

**2SHB 1506** - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 04/05/2007

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

3 "Sec. 1. RCW 39.10.010 and 1994 c 132 s 1 are each amended to read  
4 as follows:

5 The legislature finds that the traditional process of awarding  
6 public works contracts in lump sum to the lowest responsible bidder is  
7 a fair and objective method of selecting a contractor. However, under  
8 certain circumstances, alternative public works contracting procedures  
9 may best serve the public interest if such procedures are implemented  
10 in an open and fair process based on objective and equitable criteria.  
11 The purpose of this chapter is to authorize the use of certain  
12 supplemental alternative public works contracting procedures (~~((by state  
13 agencies and large municipalities under limited circumstances))~~), to  
14 prescribe appropriate requirements to ensure that such contracting  
15 procedures serve the public interest, and to establish a process for  
16 evaluation of such contracting procedures.

17 **PART 1**

18 **GENERAL PROVISIONS**

19 **Sec. 101.** RCW 39.10.020 and 2005 c 469 s 3 are each amended to  
20 read as follows:

21 Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

23 (1) "Alternative public works contracting procedure" means the  
24 design-build (~~((and the))~~), general contractor/construction manager, and  
25 job order contracting procedures authorized in RCW 39.10.051 (~~((and))~~),  
26 39.10.061, and 39.10.130 (as recodified by this act), respectively.  
27 (~~((Public bodies eligible to enter into agreements with service  
28 providers for the furnishing of services in connection with water~~

1 ~~pollution control facilities under the authority of chapter 70.150 RCW~~  
2 ~~may elect to use either RCW 39.10.051 and 39.10.061 or chapter 70.150~~  
3 ~~RCW as their method of procurement for such services.)~~

4 (2) (~~"Public body" means the state department of general~~  
5 ~~administration; the University of Washington; Washington State~~  
6 ~~University; every city with a population greater than seventy thousand~~  
7 ~~and any public authority chartered by such city under RCW 35.21.730~~  
8 ~~through 35.21.755 and specifically authorized as provided in RCW~~  
9 ~~39.10.120(4); every county with a population greater than four hundred~~  
10 ~~fifty thousand; every port district with total revenues greater than~~  
11 ~~fifteen million dollars per year; every public hospital district with~~  
12 ~~total revenues greater than fifteen million dollars per year utilizing~~  
13 ~~the design-build procedure authorized by RCW 39.10.051 and every public~~  
14 ~~hospital district, regardless of total revenues, proposing projects~~  
15 ~~that are considered and approved by the public hospital district~~  
16 ~~project review board under RCW 39.10.117; every public utility district~~  
17 ~~with revenues from energy sales greater than twenty three million~~  
18 ~~dollars per year; those school districts proposing projects that are~~  
19 ~~considered and approved by the school district project review board~~  
20 ~~under RCW 39.10.115; and the state ferry system.)) "Board" means the  
21 capital projects advisory review board.~~

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

25 (4) "Design-build procedure" means a contract between a public body  
26 and another party in which the party agrees to both design and build  
27 the facility, portion of the facility, or other item specified in the  
28 contract.

29 (5) "Total contract cost" means the fixed amount for the detailed  
30 specified general conditions work, the negotiated maximum allowable  
31 construction cost, and the percent fee on the negotiated maximum  
32 allowable construction cost.

33 (6) "General contractor/construction manager" means a firm with  
34 which a public body has selected and negotiated a maximum allowable  
35 construction cost to provide services during the design phase and to  
36 act as construction manager and general contractor during the  
37 construction phase.

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

6        ~~((+5))~~ (8) "Job order contractor" means a registered or licensed  
7 contractor awarded a job order contract.

8        ~~((+6))~~ (9) "Maximum allowable construction cost" means the maximum  
9 cost of the work to construct the project including a percentage for  
10 risk contingency, negotiated support services, and approved change  
11 orders.

12        (10) "Negotiated support services" means items a general contractor  
13 would normally manage or perform on a construction project including,  
14 but not limited to surveying, hoisting, safety enforcement, provision  
15 of toilet facilities, temporary heat, cleanup, and trash removal.

16        (11) "Percent fee" means the percentage amount to be earned by the  
17 general contractor/construction manager as overhead and profit.

18        (12) "Public body" means any general or special purpose government,  
19 including but not limited to state agencies, institutions of higher  
20 education, counties, cities, towns, ports, school districts, and  
21 special purpose districts.

22        (13) "Certified public body" means a public body certified to use  
23 design-build or general contractor/construction manager contracting  
24 procedures, or both, under section 107 of this act.

25        (14) "Public works project" means any work for a public body within  
26 the definition of "public work" in RCW 39.04.010.

27        (15) "Total project cost" means the cost of the project less  
28 financing and land acquisition costs.

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

36        ~~((+7))~~ (17) "Work order" means an order issued for a definite  
37 scope of work to be performed pursuant to a job order contract.

1       **Sec. 102.** RCW 39.10.800 and 2005 c 377 s 1 are each amended to  
2 read as follows:

3       (1) The (~~capital projects advisory review~~) board is created in  
4 the department of general administration to provide an evaluation of  
5 public capital projects construction processes, including the impact of  
6 contracting methods on project outcomes, and to advise the legislature  
7 on policies related to (~~alternative~~) public works delivery methods.

8       (2)(a) The (~~capital projects advisory review~~) board shall consist  
9 of the following members appointed by the governor: (~~One~~) Two  
10 representatives from construction general contracting; one  
11 representative from the (~~design industries~~) architectural profession;  
12 one representative from the engineering profession; two representatives  
13 from construction specialty subcontracting; (~~one~~) two representatives  
14 from (~~a~~) construction trades labor organizations; one representative  
15 from the office of minority and women's business enterprises; one  
16 representative from a higher education institution; one representative  
17 from the department of general administration; two representatives from  
18 private industry; and one representative of a domestic insurer  
19 authorized to write surety bonds for contractors in Washington state.  
20 All appointed members must be (~~actively engaged in or authorized to~~  
21 ~~use alternative~~) knowledgeable about public works contracting  
22 procedures.

23       (b) (~~Two~~) Three members shall be (~~at-large~~) positions  
24 representing different local public owners(~~. The two at-large~~  
25 ~~positions shall serve on a rotating basis to be determined and~~  
26 ~~appointed~~), selected by the association of Washington cities, the  
27 Washington state association of counties, and the Washington public  
28 ports association, respectively.

