaluation factors and the relative weight of  
16 factors; the form of the contract to be awarded; the estimated maximum  
17 allowable construction cost; minority and women business enterprise  
18 total project goals, where applicable; and the bid instructions to be  
19 used by the general contractor/construction manager finalists.  
20 Evaluation factors shall include, but not be limited to: Ability of  
21 professional personnel, past performance in negotiated and complex  
22 projects, and ability to meet time and budget requirements; location;  
23 recent, current, and projected work loads of the firm; and the concept  
24 of their proposal. A public body shall establish a committee to  
25 evaluate the proposals. After the committee has selected the most  
26 qualified finalists, these finalists shall submit final proposals,  
27 including sealed bids for the percent fee, which is the percentage  
28 amount to be earned by the general contractor/construction manager as  
29 overhead and profit, on the estimated maximum allowable construction  
30 cost and the fixed amount for the detailed specified general conditions  
31 work. The public body shall select the firm submitting the highest  
32 scored final proposal using the evaluation factors and the relative  
33 weight of factors published in the public solicitation of proposals.

34 (5) The maximum allowable construction cost may be negotiated  
35 between the public body and the selected firm after the scope of the  
36 project is adequately determined to establish a guaranteed contract  
37 cost for which the general contractor/construction manager will provide  
38 a performance and payment bond. The guaranteed contract cost includes  
39 the fixed amount for the detailed specified general conditions work,

1 the negotiated maximum allowable construction cost, the percent fee on  
2 the negotiated maximum allowable construction cost, and sales tax. If  
3 the public body is unable to negotiate a satisfactory maximum allowable  
4 construction cost with the firm selected that the public body  
5 determines to be fair, reasonable, and within the available funds,  
6 negotiations with that firm shall be formally terminated and the public  
7 body shall negotiate with the next highest scored firm and continue  
8 until an agreement is reached or the process is terminated. If the  
9 maximum allowable construction cost varies more than fifteen percent  
10 from the bid estimated maximum allowable construction cost due to  
11 requested and approved changes in the scope by the public body, the  
12 percent fee shall be renegotiated.

13 (6) All subcontract work shall be competitively bid with public bid  
14 openings. Subcontract work shall not be issued for bid until the  
15 public body has approved, in consultation with the office of minority  
16 and women's business enterprises or the equivalent local agency, a plan  
17 prepared by the general contractor/construction manager for attaining  
18 applicable minority and women business enterprise total project goals  
19 that equitably spreads women and minority enterprise opportunities to  
20 as many firms in as many bid packages as is practicable. When critical  
21 to the successful completion of a subcontractor bid package the owner  
22 and general contractor/construction manager may evaluate for bidding  
23 eligibility a subcontractor's ability, time, budget, and specification  
24 requirements based on the subcontractor's performance of those items on  
25 previous projects. Subcontract bid packages shall be awarded to the  
26 responsible bidder submitting the low responsive bid. The requirements  
27 of RCW 39.30.060 apply to each subcontract bid package. All  
28 subcontractors who bid work over three hundred thousand dollars shall  
29 post a bid bond and all subcontractors who are awarded a contract over  
30 three hundred thousand dollars shall provide a performance and payment  
31 bond for their contract amount. All other subcontractors shall provide  
32 a performance and payment bond if required by the general  
33 contractor/construction manager. A low bidder who claims error and  
34 fails to enter into a contract is prohibited from bidding on the same  
35 project if a second or subsequent call for bids is made for the  
36 project. Except as provided for under subsection (7) of this section,  
37 bidding on subcontract work by the general contractor/construction  
38 manager or its subsidiaries is prohibited. The general  
39 contractor/construction manager may negotiate with the low-responsive

1 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
2 negotiations, rebid.

3 (7) The general contractor/construction manager, or its  
4 subsidiaries, may bid on subcontract work on projects valued over  
5 twenty million dollars if:

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

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

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

12 In no event may the value of subcontract work performed by the  
13 general contractor/construction manager exceed twenty percent of the  
14 negotiated maximum allowable construction cost.

