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HOUSE BILL 1567

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State of Washington                      58th Legislature                      2003 Regular Session

By Representatives Alexander, Romero, Clements, DeBolt, Skinner, Hunt, Rockefeller, Eickmeyer, Woods, Haigh, Chandler, Newhouse and McMahan

Read first time 01/30/2003.                      Referred to Committee on State Government.

1            AN ACT Relating to authorizing alternative public works contracting  
2 procedures for counties with a population greater than two hundred  
3 thousand; and amending RCW 39.10.020, 39.10.051, and 39.10.902.

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

5            **Sec. 1.** RCW 39.10.020 and 2001 c 328 s 1 are each amended to read  
6 as follows:

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

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

13            (2) "Public body" means the state department of general  
14 administration; the University of Washington; Washington State  
15 University; every city with a population greater than seventy thousand  
16 and any public authority chartered by such city under RCW 35.21.730  
17 through 35.21.755 and specifically authorized as provided in RCW  
18 39.10.120(4); every county with a population greater than (~~four~~) two  
19 hundred (~~fifty~~) thousand; every port district with total revenues

1 greater than fifteen million dollars per year; every public utility  
2 district with revenues from energy sales greater than twenty-three  
3 million dollars per year; and those school districts proposing projects  
4 that are considered and approved by the school district project review  
5 board under RCW 39.10.115.

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

8 **Sec. 2.** RCW 39.10.051 and 2002 c 46 s 1 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, the following public bodies may utilize the design-  
12 build procedure of public works contracting for public works projects  
13 authorized under this section: The state department of general  
14 administration; the University of Washington; Washington State  
15 University; every city with a population greater than seventy thousand  
16 and any public authority chartered by such city under RCW 35.21.730  
17 through 35.21.755 and specifically authorized as provided in RCW  
18 39.10.120(4); every county with a population greater than (~~four~~) two  
19 hundred (~~fifty~~) thousand; every public utility district with revenues  
20 from energy sales greater than twenty-three million dollars per year;  
21 and every port district with total revenues greater than fifteen  
22 million dollars per year. The authority granted to port districts in  
23 this section is in addition to and does not affect existing contracting  
24 authority under RCW 53.08.120 and 53.08.130. For the purposes of this  
25 section, "design-build procedure" means a contract between a public  
26 body and another party in which the party agrees to both design and  
27 build the facility, portion of the facility, or other item specified in  
28 the contract.

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

32 (a) The construction activities or technologies to be used are  
33 highly specialized and a design-build approach is critical in  
34 developing the construction methodology or implementing the proposed  
35 technology; or

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

1 (c) Regular interaction with and feedback from facilities users and  
2 operators during design is not critical to an effective facility  
3 design.

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

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

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

11 (4) Contracts for design-build services shall be awarded through a  
12 competitive process utilizing public solicitation of proposals for  
13 design-build services. The public body shall publish at least once in  
14 a legal newspaper of general circulation published in or as near as  
15 possible to that part of the county in which the public work will be  
16 done, a notice of its request for proposals for design-build services  
17 and the availability and location of the request for proposal  
18 documents. The request for proposal documents shall include:

19 (a) A detailed description of the project including programmatic,  
20 performance, and technical requirements and specifications, functional  
21 and operational elements, minimum and maximum net and gross areas of  
22 any building, and, at the discretion of the public body, preliminary  
23 engineering and architectural drawings;

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

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

28 (d) A description of the process the public body will use to  
29 evaluate qualifications and proposals, including evaluation factors and  
30 the relative weight of factors. Evaluation factors shall include, but  
31 not be limited to: Proposal price; ability of professional personnel;  
32 past performance on similar projects; ability to meet time and budget  
33 requirements; ability to provide a performance and payment bond for the  
34 project; recent, current, and projected work loads of the firm;  
35 location; and the concept of the proposal;

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

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

1 (g) Other information relevant to the project.

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

9 (a) Best and final proposals shall be evaluated and scored based on  
10 the factors, weighting, and process identified in the initial request  
11 for proposals. The public body may score the proposals using a system  
12 that measures the quality and technical merits of the proposal on a  
13 unit price basis. Final proposals may not be considered if the  
14 proposal cost is greater than the maximum allowable construction cost  
15 identified in the initial request for proposals. The public body shall  
16 initiate negotiations with the firm submitting the highest scored best  
17 and final proposal. If the public body is unable to execute a contract  
18 with the firm submitting the highest scored best and final proposal,  
19 negotiations with that firm may be suspended or terminated and the  
20 public body may proceed to negotiate with the next highest scored firm.  
21 Public bodies shall continue in accordance with this procedure until a  
22 contract agreement is reached or the selection process is terminated.

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

27 (6) The firm awarded the contract shall provide a performance and  
28 payment bond for the contracted amount. The public body shall provide  
29 appropriate honorarium payments to finalists submitting best and final  
30 proposals who are not awarded a design-build contract. Honorarium  
31 payments shall be sufficient to generate meaningful competition among  
32 potential proposers on design-build projects.

33 **Sec. 3.** RCW 39.10.902 and 2002 c 46 s 4 are each amended to read  
34 as follows:

35 The following acts or parts of acts, as now existing or hereafter  
36 amended, are each repealed, effective July 1, 2007:

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

- 1           (2) RCW 39.10.020 and 2003 c ... s 1 (section 1 of this act), 2001  
2 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;  
3           (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;  
4           (4) RCW 39.10.040 and 1994 c 132 s 4;  
5           (5) RCW 39.10.051 and 2003 c ... s 2 (section 2 of this act), 2002  
6 c 46 s 1, & 2001 c 328 s 2;  
7           (6) RCW 39.10.061 and 2002 c 46 s 2 & 2001 c 328 s 3;  
8           (7) RCW 39.10.065 and 1997 c 376 s 5;  
9           (8) RCW 39.10.067 and 2002 c 46 s 3 & 2000 c 209 s 3;  
10          (9) RCW 39.10.070 and 1994 c 132 s 7;  
11          (10) RCW 39.10.080 and 1994 c 132 s 8;  
12          (11) RCW 39.10.090 and 1994 c 132 s 9;  
13          (12) RCW 39.10.100 and 1994 c 132 s 10;  
14          (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;  
15          (14) RCW 39.10.900 and 1994 c 132 s 13; and  
16          (15) RCW 39.10.901 and 1994 c 132 s 14.

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