29       (c) One member shall be a (~~member of~~) representative from the  
30 public hospital districts (~~project review board~~), selected by (~~that~~  
31 ~~board, who shall be nonvoting~~) the association of Washington public  
32 hospital districts.

33       (d) One member shall be a (~~member of the~~) representative from  
34 school districts (~~project review board~~), selected by (~~that board,~~  
35 ~~who shall be nonvoting~~) the Washington state school directors'  
36 association.

37       (e) The (~~advisory review~~) board shall include two members of the  
38 house of representatives, one from each major caucus, appointed by the

1 speaker of the house of representatives, and two members of the senate,  
2 one from each major caucus, appointed by the president of the senate.  
3 Legislative members are nonvoting.

4 (3) Members selected under subsection (2)(a) of this section shall  
5 serve for terms of four years, with the terms expiring on June 30th on  
6 the fourth year of the term. ~~((However, in the case of the initial  
7 members, four members shall serve four-year terms, four members shall  
8 serve three-year terms, and three members shall serve a two-year term,  
9 with each of the terms expiring on June 30th of the applicable year.  
10 Appointees may be reappointed to serve more than one term.))~~

11 (4) The ~~((capital projects advisory review))~~ board chair is  
12 selected from among the appointed members by the majority vote of the  
13 voting members.

14 (5) Legislative members of the ~~((capital projects advisory review))~~  
15 board shall be reimbursed for travel expenses in accordance with RCW  
16 44.04.120. Nonlegislative members of the ~~((capital projects advisory  
17 review))~~ board, ~~((including any subcommittee members, except those  
18 representing an employer or organization,))~~ project review committee  
19 members, and subcommittee chairs shall be reimbursed for travel  
20 expenses as provided in RCW 43.03.050 and 43.03.060.

21 (6) If a vacancy occurs of the appointive members of the board, the  
22 governor shall fill the vacancy for the unexpired term. Members of the  
23 board may be removed for malfeasance or misfeasance in office, upon  
24 specific written charges by the governor, under chapter 34.05 RCW.

25 (7) The ~~((capital projects advisory review))~~ board shall ~~((convene  
26 as soon as practical after July 1, 2005, and may))~~ meet as often as  
27 necessary ~~((thereafter))~~.

28 (8) ~~((Capital projects advisory review))~~ Board members are expected  
29 to consistently attend ~~((review))~~ board meetings. The chair of the  
30 ~~((capital projects advisory review))~~ board may ask the governor to  
31 remove any member who misses more than two meetings in any calendar  
32 year without cause.

33 (9) The department of general administration shall provide staff  
34 support as may be required for the proper discharge of the function of  
35 the ~~((capital projects advisory review))~~ board.

36 (10) The ~~((capital projects advisory review))~~ board may establish  
37 subcommittees as it desires and may invite nonmembers of the ~~((capital  
38 projects advisory review))~~ board to serve as committee members.

1 (11) The board shall encourage participation from persons and  
2 entities not represented on the (~~capital projects advisory review~~)  
3 board.

4 **Sec. 103.** RCW 39.10.810 and 2005 c 377 s 2 are each amended to  
5 read as follows:

6 The (~~capital projects advisory review~~) board has the following  
7 powers and duties:

8 (~~1) Develop and recommend to the legislature criteria that may be  
9 used to determine effective and feasible use of alternative contracting  
10 procedures;~~

11 (~~2) Develop and recommend to the legislature qualification  
12 standards for general contractors bidding on alternative public works  
13 projects;~~

14 (~~3~~) Develop and recommend to the legislature policies to further  
15 enhance the quality, efficiency, and accountability of capital  
16 construction projects through the use of traditional and alternative  
17 delivery methods in Washington, and make recommendations regarding  
18 expansion, continuation, elimination, or modification of the  
19 alternative public works contracting methods;

20 (~~4~~) (2) Evaluate the use of existing contracting procedures and  
21 potential future use of other alternative contracting procedures  
22 including competitive negotiation contracts;

23 (3) Appoint members of the committee; and

24 (4) Develop and administer questionnaires designed to provide  
25 quantitative and qualitative data on alternative public works  
26 contracting procedures on which evaluations are based.

27 NEW SECTION. **Sec. 104.** PROJECT REVIEW COMMITTEE--CREATED. (1)  
28 The board shall establish a project review committee to review and  
29 approve public works projects using the design-build and general  
30 contractor/construction manager contracting procedures authorized in  
31 RCW 39.10.051 and 39.10.061 (as recodified by this act) and to certify  
32 public bodies as provided in section 107 of this act.

33 (2) The board shall, by a majority vote of the board, appoint  
34 persons to the committee who are knowledgeable in the use of the  
35 design-build and general contractor/construction manager contracting

1 procedures. Appointments must represent a balance among the industries  
2 and public owners on the board listed in RCW 39.10.800 (as recodified  
3 by this act).

4 (a) When making initial appointments to the committee, the board  
5 shall consider for appointment former members of the school district  
6 project review board and the public hospital district project review  
7 board.

8 (b) Each member of the committee shall be appointed for a term of  
9 three years. However, for initial appointments, the board shall  
10 stagger the appointment of committee members so that the first members  
11 are appointed to serve terms of one, two, or three years from the date  
12 of appointment. Appointees may be reappointed to serve more than one  
13 term.

14 (c) The committee shall, by a majority vote, elect a chair and  
15 vice-chair for the committee.

16 (d) The committee chair may select a person or persons on a  
17 temporary basis as a nonvoting member if project specific expertise is  
18 needed to assist in a review.

19 (3) The chair of the committee, in consultation with the vice-  
20 chair, may appoint one or more panels of at least six committee members  
21 to carry out the duties of the committee. Each panel shall have  
22 balanced representation of the private and public sector  
23 representatives serving on the committee.

24 (4) Any member of the committee directly or indirectly affiliated  
25 with a submittal before the committee must recuse himself or herself  
26 from the committee consideration of that submittal.

27 (5) Any person who sits on the committee or panel is not precluded  
28 from subsequently bidding on or participating in projects that have  
29 been reviewed by the committee.

30 (6) The committee shall meet as often as necessary to ensure that  
31 certification and approvals are completed in a timely manner.

