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SENATE BILL 6556

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State of Washington

56th Legislature

2000 Regular Session

By Senators Horn, Bauer and McDonald

Read first time 01/19/2000. Referred to Committee on State & Local Government.

1 AN ACT Relating to authorizing cities over one hundred thousand in  
2 population to use design-build and general contractor/construction  
3 manager procedures; and amending RCW 39.10.020, 39.10.050, and  
4 39.10.060.

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

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

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

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

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

1 fifty thousand; and every port district with a population greater than  
2 five hundred thousand.

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

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

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

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

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

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

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

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

37 (a) The construction or erection of preengineered metal buildings  
38 or prefabricated modular buildings, regardless of cost; 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.

27 **Sec. 3.** RCW 39.10.060 and 1997 c 376 s 4 are each amended to read  
28 as follows:

29 (1) Notwithstanding any other provision of law, and after complying  
30 with RCW 39.10.030, the following public bodies may utilize the general  
31 contractor/construction manager procedure of public works contracting  
32 for public works projects authorized under subsection (2) of this  
33 section: The state department of general administration; the  
34 University of Washington; Washington State University; every city with  
35 a population greater than one hundred ((fifty)) thousand; every county  
36 with a population greater than four hundred fifty thousand; and every  
37 port district with a population greater than five hundred thousand.  
38 For the purposes of this section, "general contractor/construction

1 manager" means a firm with which a public body has selected and  
2 negotiated a maximum allowable construction cost to be guaranteed by  
3 the firm, after competitive selection through formal advertisement and  
4 competitive bids, to provide services during the design phase that may  
5 include life-cycle cost design considerations, value engineering,  
6 scheduling, cost estimating, constructability, alternative construction  
7 options for cost savings, and sequencing of work, and to act as the  
8 construction manager and general contractor during the construction  
9 phase.

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

13 (a) Implementation of the project involves complex scheduling  
14 requirements;

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

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

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

22 (4) Contracts for the services of a general contractor/construction  
23 manager under this section shall be awarded through a competitive  
24 process requiring the public solicitation of proposals for general  
25 contractor/construction manager services. The public solicitation of  
26 proposals shall include: A description of the project, including  
27 programmatic, performance, and technical requirements and  
28 specifications when available; the reasons for using the general  
29 contractor/construction manager procedure; a description of the  
30 qualifications to be required of the proposer, including submission of  
31 the proposer's accident prevention program; a description of the  
32 process the public body will use to evaluate qualifications and  
33 proposals, including evaluation factors and the relative weight of  
34 factors; the form of the contract to be awarded; the estimated maximum  
35 allowable construction cost; minority and women business enterprise  
36 total project goals, where applicable; and the bid instructions to be  
37 used by the general contractor/construction manager finalists.  
38 Evaluation factors shall include, but not be limited to: Ability of  
39 professional personnel, past performance in negotiated and complex

1 projects, and ability to meet time and budget requirements; location;  
2 recent, current, and projected work loads of the firm; and the concept  
3 of their proposal. A public body shall establish a committee to  
4 evaluate the proposals. After the committee has selected the most  
5 qualified finalists, these finalists shall submit final proposals,  
6 including sealed bids for the percent fee, which is the percentage  
7 amount to be earned by the general contractor/construction manager as  
8 overhead and profit, on the estimated maximum allowable construction  
9 cost and the fixed amount for the detailed specified general conditions  
10 work. The public body shall select the firm submitting the highest  
11 scored final proposal using the evaluation factors and the relative  
12 weight of factors published in the public solicitation of proposals.

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

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

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

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

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

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

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

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

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

1 for more than the agreed upon maximum allowable construction cost,  
2 excepting increases due to any contract change orders approved by the  
3 public body, the additional cost shall be the responsibility of the  
4 general contractor/construction manager.

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