

SSB 5520 - H COMM AMD
By Committee on Transportation

ADOPTED 04/14/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 39.10.020 and 2001 c 328 s 1 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Alternative public works contracting procedure" means the
8 design-build and the general contractor/construction manager
9 contracting procedures authorized in RCW 39.10.051 and 39.10.061,
10 respectively.

11 (2) "Public body" means the state department of general
12 administration; the University of Washington; Washington State
13 University; every city with a population greater than seventy thousand
14 and any public authority chartered by such city under RCW 35.21.730
15 through 35.21.755 and specifically authorized as provided in RCW
16 39.10.120(4); every county with a population greater than four hundred
17 fifty thousand; every port district with total revenues greater than
18 fifteen million dollars per year; every public utility district with
19 revenues from energy sales greater than twenty-three million dollars
20 per year; ~~((and))~~ those school districts proposing projects that are
21 considered and approved by the school district project review board
22 under RCW 39.10.115; and the state ferry system.

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

25 **Sec. 2.** RCW 39.10.051 and 2002 c 46 s 1 are each amended to read
26 as follows:

27 (1) Notwithstanding any other provision of law, and after complying
28 with RCW 39.10.030, the following public bodies may utilize the design-
29 build procedure of public works contracting for public works projects

1 authorized under this section: The state department of general
2 administration; the state ferry system; the University of Washington;
3 Washington State University; every city with a population greater than
4 seventy thousand and any public authority chartered by such city under
5 RCW 35.21.730 through 35.21.755 and specifically authorized as provided
6 in RCW 39.10.120(4); every county with a population greater than four
7 hundred fifty thousand; every public utility district with revenues
8 from energy sales greater than twenty-three million dollars per year;
9 and every port district with total revenues greater than fifteen
10 million dollars per year. The authority granted to port districts in
11 this section is in addition to and does not affect existing contracting
12 authority under RCW 53.08.120 and 53.08.130. For the purposes of this
13 section, "design-build procedure" means a contract between a public
14 body and another party in which the party agrees to both design and
15 build the facility, portion of the facility, or other item specified in
16 the contract.

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

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

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

26 (c) Regular interaction with and feedback from facilities users and
27 operators during design is not critical to an effective facility
28 design.

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

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

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

36 (4) Contracts for design-build services shall be awarded through a
37 competitive process utilizing public solicitation of proposals for

1 design-build services. The public body shall publish at least once in
2 a legal newspaper of general circulation published in or as near as
3 possible to that part of the county in which the public work will be
4 done, a notice of its request for proposals for design-build services
5 and the availability and location of the request for proposal
6 documents. The request for proposal documents shall include:

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

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

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

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

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

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

27 (g) Other information relevant to the project.

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

35 (a) Best and final proposals shall be evaluated and scored based on
36 the factors, weighting, and process identified in the initial request
37 for proposals. The public body may score the proposals using a system

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

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

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

22 (7)(a) The authority provided to the state ferry system in this
23 section is limited to projects concerning construction, renovation,
24 preservation, demolition, and reconstruction of ferry terminals and
25 associated land-based facilities.

26 (b) Before using the procedures outlined in this chapter for
27 construction, renovation, or preservation projects, the state ferry
28 system shall complete a request for proposal process to identify and
29 select possible public or private partnerships in order to maximize the
30 value of the project and the state's investment.

31 (i) The request for proposal shall consist of an open solicitation
32 outlining functional specifications to be used as the basis for
33 selecting partnerships in the project. Any responses to the request
34 for proposal shall be evaluated, at a minimum, on the basis of
35 compatibility with the state ferry system's core business, potential to
36 maximize nonfarebox revenue, longevity of the possible partnership

1 commitment, and benefit to the public users of the ferry system
2 facilities.

3 (ii) If no responses are received, or those that are received are
4 incompatible with ferry system operations, or do not meet the criteria
5 stated in (b)(i) of this subsection, the state ferry system may proceed
6 with the project while continuing to achieve state ferry system
7 objectives without established partnerships.

8 **Sec. 3.** RCW 39.10.061 and 2002 c 46 s 2 are each amended to read
9 as follows:

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

24 (2) Except those school districts proposing projects that are
25 considered and approved by the school district project review board,
26 public bodies authorized under this section may utilize the general
27 contractor/construction manager procedure for public works projects
28 valued over ten million dollars where:

29 (a) Implementation of the project involves complex scheduling
30 requirements; or

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

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

35 (3) Public bodies should select general contractor/construction

1 managers early in the life of public works projects, and in most
2 situations no later than the completion of schematic design.

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

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

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

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

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

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

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

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

36 (f) Ability to meet subcontract bid package shop drawing and other
37 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

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

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

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

18 (9) The authority provided to the state ferry system in this
19 section is limited to projects concerning construction, renovation,
20 preservation, demolition, and reconstruction of ferry terminals and
21 associated land-based facilities."

EFFECT: Requires the state ferry system to complete a request for
proposal process to identify and select possible public or private
partnerships before using alternative public works contracting
procedures.

--- END ---