32 NEW SECTION. **Sec. 105.** PROJECT REVIEW COMMITTEE DUTIES. The  
33 committee shall:

34 (1) Certify, or recertify, public bodies for a period of three  
35 years to use the design-build or general contractor/construction  
36 manager, or both, contracting procedures for projects with a total  
37 project cost of ten million dollars or more;

1 (2) Review and approve the use of the design-build or general  
2 contractor/construction manager contracting procedures on a project by  
3 project basis for public bodies that are not certified under section  
4 107 of this act; and

5 (3) Review and approve the use of the general  
6 contractor/construction manager contracting procedure by certified  
7 public bodies for projects with a total project cost under ten million  
8 dollars.

9 NEW SECTION. **Sec. 106.** PROJECT REVIEW COMMITTEE MEETINGS--OPEN  
10 AND PUBLIC. (1) The committee shall hold regular public meetings to  
11 carry out its duties as described in section 105 of this act.  
12 Committee meetings are subject to chapter 42.30 RCW.

13 (2) The committee shall publish notice of its public meetings at  
14 least twenty days before the meeting in a legal newspaper circulated in  
15 the area where the public body seeking certification is located, or  
16 where each of the proposed projects under consideration will be  
17 constructed. All meeting notices must be posted on the committee's web  
18 site.

19 (3) The meeting notice must identify the public body that is  
20 seeking certification or project approval, and where applicable, a  
21 description of projects to be considered at the meeting. The notice  
22 must indicate when, where, and how the public may present comments  
23 regarding the committee's certification of a public body or approval of  
24 a project. Information submitted by a public body to be reviewed at  
25 the meeting shall be available on the committee's web site at the time  
26 the notice is published.

27 (4) The committee must allow for public comment on the  
28 appropriateness of certification of a public body or on the  
29 appropriateness of the use of the proposed contracting procedure and  
30 the qualifications of a public body to use the contracting procedure.  
31 The committee shall receive and record both written and oral comments  
32 at the public hearing.

33 NEW SECTION. **Sec. 107.** PROJECT REVIEW COMMITTEE--CERTIFICATION OF  
34 PUBLIC BODIES. (1) A public body may apply for certification to use  
35 the design-build or general contractor/construction manager contracting  
36 procedure, or both. Once certified, a public body may use the



1 contracting procedure for which it is certified on individual projects  
2 with a total project cost over ten million dollars without seeking  
3 committee approval. The certification period is three years. A public  
4 body seeking certification must submit to the committee an application  
5 in a format and manner as prescribed by the committee. The application  
6 must include a description of the public body's qualifications, its  
7 capital plan during the certification period, and its intended use of  
8 alternative contracting procedures.

9 (2) To certify a public body, the committee shall determine that  
10 the public body:

11 (a) Has the necessary experience and qualifications to determine  
12 which projects are appropriate for using alternative contracting  
13 procedures;

14 (b) Has the necessary experience and qualifications to carry out  
15 the alternative contracting procedure including, but not limited to:  
16 (i) Project delivery knowledge and experience; (ii) personnel with  
17 appropriate construction experience; (iii) a management plan and  
18 rationale for its alternative public works projects; (iv) demonstrated  
19 success in managing public works projects; (v) demonstrated success in  
20 managing at least one general contractor/construction manager or  
21 design-build project within the previous five years; (vi) the ability  
22 to properly manage its capital facilities plan including, but not  
23 limited to, appropriate project planning and budgeting experience; and  
24 (vii) the ability to meet requirements of this chapter; and

25 (c) Has resolved any audit findings on previous public works  
26 projects in a manner satisfactory to the committee.

27 (3) The committee shall, if practicable, make its determination at  
28 the public meeting during which an application for certification is  
29 reviewed. Public comments must be considered before a determination is  
30 made. Within ten business days of the public meeting, the committee  
31 shall provide a written determination to the public body, and make its  
32 determination available to the public on the committee's web site.

33 (4) The committee may revoke any public body's certification upon  
34 a finding, after a public hearing, that its use of design-build or  
35 general contractor/construction manager contracting procedures no  
36 longer serves the public interest.

37 (5) The committee may renew the certification of a public body for  
38 one additional three-year period. The public body must submit an

1 application for recertification at least three months before the  
2 initial certification expires. The application shall include updated  
3 information on the public body's capital plan for the next three years,  
4 its intended use of the procedures, and any other information requested  
5 by the committee. The committee must review the application for  
6 recertification at a meeting held before expiration of the applicant's  
7 initial certification period. A public body must reapply for  
8 certification under the process described in subsection (1) of this  
9 section once the period of recertification expires.

10 (6) Certified public bodies must submit project data information as  
11 required in RCW 39.10.070 (as recodified by this act) and section 302  
12 of this act.

13 NEW SECTION. **Sec. 108.** PROJECT REVIEW COMMITTEE--PROJECT APPROVAL  
14 PROCESS. (1) A public body not certified under section 107 of this act  
15 must apply for approval from the committee to use the design-build or  
16 general contractor/construction manager contracting procedure on a  
17 project. A public body seeking approval must submit to the committee  
18 an application in a format and manner as prescribed by the committee.  
19 The application must include a description of the public body's  
20 qualifications, a description of the project, and its intended use of  
21 alternative contracting procedures.

22 (2) To approve a proposed project, the committee shall determine  
23 that:

24 (a) The alternative contracting procedure will provide a  
25 substantial fiscal benefit or the use of the traditional method of  
26 awarding contracts in lump sum to the low responsive bidder is not  
27 practical for meeting desired quality standards or delivery schedules;

28 (b) The proposed project meets the requirements for using the  
29 alternative contracting procedure as described in section 201 or 301 of  
30 this act;

31 (c) The public body has the necessary experience or qualified team  
32 to carry out the alternative contracting procedure including, but not  
33 limited to: (i) Project delivery knowledge and experience; (ii)  
34 sufficient personnel with construction experience to administer the  
35 contract; (iii) a written management plan that shows clear and logical  
36 lines of authority; (iv) the necessary and appropriate funding and time  
37 to properly manage the job and complete the project; (v) continuity of

1 project management team, including personnel with experience managing  
2 projects of similar scope and size to the project being proposed; and  
3 (vi) necessary and appropriate construction budget;

4 (d) For design-build projects, construction personnel independent  
5 of the design-build team are knowledgeable in the design-build process  
6 and are able to oversee and administer the contract; and

7 (e) The public body has resolved any audit findings related to  
8 previous public works projects in a manner satisfactory to the  
9 committee.

10 (3) The committee shall, if practicable, make its determination at  
11 the public meeting during which a submittal is reviewed. Public  
12 comments must be considered before a determination is made.

