

ESHB 2056 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 04/11/2003

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW
4 to read as follows:

5 When a municipality receives a written protest from a bidder for a
6 public works project which is the subject of competitive bids, the
7 municipality shall not execute a contract for the project with anyone
8 other than the protesting bidder without first providing at least two
9 full business days' written notice of the municipality's intent to
10 execute a contract for the project; provided that the protesting bidder
11 submits notice in writing of its protest no later than two full
12 business days following bid opening. Intermediate Saturdays, Sundays,
13 and legal holidays are not counted in determining the minimum two-day
14 notice period.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
16 to read as follows:

17 A low bidder on a public works project who claims error and fails
18 to enter into a contract is prohibited from bidding on the same project
19 if a second or subsequent call for bids is made for the project.

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

22 (1) Notwithstanding any other provision of law, and after complying
23 with RCW 39.10.030, a public body may utilize the general
24 contractor/construction manager procedure of public works contracting
25 for public works projects authorized under subsection (2) of this
26 section. For the purposes of this section, "general
27 contractor/construction manager" means a firm with which a public body
28 has selected and negotiated a maximum allowable construction cost to be

1 guaranteed by the firm, after competitive selection through formal
2 advertisement and competitive bids, to provide services during the
3 design phase that may include life-cycle cost design considerations,
4 value engineering, scheduling, cost estimating, constructability,
5 alternative construction options for cost savings, and sequencing of
6 work, and to act as the construction manager and general contractor
7 during the construction phase.

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

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

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; and the bid instructions to be used by the
36 general contractor/construction manager finalists. Evaluation factors
37 shall include, but not be limited to: Ability of professional

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

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

34 (6) All subcontract work shall be competitively bid with public bid
35 openings. When critical to the successful completion of a
36 subcontractor bid package and after publication of notice of intent to
37 determine bidder eligibility in a legal newspaper of general

1 circulation published in or as near as possible to that part of the
2 county in which the public work will be done at least twenty days
3 before requesting qualifications from interested subcontract bidders,
4 the owner and general contractor/construction manager may determine
5 subcontractor bidding eligibility using the following evaluation
6 criteria:

7 (a) Adequate financial resources or the ability to secure such
8 resources;

9 (b) History of successful completion of a contract of similar type
10 and scope;

11 (c) Project management and project supervision personnel with
12 experience on similar projects and the availability of such personnel
13 for the project;

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

16 (e) Ability to accurately estimate the subcontract bid package
17 scope of work;

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

20 (g) Eligibility to receive an award under applicable laws and
21 regulations; and

22 (h) Ability to meet subcontract bid package scheduling
23 requirements.

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

27 After publication of notice of intent to determine bidder
28 eligibility, subcontractors requesting eligibility shall be provided
29 the evaluation criteria and weighting to be used by the owner and
30 general contractor/construction manager to determine eligible
31 subcontract bidders. After the owner and general
32 contractor/construction manager determine eligible subcontract bidders,
33 subcontractors requesting eligibility shall be provided the results and
34 scoring of the subcontract bidder eligibility determination.

35 Subcontract bid packages shall be awarded to the responsible bidder
36 submitting the low responsive bid. The requirements of RCW 39.30.060
37 apply to each subcontract bid package. All subcontractors who bid work

1 over three hundred thousand dollars shall post a bid bond and all
2 subcontractors who are awarded a contract over three hundred thousand
3 dollars shall provide a performance and payment bond for their contract
4 amount. All other subcontractors shall provide a performance and
5 payment bond if required by the general contractor/construction
6 manager. If a general contractor/construction manager receives a
7 written protest from a subcontractor bidder, the general
8 contractor/construction manager shall not execute a contract for the
9 subcontract bid package with anyone other than the protesting bidder
10 without first providing at least two full business days' written notice
11 of the general contractor/construction manager's intent to execute a
12 contract for the subcontract bid package. Intermediate Saturdays,
13 Sundays, and legal holidays are not counted in determining the minimum
14 two-day notice period. A low bidder who claims error and fails to
15 enter into a contract is prohibited from bidding on the same project if
16 a second or subsequent call for bids is made for the project. Except
17 as provided for under subsection (7) of this section, bidding on
18 subcontract work by the general contractor/construction manager or its
19 subsidiaries is prohibited. The general contractor/construction
20 manager may negotiate with the low-responsive bidder in accordance with
21 RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

22 (7) The general contractor/construction manager, or its
23 subsidiaries, may bid on subcontract work 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 thirty 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

1 cost, any savings not otherwise negotiated as part of an incentive
2 clause shall accrue to the public body. If the project is completed
3 for more than the agreed upon maximum allowable construction cost,
4 excepting increases due to any contract change orders approved by the
5 public body, the additional cost shall be the responsibility of the
6 general contractor/construction manager."

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7 On page 1, line 1 of the title, after "bidding;" strike the
8 remainder of the title and insert "amending RCW 39.10.061; and adding
9 new sections to chapter 39.04 RCW."

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