
SUBSTITUTE SENATE BILL 5520

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Highways & Transportation (originally sponsored by Senators Haugen, Horn and Oke; by request of Department of Transportation)

READ FIRST TIME 02/13/03.

1 AN ACT Relating to authorizing the ferry system to use alternative
2 public works contracting procedures; and amending RCW 39.10.020,
3 39.10.051, and 39.10.061.

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 hundred
19 fifty thousand; every port district with total revenues greater than

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

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 state ferry system; the University of Washington;
15 Washington State University; every city with a population greater than
16 seventy thousand and any public authority chartered by such city under
17 RCW 35.21.730 through 35.21.755 and specifically authorized as provided
18 in RCW 39.10.120(4); every county with a population greater than four
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 (7) The authority provided to the state ferry system in this
34 section is limited to projects concerning construction, renovation,
35 preservation, demolition, and reconstruction of ferry terminals and
36 associated land-based facilities.

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

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

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

22 (a) Implementation of the project involves complex scheduling
23 requirements; or

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

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

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

31 (4) Contracts for the services of a general contractor/construction
32 manager under this section shall be awarded through a competitive
33 process requiring the public solicitation of proposals for general
34 contractor/construction manager services. The public solicitation of
35 proposals shall include: A description of the project, including
36 programmatic, performance, and technical requirements and
37 specifications when available; the reasons for using the general
38 contractor/construction manager procedure; a description of the

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

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

1 from the bid estimated maximum allowable construction cost due to
2 requested and approved changes in the scope by the public body, the
3 percent fee shall be renegotiated.

4 (6) All subcontract work shall be competitively bid with public bid
5 openings. When critical to the successful completion of a
6 subcontractor bid package and after publication of notice of intent to
7 determine bidder eligibility in a legal newspaper of general
8 circulation published in or as near as possible to that part of the
9 county in which the public work will be done at least twenty days
10 before requesting qualifications from interested subcontract bidders,
11 the owner and general contractor/construction manager may determine
12 subcontractor bidding eligibility using the following evaluation
13 criteria:

14 (a) Adequate financial resources or the ability to secure such
15 resources;

16 (b) History of successful completion of a contract of similar type
17 and scope;

18 (c) Project management and project supervision personnel with
19 experience on similar projects and the availability of such personnel
20 for the project;

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

23 (e) Ability to accurately estimate the subcontract bid package
24 scope of work;

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

27 (g) Eligibility to receive an award under applicable laws and
28 regulations; and

29 (h) Ability to meet subcontract bid package scheduling
30 requirements.

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

34 After publication of notice of intent to determine bidder
35 eligibility, subcontractors requesting eligibility shall be provided
36 the evaluation criteria and weighting to be used by the owner and
37 general contractor/construction manager to determine eligible
38 subcontract bidders. After the owner and general

1 contractor/construction manager determine eligible subcontract bidders,
2 subcontractors requesting eligibility shall be provided the results and
3 scoring of the subcontract bidder eligibility determination.

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

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

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

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

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

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

31 (8) A public body may include an incentive clause in any contract
32 awarded under this section for savings of either time or cost or both
33 from that originally negotiated. No incentives granted may exceed five
34 percent of the maximum allowable construction cost. If the project is
35 completed for less than the agreed upon maximum allowable construction
36 cost, any savings not otherwise negotiated as part of an incentive
37 clause shall accrue to the public body. If the project is completed
38 for more than the agreed upon maximum allowable construction cost,

1 excepting increases due to any contract change orders approved by the
2 public body, the additional cost shall be the responsibility of the
3 general contractor/construction manager.

4 (9) The authority provided to the state ferry system in this
5 section is limited to projects concerning construction, renovation,
6 preservation, demolition, and reconstruction of ferry terminals and
7 associated land-based facilities.

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