13 (4) Within ten business days after the public meeting, the  
14 committee shall provide a written determination to the public body, and  
15 make its determination available to the public on the committee's web  
16 site. If the committee fails to make a written determination within  
17 ten business days of the public meeting, the request of the public body  
18 to use the alternative contracting procedure on the requested project  
19 shall be deemed approved.

20 (5) The requirements of subsection (1) of this section also apply  
21 to certified public bodies seeking to use the general  
22 contractor/construction manager contracting procedure on projects with  
23 a total project cost of less than ten million dollars.

24 (6) Failure of the committee to meet within sixty calendar days of  
25 a public body's application to use an alternative contracting procedure  
26 on a project shall be deemed an approval of the application.

27 NEW SECTION. **Sec. 109.** APPEAL PROCESS. Final determinations by  
28 the committee may be appealed to the board within seven days by the  
29 public body or by an interested party. A written notice of an appeal  
30 must be provided to the committee and, as applicable, to the public  
31 body. The board shall resolve an appeal within forty-five days of  
32 receipt of the appeal and shall send a written determination of its  
33 decision to the party making the appeal and to the appropriate public  
34 body, as applicable. The public body shall comply with the  
35 determination of the board.

36 **PART 2**

DESIGN-BUILD

Sec. 201. RCW 39.10.051 and 2003 c 352 s 2 and 2003 c 300 s 4 are each reenacted and amended to read as follows:

(1) ~~((Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the design build procedure of public works contracting for public works projects authorized under this section: The state department of general administration; the state ferry system; the University of Washington; Washington State University; every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755 and specifically authorized as provided in RCW 39.10.120(4); every county with a population greater than four hundred fifty thousand; every public utility district with revenues from energy sales greater than twenty-three million dollars per year; every public hospital district with total revenues greater than fifteen million dollars per year; and every port district with total revenues greater than fifteen million dollars per year. The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130. For the purposes of this section, "design build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.~~

~~(2) Public bodies authorized under this section))~~ Subject to the process in section 107 or 108 of this act, public bodies may utilize the design-build procedure for public works projects ((valued)) in which the total project cost is over ten million dollars and where:

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

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

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

1        (2) Subject to the process in section 107 or 108 of this act,  
2 public bodies may use the design-build procedure for parking garages,  
3 regardless of cost.

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

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

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

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

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

25        ~~(b) The reasons for using the design build procedure;~~

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

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

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

1       ~~(f) The amount to be paid to finalists submitting best and final~~  
2 ~~proposals who are not awarded a design build contract; and~~

3       ~~(g) Other information relevant to the project.~~

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

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

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

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

35       ~~(7) The authority provided to the state ferry system in this~~  
36 ~~section is limited to projects concerning construction, renovation,~~  
37 ~~preservation, demolition, and reconstruction of ferry terminals and~~

1 ~~associated land-based facilities)) and is not subject to approval by~~  
2 ~~the committee.~~

3 (4) Except for utility projects, the design-build procedure may not  
4 be used to procure operations and maintenance services for a period  
5 longer than three years. State agency projects that propose to use the  
6 design-build-operate-maintain procedure shall submit cost estimates for  
7 the construction portion of the project consistent with the office of  
8 financial management's capital budget requirements. Operations and  
9 maintenance costs must be shown separately and must not be included as  
10 part of the capital budget request.

11 **Sec. 202.** RCW 39.10.080 and 1994 c 132 s 8 are each amended to  
12 read as follows:

13 Notwithstanding the provisions of RCW 39.04.015, a public body  
14 using the design-build contracting procedure is authorized to negotiate  
15 an adjustment to the lowest bid or proposal price for a public works  
16 project (~~awarded under RCW 39.10.050 and 39.10.060~~) based upon agreed  
17 changes to the contract plans and specifications under the following  
18 conditions:

19 (1) All responsive bids or proposal prices exceed the available  
20 funds, as certified by an appropriate fiscal officer;

21 (2) The apparent low-responsive bid or proposal does not exceed the  
22 available funds by the greater of one hundred twenty-five thousand  
23 dollars or two percent for projects valued over ten million dollars;  
24 and

25 (3) The negotiated adjustment will bring the bid or proposal price  
26 within the amount of available funds.

27 **Sec. 203.** RCW 39.10.070 and 1994 c 132 s 7 are each amended to  
28 read as follows:

29 (1) A public body utilizing the (~~alternative public works~~)  
30 design-build contracting procedure(~~s authorized under RCW 39.10.050~~  
31 ~~and 39.10.060~~) shall provide for:

32 (a) (~~The preparation of appropriate, complete, and coordinated~~  
33 ~~design documents consistent with the procedure utilized;~~

34 (b) ~~To the extent appropriate, an independent review of the~~  
35 ~~contract documents through value engineering or constructability~~  
36 ~~studies prior to bid or proposal solicitation;~~

1       ~~(e))~~ Reasonable budget contingencies totaling not less than five  
2 percent of the anticipated contract value;

3       ~~((d) To the extent appropriate, on-site architectural or~~  
4 ~~engineering representatives during major construction or installation~~  
5 ~~phases;~~

6       ~~(e))~~ (b) Employment of staff or consultants with expertise and  
7 prior experience in the management of comparable projects; ~~((and~~

8       ~~(f))~~ (c) Contract documents that include alternative dispute  
9 resolution procedures to be attempted prior to the initiation of  
10 litigation;

11       (d) Submission of project information, as required by the board;  
12 and

13       (e) Contract documents that require the contractor, subcontractors,  
14 and designers to submit project information required by the board.

15       (2) A public body utilizing the ~~((alternative public works))~~  
16 design-build contracting procedure~~((s under RCW 39.10.050 and~~  
17 ~~39.10.060))~~ may provide incentive payments to contractors for early  
18 completion, cost savings, or other goals if such payments are  
19 identified in the request for proposals.

