

2 **ESSB 5060** - H COMM AMD **ADOPTED 4/4/01**
3 By Committee on State Government

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 39.10.020 and 2000 c 209 s 1 are each amended to read
8 as follows:

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

11 (1) "Alternative public works contracting procedure" means the
12 design-build and the general contractor/construction manager
13 contracting procedures authorized in ~~((RCW 39.10.050 and 39.10.060))~~
14 sections 2 and 3 of this act, respectively.

15 (2) "Public body" means the state department of general
16 administration; the University of Washington; Washington State
17 University; every city with a population greater than ~~((one hundred
18 fifty))~~ seventy thousand and any public authority chartered by such
19 city under RCW 35.21.730 through 35.21.755 and specifically authorized
20 as provided in RCW 39.10.120(4); ~~((every city authorized to use the
21 design-build procedure for a water system demonstration project under
22 RCW 39.10.065(3);))~~ every county with a population greater than four
23 hundred fifty thousand; every port district with a population greater
24 than five hundred thousand; and those school districts proposing
25 projects that are considered and approved by the school district
26 project review board under RCW 39.10.115.

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

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.10 RCW
30 to read as follows:

31 (1) Notwithstanding any other provision of law, and after complying
32 with RCW 39.10.030, the following public bodies may utilize the design-
33 build procedure of public works contracting for public works projects
34 authorized under this section: The state department of general
35 administration; the University of Washington; Washington State

1 University; every city with a population greater than seventy thousand
2 and any public authority chartered by such city under RCW 35.21.730
3 through 35.21.755 and specifically authorized as provided in RCW
4 39.10.120(4); every county with a population greater than four hundred
5 fifty thousand; and every port district with a population greater than
6 five hundred thousand. The authority granted to port districts in this
7 section is in addition to and does not affect existing contracting
8 authority under RCW 53.08.120 and 53.08.130. For the purposes of this
9 section, "design-build procedure" means a contract between a public
10 body and another party in which the party agrees to both design and
11 build the facility, portion of the facility, or other item specified in
12 the contract.

13 (2) Public bodies authorized under this section may utilize the
14 design-build procedure for public works projects valued over twelve
15 million dollars where:

16 (a) The construction activities or technologies to be used are
17 highly specialized and a design-build approach is critical in
18 developing the construction methodology or implementing the proposed
19 technology; or

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

22 (c) Regular interaction with and feedback from facilities users and
23 operators during design is not critical to an effective facility
24 design.

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

28 (a) The construction or erection of preengineered metal buildings
29 or prefabricated modular buildings, regardless of cost; or

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

32 (4) Contracts for design-build services shall be awarded through a
33 competitive process utilizing public solicitation of proposals for
34 design-build services. The public body shall publish at least once in
35 a legal newspaper of general circulation published in or as near as
36 possible to that part of the county in which the public work will be
37 done, a notice of its request for proposals for design-build services
38 and the availability and location of the request for proposal
39 documents. The request for proposal documents shall include:

1 (a) A detailed description of the project including programmatic,
2 performance, and technical requirements and specifications, functional
3 and operational elements, minimum and maximum net and gross areas of
4 any building, and, at the discretion of the public body, preliminary
5 engineering and architectural drawings;

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

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

10 (d) A description of the process the public body will use to
11 evaluate qualifications and proposals, including evaluation factors and
12 the relative weight of factors. Evaluation factors shall include, but
13 not be limited to: Proposal price; ability of professional personnel;
14 past performance on similar projects; ability to meet time and budget
15 requirements; ability to provide a performance and payment bond for the
16 project; recent, current, and projected work loads of the firm;
17 location; and the concept of the proposal;

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

19 (f) The amount to be paid to finalists submitting best and final
20 proposals who are not awarded a design-build contract; and

21 (g) Other information relevant to the project.

22 (5) The public body shall establish a committee to evaluate the
23 proposals based on the factors, weighting, and process identified in
24 the request for proposals. Based on its evaluation, the public body
25 shall select not fewer than three nor more than five finalists to
26 submit best and final proposals. The public body may, in its sole
27 discretion, reject all proposals. Design-build contracts shall be
28 awarded using the procedures in (a) or (b) of this subsection.