15 (8) A public body may include an incentive clause in any contract  
16 awarded under this section for savings of either time or cost or both  
17 from that originally negotiated. No incentives granted may exceed five  
18 percent of the maximum allowable construction cost. If the project is  
19 completed for less than the agreed upon maximum allowable construction  
20 cost, any savings not otherwise negotiated as part of an incentive  
21 clause shall accrue to the public body. If the project is completed  
22 for more than the agreed upon maximum allowable construction cost,  
23 excepting increases due to any contract change orders approved by the  
24 public body, the additional cost shall be the responsibility of the  
25 general contractor/construction manager.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.10 RCW  
27 to read as follows:

28 (1) In addition to the projects authorized in RCW 39.10.060, public  
29 bodies may also use the general contractor/construction manager  
30 contracting procedure for the construction of school district capital  
31 demonstration projects valued between five and ten million dollars.

32 (a) The project must receive approval from the school district  
33 project review board established under section 4 of this act.

34 (b) The school district project review board may not authorize more  
35 than five such demonstration projects.

36 (c) The school district project review board may not approve more  
37 than two such demonstration projects under this section for each school  
38 district except as provided in subsection (2) of this section.

1 (2) The school district project review board may authorize more  
2 than two projects under subsection (1) of this section for a school  
3 district if:

4 (a) The school district project review board has determined that  
5 additional projects are warranted;

6 (b) The school district project review board has considered the  
7 overall demand; and

8 (c) The total number of demonstration projects has not exceeded the  
9 limits in subsection (1)(b) of this section.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.10 RCW  
11 to read as follows:

12 (1) The school district project review board is established to  
13 review school district proposals submitted by school districts to use  
14 alternative public works contracting procedures. The board shall  
15 select and approve qualified projects based upon an evaluation of the  
16 information submitted by the school district under subsection (2) of  
17 this section. The membership of the board shall be selected by the  
18 independent oversight committee as established under RCW 39.10.110 and  
19 shall include the following representatives, each having experience  
20 with public works or commercial construction: One representative from  
21 the office of the superintendent of public instruction; one  
22 representative from the office of financial management; one  
23 representative from the construction industry; one representative from  
24 the specialty contracting industry; one representative from the design  
25 industry; one representative from a public body previously authorized  
26 under this chapter to use an alternative public works contracting  
27 procedure who has experience using such alternative contracting  
28 procedures; one representative from school districts with ten thousand  
29 or more annual average full-time equivalent pupils; and one  
30 representative from school districts with fewer than ten thousand  
31 average full-time equivalent pupils. Each member shall be appointed  
32 for a term of three years, with the first three-year term commencing  
33 after the effective date of this section.

34 (2) A school district seeking to use alternative contracting  
35 procedures authorized under this chapter shall file an application with  
36 the school district project review board. The application form shall  
37 require the district to submit a detailed statement of the proposed  
38 project, including the school district's name; student population based

1 upon October full-time equivalents; the current projected total budget  
2 for the project, including the estimated construction costs, costs for  
3 professional services, equipment and furnishing costs, off-site costs,  
4 contract administration costs, and other related project costs; the  
5 anticipated project design and construction schedule; a summary of the  
6 school district's construction activity for the preceding six years;  
7 and an explanation of why the school district believes the use of an  
8 alternative contracting procedure is in the public interest and why the  
9 school district is qualified to use an alternative contracting  
10 procedure, including a summary of the relevant experience of the school  
11 district's management team. The applicant shall also provide in a  
12 timely manner any other information concerning implementation of  
13 projects under this chapter requested by the school district project  
14 review board to assist in its consideration.

15 (3) Any school district whose application is approved by the school  
16 district project review board shall comply with the public notification  
17 and review requirements in RCW 39.10.030.

18 (4) The school district project review board shall prepare and  
19 issue a report reviewing the use of the alternative public works  
20 contracting procedures by school districts. The board shall report to  
21 the independent oversight committee at least sixty days before the  
22 oversight committee is required to report to the legislature under RCW  
23 39.10.110(4).

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