20       NEW SECTION. Sec. 204. DESIGN-BUILD CONTRACT AWARD.       (1)

21 Contracts for design-build services shall be awarded through a  
22 competitive process using public solicitation of proposals for design-  
23 build services. The public body shall publish at least once in a legal  
24 newspaper of general circulation published in, or as near as possible  
25 to, that part of the county in which the public work will be done, a  
26 notice of its request for qualifications from proposers for design-  
27 build services, and the availability and location of the request for  
28 proposal documents. The request for qualifications documents shall  
29 include:

30       (a) A general description of the project that provides sufficient  
31 information for proposers to submit qualifications;

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

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

36       (d) A description of the process the public body will use to



1 evaluate qualifications and finalists' proposals, including evaluation  
2 factors and the relative weight of factors and any specific forms to be  
3 used by the proposers;

4 (i) Evaluation factors for request for qualifications shall  
5 include, but not be limited to, technical qualifications, such as  
6 specialized experience and technical competence; capability to perform;  
7 past performance of the proposers' team, including the architect-  
8 engineer and construction members; and other appropriate factors. Cost  
9 or price-related factors are not permitted in the request for  
10 qualifications phase;

11 (ii) Evaluation factors for finalists' proposals shall include, but  
12 not be limited to, the factors listed in (d)(i) of this subsection, as  
13 well as technical approach design concept; proposal price; ability of  
14 professional personnel; past performance on similar projects; ability  
15 to meet time and budget requirements; ability to provide a performance  
16 and payment bond for the project; recent, current, and projected work  
17 loads of the firm; and location. Alternatively, if the public body  
18 determines that all finalists will be capable of producing a design  
19 that adequately meets project requirements, the public body may award  
20 the contract to the firm that submits the responsive proposal with the  
21 lowest price;

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

23 (f) The amount to be paid to finalists submitting responsive  
24 proposals and who are not awarded a design-build contract;

25 (g) The schedule for the procurement process and the project; and

26 (h) Other information relevant to the project.

27 (2) The public body shall establish an evaluation committee to  
28 evaluate the responses to the request for qualifications based on the  
29 factors, weighting, and process identified in the request for  
30 qualifications. Based on the evaluation committee's findings, the  
31 public body shall select not more than five responsive and responsible  
32 finalists to submit proposals. The public body may, in its sole  
33 discretion, reject all proposals and shall provide its reasons for  
34 rejection in writing to all proposers.

35 (3) Upon selection of the finalists, the public body shall issue a  
36 request for proposals to the finalists, which shall provide the  
37 following information:

1 (a) A detailed description of the project including programmatic,  
2 performance, and technical requirements and specifications; functional  
3 and operational elements; minimum and maximum net and gross areas of  
4 any building; and, at the discretion of the public body, preliminary  
5 engineering and architectural drawings; and

6 (b) The target budget for the design-build portion of the project.

7 (4) The public body shall establish an evaluation committee to  
8 evaluate the proposals submitted by the finalists. Design-build  
9 contracts shall be awarded using the procedures in (a) or (b) of this  
10 subsection. The public body must identify in the request for  
11 qualifications which procedure will be used.

12 (a) The finalists' proposals shall be evaluated and scored based on  
13 the factors, weighting, and process identified in the initial request  
14 for qualifications and in any addenda published by the public body.  
15 Public bodies may request best and final proposals from finalists. The  
16 public body shall initiate negotiations with the firm submitting the  
17 highest scored proposal. If the public body is unable to execute a  
18 contract with the firm submitting the highest scored 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 a design that adequately meets project requirements, the  
25 public body may award the contract to the firm that submits the  
26 responsive proposal with the lowest price.

27 (5) 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 that 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. In determining the  
33 amount of the honorarium, the public body shall consider the level of  
34 effort required to meet the selection criteria.

35 **PART 3**

36 **GENERAL CONTRACTOR/CONSTRUCTION MANAGER**

1           **Sec. 301.** RCW 39.10.061 and 2003 c 352 s 3 and 2003 c 300 s 5 are  
2 each reenacted and amended to read as follows:

3           ~~((1) Notwithstanding any other provision of law, and after~~  
4 ~~complying 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 and~~  
19 ~~those public hospital districts proposing projects that are considered~~  
20 ~~and approved by the public hospital district project review board))~~  
21 Subject to the process in section 107 or 108 of this act, public bodies  
22 ~~((authorized under this section))~~ may utilize the general  
23 contractor/construction manager procedure for public works projects  
24 ~~((valued over ten million dollars))~~ where:

25           ~~((a))~~ (1) Implementation of the project involves complex  
26 scheduling ((requirements)), phasing, or coordination; ~~((or~~

27           ~~(b))~~ (2) The project involves construction at an ((existing))  
28 occupied facility which must continue to operate during construction;  
29 ~~((or~~

30           ~~(c))~~ (3) The involvement of the general contractor/construction  
31 manager during the design stage is critical to the success of the  
32 project((-

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

36           ~~(4) Contracts for the services of a general contractor/construction~~  
37 ~~manager under this section shall be awarded through a competitive~~  
38 ~~process requiring the public solicitation of proposals for general~~

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

29 (5) The maximum allowable construction cost may be negotiated  
30 between the public body and the selected firm after the scope of the  
31 project is adequately determined to establish a guaranteed contract  
32 cost for which the general contractor/construction manager will provide  
33 a performance and payment bond. The guaranteed contract cost includes  
34 the fixed amount for the detailed specified general conditions work,  
35 the negotiated maximum allowable construction cost, the percent fee on  
36 the negotiated maximum allowable construction cost, and sales tax. If  
37 the public body is unable to negotiate a satisfactory maximum allowable  
38 construction cost with the firm selected that the public body

1 ~~determines to be fair, reasonable, and within the available funds,~~  
2 ~~negotiations with that firm shall be formally terminated and the public~~  
3 ~~body shall negotiate with the next highest scored firm and continue~~  
4 ~~until an agreement is reached or the process is terminated. If the~~  
5 ~~maximum allowable construction cost varies more than fifteen percent~~  
6 ~~from the bid estimated maximum allowable construction cost due to~~  
7 ~~requested and approved changes in the scope by the public body, the~~  
8 ~~percent fee shall be renegotiated.~~

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

19 ~~(a) Adequate financial resources or the ability to secure such~~  
20 ~~resources;~~

21 ~~(b) History of successful completion of a contract of similar type~~  
22 ~~and scope;~~

23 ~~(c) Project management and project supervision personnel with~~  
24 ~~experience on similar projects and the availability of such personnel~~  
25 ~~for the project;~~

26 ~~(d) Current and projected workload and the impact the project will~~  
27 ~~have on the subcontractor's current and projected workload;~~

28 ~~(e) Ability to accurately estimate the subcontract bid package~~  
29 ~~scope of work;~~

30 ~~(f) Ability to meet subcontract bid package shop drawing and other~~  
31 ~~coordination procedures;~~

32 ~~(g) Eligibility to receive an award under applicable laws and~~  
33 ~~regulations; and~~

34 ~~(h) Ability to meet subcontract bid package scheduling~~  
35 ~~requirements.~~

36 ~~The owner and general contractor/construction manager shall weigh~~  
37 ~~the evaluation criteria and determine a minimum acceptable score to be~~  
38 ~~considered an eligible subcontract bidder.~~

1 After publication of notice of intent to determine bidder  
2 eligibility, subcontractors requesting eligibility shall be provided  
3 the evaluation criteria and weighting to be used by the owner and  
4 general contractor/construction manager to determine eligible  
5 subcontract bidders. After the owner and general  
6 contractor/construction manager determine eligible subcontract bidders,  
7 subcontractors requesting eligibility shall be provided the results and  
8 scoring of the subcontract bidder eligibility determination.

