
SUBSTITUTE SENATE BILL 5768

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama, Roach, Rockefeller, Esser, Prentice, Weinstein, Kline, Delvin and Rasmussen)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to alternative public works contracting procedures;
2 and reenacting and amending RCW 39.10.020 and 39.10.051.

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

4 **Sec. 1.** RCW 39.10.020 and 2003 c 352 s 1, 2003 c 301 s 2, and 2003
5 c 300 s 3 are each reenacted and amended to read as follows:

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

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

12 (2) "Public body" means the state department of general
13 administration; the University of Washington; Washington State
14 University; every city with a population greater than seventy thousand
15 and any public authority chartered by such city under RCW 35.21.730
16 through 35.21.755 and specifically authorized as provided in RCW
17 39.10.120(4) or a city with a population less than seventy thousand
18 that reports in the state auditor's local government financial
19 reporting system combined general fund, special revenue, debt service,

1 capital projects, and enterprise funds revenues that exceed sixty
2 million dollars if the city has projects in design and out for bidding
3 by January 1, 2007; every county with a population greater than
4 (~~four~~) three hundred fifty thousand; every port district with total
5 revenues greater than fifteen million dollars per year; every public
6 hospital district with total revenues greater than fifteen million
7 dollars per year utilizing the design-build procedure authorized by RCW
8 39.10.051 and every public hospital district, regardless of total
9 revenues, proposing projects that are considered and approved by the
10 public hospital district project review board under RCW 39.10.117;
11 every public utility district with revenues from energy sales greater
12 than twenty-three million dollars per year; those school districts
13 proposing projects that are considered and approved by the school
14 district project review board under RCW 39.10.115; and the state ferry
15 system.

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

18 (4) "Job order contract" means a contract between a public body or
19 any school district and a registered or licensed contractor in which
20 the contractor agrees to a fixed period, indefinite quantity delivery
21 order contract which provides for the use of negotiated, definitive
22 work orders for public works as defined in RCW 39.04.010.

23 (5) "Job order contractor" means a registered or licensed
24 contractor awarded a job order contract.

25 (6) "Unit price book" means a book containing specific prices,
26 based on generally accepted industry standards and information, where
27 available, for various items of work to be performed by the job order
28 contractor. The prices may include: All the costs of materials;
29 labor; equipment; overhead, including bonding costs; and profit for
30 performing the items of work. The unit prices for labor must be at the
31 rates in effect at the time the individual work order is issued.

32 (7) "Work order" means an order issued for a definite scope of work
33 to be performed pursuant to a job order contract.

34 **Sec. 2.** RCW 39.10.051 and 2003 c 352 s 2 and 2003 c 300 s 4 are
35 each reenacted and amended to read as follows:

36 (1) Notwithstanding any other provision of law, and after complying
37 with RCW 39.10.030, the following public bodies may utilize the design-

1 build procedure of public works contracting for public works projects
2 authorized under this section: The state department of general
3 administration; the state ferry system; the University of Washington;
4 Washington State University; every city with a population greater than
5 seventy thousand and any public authority chartered by such city under
6 RCW 35.21.730 through 35.21.755 and specifically authorized as provided
7 in RCW 39.10.120(4) or a city with a population less than seventy
8 thousand that reports in the state auditor's local government financial
9 reporting system combined general fund, special revenue, debt service,
10 capital projects, and enterprise funds revenues that exceed sixty
11 million dollars if the city has projects in design and out for bidding
12 by January 1, 2007; every county with a population greater than
13 (~~four~~) three hundred fifty thousand; every public utility district
14 with revenues from energy sales greater than twenty-three million
15 dollars per year; every public hospital district with total revenues
16 greater than fifteen million dollars per year; and every port district
17 with total revenues greater than fifteen million dollars per year. The
18 authority granted to port districts in this section is in addition to
19 and does not affect existing contracting authority under RCW 53.08.120
20 and 53.08.130. For the purposes of this section, "design-build
21 procedure" means a contract between a public body and another party in
22 which the party agrees to both design and build the facility, portion
23 of the facility, or other item specified in the contract.

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

27 (a) The construction activities or technologies to be used are
28 highly specialized and a design-build approach is critical in
29 developing the construction methodology or implementing the proposed
30 technology; or

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

33 (c) Regular interaction with and feedback from facilities users and
34 operators during design is not critical to an effective facility
35 design.

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

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

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

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

13 (a) A detailed description of the project including programmatic,
14 performance, and technical requirements and specifications, functional
15 and operational elements, minimum and maximum net and gross areas of
16 any building, and, at the discretion of the public body, preliminary
17 engineering and architectural drawings;

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

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

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

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

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

33 (g) Other information relevant to the project.

34 (5) The public body shall establish a committee to evaluate the
35 proposals based on the factors, weighting, and process identified in
36 the request for proposals. Based on its evaluation, the public body
37 shall select not fewer than three nor more than five finalists to

1 submit best and final proposals. The public body may, in its sole
2 discretion, reject all proposals. Design-build contracts shall be
3 awarded using the procedures in (a) or (b) of this subsection.

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

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

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

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

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