29 (a) Best and final proposals shall be evaluated and scored based on
30 the factors, weighting, and process identified in the initial request
31 for proposals. The public body may score the proposals using a system
32 that measures the quality and technical merits of the proposal on a
33 unit price basis. Final proposals may not be considered if the
34 proposal cost is greater than the maximum allowable construction cost
35 identified in the initial request for proposals. The public body shall
36 initiate negotiations with the firm submitting the highest scored best
37 and final proposal. If the public body is unable to execute a contract
38 with the firm submitting the highest scored best and final proposal,
39 negotiations with that firm may be suspended or terminated and the

1 public body may proceed to negotiate with the next highest scored firm.
2 Public bodies shall continue in accordance with this procedure until a
3 contract agreement is reached or the selection process is terminated.

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

8 (6) The firm awarded the contract shall provide a performance and
9 payment bond for the contracted amount. The public body shall provide
10 appropriate honorarium payments to finalists submitting best and final
11 proposals who are not awarded a design-build contract. Honorarium
12 payments shall be sufficient to generate meaningful competition among
13 potential proposers on design-build projects.

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

16 (1) Notwithstanding any other provision of law, and after complying
17 with RCW 39.10.030, a public body may utilize the general
18 contractor/construction manager procedure of public works contracting
19 for public works projects authorized under subsection (2) of this
20 section. For the purposes of this section, "general
21 contractor/construction manager" means a firm with which a public body
22 has selected and negotiated a maximum allowable construction cost to be
23 guaranteed by the firm, after competitive selection through formal
24 advertisement and competitive bids, to provide services during the
25 design phase that may include life-cycle cost design considerations,
26 value engineering, scheduling, cost estimating, constructability,
27 alternative construction options for cost savings, and sequencing of
28 work, and to act as the construction manager and general contractor
29 during the construction phase.

30 (2) Except those school districts proposing projects that are
31 considered and approved by the school district project review board,
32 public bodies authorized under this section may utilize the general
33 contractor/construction manager procedure for public works projects
34 valued over twelve million dollars where:

35 (a) Implementation of the project involves complex scheduling
36 requirements; or

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

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

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

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

37 (5) The maximum allowable construction cost may be negotiated
38 between the public body and the selected firm after the scope of the
39 project is adequately determined to establish a guaranteed contract

1 cost for which the general contractor/construction manager will provide
2 a performance and payment bond. The guaranteed contract cost includes
3 the fixed amount for the detailed specified general conditions work,
4 the negotiated maximum allowable construction cost, the percent fee on
5 the negotiated maximum allowable construction cost, and sales tax. If
6 the public body is unable to negotiate a satisfactory maximum allowable
7 construction cost with the firm selected that the public body
8 determines to be fair, reasonable, and within the available funds,
9 negotiations with that firm shall be formally terminated and the public
10 body shall negotiate with the next highest scored firm and continue
11 until an agreement is reached or the process is terminated. If the
12 maximum allowable construction cost varies more than fifteen percent
13 from the bid estimated maximum allowable construction cost due to
14 requested and approved changes in the scope by the public body, the
15 percent fee shall be renegotiated.

16 (6) All subcontract work shall be competitively bid with public bid
17 openings. When critical to the successful completion of a
18 subcontractor bid package and after publication of notice of intent to
19 determine bidder eligibility in a legal newspaper of general
20 circulation published in or as near as possible to that part of the
21 county in which the public work will be done at least twenty days
22 before requesting qualifications from interested subcontract bidders,
23 the owner and general contractor/construction manager may determine
24 subcontractor bidding eligibility using the following evaluation
25 criteria:

26 (a) Adequate financial resources or the ability to secure such
27 resources;

28 (b) History of successful completion of a contract of similar type
29 and scope;

30 (c) Project management and project supervision personnel with
31 experience on similar projects and the availability of such personnel
32 for the project;

33 (d) Current and projected workload and the impact the project will
34 have on the subcontractor's current and projected workload;

35 (e) Ability to accurately estimate the subcontract bid package
36 scope of work;

37 (f) Ability to meet subcontract bid package shop drawing and other
38 coordination procedures;

1 (g) Eligibility to receive an award under applicable laws and
2 regulations; and

3 (h) Ability to meet subcontract bid package scheduling
4 requirements.

5 The owner and general contractor/construction manager shall weigh
6 the evaluation criteria and determine a minimum acceptable score to be
7 considered an eligible subcontract bidder.

8 After publication of notice of intent to determine bidder
9 eligibility, subcontractors requesting eligibility shall be provided
10 the evaluation criteria and weighting to be used by the owner and
11 general contractor/construction manager to determine eligible
12 subcontract bidders. After the owner and general
13 contractor/construction manager determine eligible subcontract bidders,
14 subcontractors requesting eligibility shall be provided the results and
15 scoring of the subcontract bidder eligibility determination.