9 Subcontract bid packages shall be awarded to the responsible bidder  
10 submitting the low responsive bid. The requirements of RCW 39.30.060  
11 apply to each subcontract bid package. All subcontractors who bid work  
12 over three hundred thousand dollars shall post a bid bond and all  
13 subcontractors who are awarded a contract over three hundred thousand  
14 dollars shall provide a performance and payment bond for their contract  
15 amount. All other subcontractors shall provide a performance and  
16 payment bond if required by the general contractor/construction  
17 manager. If a general contractor/construction manager receives a  
18 written protest from a subcontractor bidder, the general  
19 contractor/construction manager shall not execute a contract for the  
20 subcontract bid package with anyone other than the protesting bidder  
21 without first providing at least two full business days' written notice  
22 of the general contractor/construction manager's intent to execute a  
23 contract for the subcontract bid package; provided that the protesting  
24 bidder submits notice in writing of its protest no later than two full  
25 business days following bid opening. Intermediate Saturdays, Sundays,  
26 and legal holidays are not counted. A low bidder who claims error and  
27 fails to enter into a contract is prohibited from bidding on the same  
28 project if a second or subsequent call for bids is made for the  
29 project. Except as provided for under subsection (7) of this section,  
30 bidding on subcontract work by the general contractor/construction  
31 manager or its subsidiaries is prohibited. The general  
32 contractor/construction manager may negotiate with the low responsive  
33 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
34 negotiations, rebid.

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

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

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

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

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

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

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

23 (4) The project encompasses a complex or technical work  
24 environment; or

25 (5) The project requires specialized work on a building that has  
26 historic significance.

27 NEW SECTION. Sec. 302. PROJECT MANAGEMENT AND CONTRACTING  
28 REQUIREMENTS. (1) A public body using the general  
29 contractor/construction manager contracting procedure shall provide  
30 for:

31 (a) The preparation of appropriate, complete, and coordinated  
32 design documents;

33 (b) Confirmation that a constructability analysis of the design  
34 documents has been performed prior to solicitation of a subcontract bid  
35 package;

36 (c) Reasonable budget contingencies totaling not less than five  
37 percent of the anticipated contract value;

1 (d) To the extent appropriate, on-site architectural or engineering  
2 representatives during major construction or installation phases;

3 (e) Employment of staff or consultants with expertise and prior  
4 experience in the management of comparable projects, critical path  
5 method schedule review and analysis, and the administration, pricing,  
6 and negotiation of change orders;

7 (f) Contract documents that include alternative dispute resolution  
8 procedures to be attempted before the initiation of litigation;

9 (g) Contract documents that: (i) Obligate the public owner to  
10 accept or reject a request for equitable adjustment, change order, or  
11 claim within a specified time period but no later than sixty calendar  
12 days after the receipt by the public body of related documentation; and  
13 (ii) provide that if the public owner does not respond in writing to a  
14 request for equitable adjustment, change order, or claim within the  
15 specified time period, the request is deemed denied;

16 (h) Submission of project information, as required by the board;  
17 and

18 (i) Contract documents that require the contractor, subcontractors,  
19 and designers to submit project information required by the board.

20 (2) A public body using the general contractor/construction manager  
21 contracting procedure may include an incentive clause for early  
22 completion, cost savings, or other performance goals if such incentives  
23 are identified in the request for proposals. No incentives granted may  
24 exceed five percent of the maximum allowable construction cost. No  
25 incentives may be paid from any contingency fund established for  
26 coordination of the construction documents or coordination of the work.

27 (3) If the construction is completed for less than the maximum  
28 allowable construction cost, any savings not otherwise negotiated as  
29 part of an incentive clause shall accrue to the public body. If the  
30 construction is completed for more than the maximum allowable  
31 construction cost, the additional cost is the responsibility of the  
32 general contractor/construction manager.

33 (4) If the public body and the general contractor/construction  
34 manager agree, in writing, on a price for additional work, the public  
35 body must issue a change order within thirty days of the written  
36 agreement. If the public body does not issue a change order within the  
37 thirty days, interest shall accrue on the dollar amount of the



1 additional work satisfactorily completed until a change order is  
2 issued. The public body shall pay this interest at a rate of one  
3 percent per month.

4 NEW SECTION. **Sec. 303.** CONTRACT AWARD. (1) Public bodies should  
5 select general contractor/construction managers early in the life of  
6 public works projects, and in most situations no later than the  
7 completion of schematic design.

8 (2) Contracts for the services of a general contractor/  
9 construction manager under this section shall be awarded through a  
10 competitive process requiring the public solicitation of proposals for  
11 general contractor/construction manager services. The public  
12 solicitation of proposals shall include:

13 (a) A description of the project, including programmatic,  
14 performance, and technical requirements and specifications when  
15 available;

16 (b) The reasons for using the general contractor/construction  
17 manager procedure;

18 (c) A description of the qualifications to be required of the firm,  
19 including submission of the firm's accident prevention program;

20 (d) A description of the process the public body will use to  
21 evaluate qualifications and proposals, including evaluation factors and  
22 the relative weight of factors;

23 (e) The form of the contract, including any contract for  
24 preconstruction services, to be awarded;

25 (f) The estimated maximum allowable construction cost; and

26 (g) The bid instructions to be used by the general contractor/  
27 construction manager finalists.

28 (3) Evaluation factors for selection of the general  
29 contractor/construction shall include, but not be limited to:

30 (a) Ability of the firm's professional personnel;

31 (b) The firm's past performance in negotiated and complex projects;

32 (c) The firm's ability to meet time and budget requirements;

33 (d) The scope of work the firm proposes to self-perform and its  
34 ability to perform that work;

35 (e) The firm's proximity to the project location;

36 (f) Recent, current, and projected work loads of the firm; and

37 (g) The firm's approach to executing the project.

