

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2536**

Chapter 194, Laws of 2000

56th Legislature  
2000 Regular Session

GENERAL CONTRACTOR/CONTRACT MANAGER--SELF-PERFORMANCE

EFFECTIVE DATE: 6/8/00

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

CLYDE BALLARD  
**Speaker of the House of Representatives**

FRANK CHOPP  
**Speaker of the House of Representatives**

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

BRAD OWEN  
**President of the Senate**

Approved March 29, 2000

GARY LOCKE  
**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.

TIMOTHY A. MARTIN  
**Chief Clerk**

CYNTHIA ZEHNDER  
**Chief Clerk**

FILED

March 29, 2000 - 2:44 p.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 2536

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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.

Passed the House February 10, 2000.

Passed the Senate March 2, 2000.

Approved by the Governor March 29, 2000.

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