16 Subcontract bid packages shall be awarded to the responsible bidder
17 submitting the low responsive bid. The requirements of RCW 39.30.060
18 apply to each subcontract bid package. All subcontractors who bid work
19 over three hundred thousand dollars shall post a bid bond and all
20 subcontractors who are awarded a contract over three hundred thousand
21 dollars shall provide a performance and payment bond for their contract
22 amount. All other subcontractors shall provide a performance and
23 payment bond if required by the general contractor/construction
24 manager. A low bidder who claims error and fails to enter into a
25 contract is prohibited from bidding on the same project if a second or
26 subsequent call for bids is made for the project. Except as provided
27 for under subsection (7) of this section, bidding on subcontract work
28 by the general contractor/construction manager or its subsidiaries is
29 prohibited. The general contractor/construction manager may negotiate
30 with the low-responsive bidder in accordance with RCW 39.10.080 or, if
31 unsuccessful in such negotiations, rebid.

32 (7) The general contractor/construction manager, or its
33 subsidiaries, may bid on subcontract work if:

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

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

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

1 In no event may the value of subcontract work performed by the
2 general contractor/construction manager exceed thirty percent of the
3 negotiated maximum allowable construction cost.

4 (8) A public body may include an incentive clause in any contract
5 awarded under this section for savings of either time or cost or both
6 from that originally negotiated. No incentives granted may exceed five
7 percent of the maximum allowable construction cost. If the project is
8 completed for less than the agreed upon maximum allowable construction
9 cost, any savings not otherwise negotiated as part of an incentive
10 clause shall accrue to the public body. If the project is completed
11 for more than the agreed upon maximum allowable construction cost,
12 excepting increases due to any contract change orders approved by the
13 public body, the additional cost shall be the responsibility of the
14 general contractor/construction manager.

15 **Sec. 4.** RCW 39.10.115 and 2000 c 209 s 4 are each amended to read
16 as follows:

17 (1) The school district project review board is established to
18 review school district proposals submitted by school districts to use
19 alternative public works contracting procedures. The board shall
20 select and approve qualified projects based upon an evaluation of the
21 information submitted by the school district under subsection (2) of
22 this section. (~~The membership of the board shall be selected by the~~
23 ~~independent oversight committee as established under RCW 39.10.110~~)
24 After July 1, 2001, any appointments for full terms or to fill a
25 vacancy shall be made by the governor and shall include the following
26 representatives, each having experience with public works or commercial
27 construction: One representative from the office of the superintendent
28 of public instruction; one representative from the office of financial
29 management; two representatives from the construction industry, one of
30 whom works for a construction company with gross annual revenues of
31 twenty million dollars or less; one representative from the specialty
32 contracting industry; one representative from organized labor; one
33 representative from the design industry; one representative from a
34 public body previously authorized under this chapter to use an
35 alternative public works contracting procedure who has experience using
36 such alternative contracting procedures; one representative from school
37 districts with ten thousand or more annual average full-time equivalent
38 pupils; and one representative from school districts with fewer than

1 ten thousand average full-time equivalent pupils. Each member shall be
2 appointed for a term of three years, with the first three-year term
3 commencing after June 8, 2000. Any member of the school district
4 project review board who is directly affiliated with any applicant
5 before the board must recuse him or herself from consideration of the
6 application.

7 (2) A school district seeking to use alternative contracting
8 procedures authorized under this chapter shall file an application with
9 the school district project review board. The application form shall
10 require the district to submit a detailed statement of the proposed
11 project, including the school district's name; student population based
12 upon October full-time equivalents; the current projected total budget
13 for the project, including the estimated construction costs, costs for
14 professional services, equipment and furnishing costs, off-site costs,
15 contract administration costs, and other related project costs; the
16 anticipated project design and construction schedule; a summary of the
17 school district's construction activity for the preceding six years;
18 and an explanation of why the school district believes the use of an
19 alternative contracting procedure is in the public interest and why the
20 school district is qualified to use an alternative contracting
21 procedure, including a summary of the relevant experience of the school
22 district's management team. The applicant shall also provide in a
23 timely manner any other information concerning implementation of
24 projects under this chapter requested by the school district project
25 review board to assist in its consideration.