1 (4) A public body shall establish a committee to evaluate the  
2 proposals. After the committee has selected the most qualified  
3 finalists, these finalists shall submit final proposals, including  
4 sealed bids for the percent fee on the estimated maximum allowable  
5 construction cost and the fixed amount for the general conditions work  
6 specified in the request for proposal. The public body shall select  
7 the firm submitting the highest scored final proposal using the  
8 evaluation factors and the relative weight of factors published in the  
9 public solicitation of proposals. A public body shall not evaluate or  
10 disqualify a proposal based on the terms of a collective bargaining  
11 agreement.

12 (5) Public bodies may contract with the selected firm to provide  
13 services during the design phase that may include life-cycle cost  
14 design considerations, value engineering, scheduling, cost estimating,  
15 constructability, alternative construction options for cost savings,  
16 and sequencing of work, and to act as the construction manager and  
17 general contractor during the construction phase.

18 NEW SECTION. Sec. 304. MAXIMUM ALLOWABLE CONSTRUCTION COST. (1)  
19 The maximum allowable construction cost shall be used to establish a  
20 total contract cost for which the general contractor/construction  
21 manager shall provide a performance and payment bond. The maximum  
22 allowable construction cost shall be negotiated between the public body  
23 and the selected firm when the construction documents and  
24 specifications are at least ninety percent complete.

25 (2) Major bid packages may be bid in accordance with section 305 of  
26 this act before agreement on the maximum allowable construction cost  
27 between the public body and the selected general  
28 contractor/construction manager. The general contractor/construction  
29 manager may issue an intent to award to the responsible bidder  
30 submitting the lowest responsive bid.

31 (3) The public body may, at its option, authorize the general  
32 contractor/construction manager to proceed with the bidding and award  
33 of bid packages and construction before receipt of complete project  
34 plans and specifications. Any contracts awarded under this subsection  
35 shall be incorporated in the negotiated maximum allowable construction  
36 cost.

1 (4) The total contract cost includes the fixed amount for the  
2 detailed specified general conditions work, the negotiated maximum  
3 allowable construction cost, the negotiated support services, and the  
4 percent fee on the negotiated maximum allowable construction cost.  
5 Negotiated support services may be included in the specified general  
6 conditions at the discretion of the public body.

7 (5) If the public body is unable to negotiate a satisfactory  
8 maximum allowable construction cost with the firm selected that the  
9 public body determines to be fair, reasonable, and within the available  
10 funds, negotiations with that firm shall be formally terminated and the  
11 public body shall negotiate with the next highest scored firm and  
12 continue until an agreement is reached or the process is terminated.

13 (6) If the maximum allowable construction cost varies more than  
14 fifteen percent from the bid estimated maximum allowable construction  
15 cost due to requested and approved changes in the scope by the public  
16 body, the percent fee shall be renegotiated.

17 NEW SECTION. **Sec. 305.** SUBCONTRACT BIDDING PROCEDURE. (1) All  
18 subcontract work and equipment and material purchases shall be  
19 competitively bid with public bid openings. Subcontract bid packages  
20 and equipment and materials purchases shall be awarded to the  
21 responsible bidder submitting the lowest responsive bid. In preparing  
22 subcontract bid packages, the general contractor/construction manager  
23 shall not be required to violate or waive terms of a collective  
24 bargaining agreement.

25 (2) All subcontract bid packages in which bidder eligibility was  
26 not determined in advance shall include the specific objective criteria  
27 that will be used by the general contractor/construction manager and  
28 the public body to evaluate bidder responsibility. If the lowest  
29 bidder submitting a responsive bid is determined by the general  
30 contractor/construction manager and the public body not to be  
31 responsible, the general contractor/construction manager and the public  
32 body must provide written documentation to that bidder explaining their  
33 intent to reject the bidder as not responsible and afford the bidder  
34 the opportunity to establish that it is a responsible bidder.  
35 Responsibility shall be determined in accordance with criteria listed  
36 in the bid documents. Protests concerning bidder responsibility

1 determination by the general contractor/construction manager and the  
2 public body shall be in accordance with subsection (4) of this section.

3 (3) All subcontractors who bid work over three hundred thousand  
4 dollars shall post a bid bond. All subcontractors who are awarded a  
5 contract over three hundred thousand dollars shall provide a  
6 performance and payment bond for the contract amount. All other  
7 subcontractors shall provide a performance and payment bond if required  
8 by the general contractor/construction manager.

9 (4) If the general contractor/construction manager receives a  
10 written protest from a subcontractor bidder or an equipment or material  
11 supplier, the general contractor/construction manager shall not execute  
12 a contract for the subcontract bid package or equipment or material  
13 purchase order with anyone other than the protesting bidder without  
14 first providing at least two full business days' written notice to all  
15 bidders of the intent to execute a contract for the subcontract bid  
16 package. The protesting bidder must submit written notice of its  
17 protest no later than two full business days following the bid opening.  
18 Intermediate Saturdays, Sundays, and legal holidays are not counted.

19 (5) A low bidder who claims error and fails to enter into a  
20 contract is prohibited from bidding on the same project if a second or  
21 subsequent call for bids is made for the project.

22 (6) The general contractor/construction manager may negotiate with  
23 the lowest responsible and responsive bidder to negotiate an adjustment  
24 to the lowest bid or proposal price based upon agreed changes to the  
25 contract plans and specifications under the following conditions:

26 (a) All responsive bids or proposal prices exceed the available  
27 funds, as certified by an appropriate fiscal officer;

28 (b) The apparent low responsive bid or proposal does not exceed the  
29 available funds by the greater of one hundred twenty-five thousand  
30 dollars or two percent for projects valued over ten million dollars;  
31 and

32 (c) The negotiated adjustment will bring the bid or proposal price  
33 within the amount of available funds.

34 (7) If the negotiation is unsuccessful, the subcontract work or  
35 equipment or material purchases must be rebid.

36 (8) The general contractor/construction manager must provide a  
37 written explanation if all bids are rejected.

1        NEW SECTION.    **Sec. 306.**    GENERAL CONTRACTOR/CONSTRUCTION MANAGER  
2 SELF PERFORMANCE OF SUBCONTRACT WORK.    (1) Except as provided in this  
3 section, bidding on subcontract work or for the supply of equipment or  
4 materials by the general contractor/construction manager or its  
5 subsidiaries is prohibited.