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

29 (4) Any school district whose application is approved by the school
30 district project review board shall not use as an evaluation factor
31 whether a contractor submitting a bid for the approved project has had
32 prior general contractor/construction manager procedure experience.

33 ~~((5) The school district project review board shall prepare and
34 issue a report reviewing the use of the alternative public works
35 contracting procedures by school districts. The board shall report to
36 the independent oversight committee at least sixty days before the
37 oversight committee is required to report to the legislature under RCW
38 39.10.110(4).))~~

1 **Sec. 5.** RCW 39.10.120 and 1997 c 376 s 7 and 1997 c 220 s 404 are
2 each reenacted and amended to read as follows:

3 (1) Except as provided in subsections (2) and (3) of this section,
4 the alternative public works contracting procedures authorized under
5 this chapter are limited to public works contracts signed before July
6 1, (~~2001~~) 2007. Methods of public works contracting authorized by
7 RCW 39.10.050 and 39.10.060 or sections 2 and 3 of this act shall
8 remain in full force and effect until completion of contracts signed
9 before July 1, (~~2001~~) 2007.

10 (2) For the purposes of a baseball stadium as defined in RCW
11 82.14.0485, the design-build contracting procedures under RCW 39.10.050
12 shall remain in full force and effect until completion of contracts
13 signed before December 31, 1997.

14 (3) For the purposes of a stadium and exhibition center, as defined
15 in RCW 36.102.010, the design-build contracting procedures under RCW
16 39.10.050 or section 2 of this act shall remain in full force and
17 effect until completion of contracts signed before December 31, 2002.

18 (4) A public authority chartered by a city that is a public body
19 may utilize an alternative public works contracting procedure under
20 this chapter only after receiving specific authorization on a project-
21 by-project basis from the governing body of the city. For purposes of
22 public authorities authorized to use alternative public works
23 contracting procedures under this chapter, the city chartering any such
24 public authority shall itself comply with RCW 39.10.030 on behalf of
25 the public authority.

26 **Sec. 6.** RCW 39.10.902 and 1997 c 376 s 8 are each amended to read
27 as follows:

28 The following acts or parts of acts, as now existing or hereafter
29 amended, are each repealed, effective July 1, (~~2001~~) 2007:

30 (1) RCW 39.10.010 and 1994 c 132 s 1;

31 (2) RCW 39.10.020 and section 1 of this act, 2000 c 209 s 1, 1997
32 c 376 s 1, & 1994 c 132 s 2;

33 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

34 (4) RCW 39.10.040 and 1994 c 132 s 4;

35 (5) (~~RCW 39.10.050 and 1994 c 132 s 5~~) Section 2 of this act;

36 (6) (~~RCW 39.10.060 and 1994 c 132 s 6~~) Section 3 of this act;

37 (7) RCW 39.10.065 and 1997 c 376 s 5;

38 (8) RCW 39.10.067 and 2000 c 209 s 3;

1 ~~(9)~~ RCW 39.10.070 and 1994 c 132 s 7;
2 ~~((+9))~~ (10) RCW 39.10.080 and 1994 c 132 s 8;
3 ~~((+10))~~ (11) RCW 39.10.090 and 1994 c 132 s 9;
4 ~~((+11))~~ (12) RCW 39.10.100 and 1994 c 132 s 10;
5 ~~((+12) RCW 39.10.110 and 1994 c 132 s 11;))~~
6 (13) RCW 39.10.115 and section 4 of this act & 2000 c 209 s 4;
7 (14) RCW 39.10.900 and 1994 c 132 s 13; and
8 ~~((+14))~~ (15) RCW 39.10.901 and 1994 c 132 s 14~~((; and~~
9 ~~(+15) RCW 39.10.902 and 1994 c 132 s 15))~~.

10 NEW SECTION. Sec. 7. The following acts or parts of acts are each
11 repealed:

12 (1) RCW 39.10.050 (Design-build procedure--Which public bodies may
13 use) and 1997 c 376 s 3 & 1994 c 132 s 5;

14 (2) RCW 39.10.060 (General contractor/construction manager
15 procedure--Which public bodies may use--Limitations) and 2000 c 209 s
16 2, 2000 c 194 s 1, 1997 c 376 s 4, 1996 c 18 s 6, & 1994 c 132 s 6; and

17 (3) RCW 39.10.110 (Temporary independent oversight committee) and
18 1997 c 376 s 6 & 1994 c 132 s 11.

19 NEW SECTION. Sec. 8. This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 July 1, 2001."

23 Correct the title.

--- END ---