6        (2)    The general contractor/construction manager, or its  
7 subsidiaries, may bid on subcontract work or for the supply of  
8 equipment or materials if:

9        (a)    The work within the subcontract bid package or equipment or  
10 materials is customarily performed or supplied by the general  
11 contractor/construction manager;

12        (b)    The bid opening is managed by the public body and is in  
13 compliance with section 305 of this act; and

14        (c)    Notification of the general contractor/construction manager's  
15 intention to bid is included in the public solicitation of bids for the  
16 bid package or for the equipment or materials.

17        (3)    In no event may the general contractor/construction manager or  
18 its subsidiaries purchase equipment or materials for assignment to  
19 subcontract bid package bidders for installation or warranty.    The  
20 value of subcontract work performed and equipment and materials  
21 supplied by the general contractor/construction manager may not exceed  
22 thirty percent of the negotiated maximum allowable construction cost.  
23 Negotiated support services performed by the general  
24 contractor/construction manager shall not be considered subcontract  
25 work for purposes of this subsection.

26        NEW SECTION.    **Sec. 307.**    PREBID DETERMINATION OF SUBCONTRACTOR  
27 ELIGIBILITY.    (1) If determination of subcontractor eligibility prior  
28 to seeking bids is in the best interest of the project and critical to  
29 the successful completion of a subcontract bid package, the general  
30 contractor/construction manager and the public body may determine  
31 subcontractor eligibility to bid.    The general contractor/construction  
32 manager and the public body must:

33        (a)    Conduct a hearing and provide an opportunity for any interested  
34 party to submit written and verbal comments regarding the justification  
35 for conducting bidder eligibility, the evaluation criteria, and weights  
36 for each criteria and subcriteria;

1 (b) Publish a notice of intent to evaluate and determine bidder  
2 eligibility in a legal newspaper published in or as near as possible to  
3 that part of the county where the public work will be constructed at  
4 least fourteen calendar days before conducting a public hearing;

5 (c) Ensure the public hearing notice includes the date, time, and  
6 location of the hearing, a statement justifying the basis and need for  
7 performing eligibility analysis before bid opening, and specific  
8 eligibility criteria and applicable weights given to each criteria and  
9 subcriteria that will be used during evaluation;

10 (d) After the public hearing, consider written and verbal comments  
11 received and determine if establishing bidder eligibility in advance of  
12 seeking bids is in the best interests of the project and critical to  
13 the successful completion of a subcontract bid package; and

14 (e) Issue a written final determination to all interested parties.  
15 All protests of the decision to establish bidder eligibility before  
16 issuing a subcontractor bid package must be filed with the superior  
17 court within seven calendar days of the final determination. Any  
18 modifications to the eligibility criteria and weights shall be based on  
19 comments received during the public hearing process and shall be  
20 included in the final determination.

21 (2) Determinations of bidder eligibility shall be in accordance  
22 with the evaluation criteria and weights for each criteria established  
23 in the final determination and shall be provided to interested persons  
24 upon request. Any potential bidder determined not to meet eligibility  
25 criteria must be afforded the opportunity to establish its eligibility.  
26 Protests concerning bidder eligibility determinations shall be in  
27 accordance with subsection (1) of this section.

28 NEW SECTION. **Sec. 308.** SUBCONTRACT AGREEMENTS. Subcontract  
29 agreements used by the general contractor/construction manager shall  
30 not:

31 (1) Delegate, restrict, or assign the general  
32 contractor/construction manager's implied duty not to hinder or delay  
33 the subcontractor. Nothing in this subsection (1) prohibits the  
34 general contractor/construction manager from requiring subcontractors  
35 not to hinder or delay the work of the general contractor/construction  
36 manager or other subcontractors and to hold subcontractors responsible  
37 for such damages;



1       **Sec. 401.** RCW 39.10.130 and 2003 c 301 s 1 are each amended to  
2 read as follows:

3       (1) The following public bodies are authorized to use the job order  
4 contracting procedure:

5       (a) The department of general administration;

6       (b) The University of Washington;

7       (c) Washington State University;

8       (d) Every city with a population greater than seventy thousand and  
9 any public authority chartered by such city under RCW 35.21.730 through  
10 35.21.755;

11       (e) Every county with a population greater than four hundred fifty  
12 thousand;

13       (f) Every port district with total revenues greater than fifteen  
14 million dollars per year;

15       (g) Every public utility district with revenues from energy sales  
16 greater than twenty-three million dollars per year;

17       (h) Every school district; and

18       (i) The state ferry system.

19       (2) The department of general administration may issue job order  
20 contract work orders for Washington state parks department projects.

21       (3) Public bodies may use a job order contract for public works  
22 projects when(+

23       ~~(a) A public body has made~~) a determination is made that the use  
24 of job order contracts will benefit the public by providing an  
25 effective means of reducing the total lead-time and cost for the  
26 construction of public works projects (~~(or)~~) for repair and renovation  
27 required at public facilities through the use of unit price books and  
28 work orders by eliminating time-consuming, costly aspects of the  
29 traditional public works process, which require separate contracting  
30 actions for each small project(+

31       ~~(b) The work order to be issued for a particular project does not~~  
32 ~~exceed two hundred thousand dollars;~~

33       ~~(c) Less than twenty percent of the dollar value of the work order~~  
34 ~~consists of items of work not contained in the unit price book; and~~

35       ~~(d) At least eighty percent of the job order contract must be~~  
36 ~~subcontracted to entities other than the job order contractor.~~

37       ~~(2) Public bodies shall award job order contracts through a~~  
38 ~~competitive process utilizing public requests for proposals. Public~~



~~bodies shall make an effort to solicit proposals from a certified minority or certified woman owned contractor to the extent permitted by the Washington state civil rights act, RCW 49.60.400. The public body shall publish, at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public works will be done, a request for proposals for job order contracts and the availability and location of the request for proposal documents. The public body shall ensure that the request for proposal documents at a minimum includes:~~

~~(a) A detailed description of the scope of the job order contract including performance, technical requirements and specifications, functional and operational elements, minimum and maximum work order amounts, duration of the contract, and options to extend the job order contract;~~

~~(b) The reasons for using job order contracts;~~

~~(c) A description of the qualifications required of the proposer;~~

~~(d) The identity of the specific unit price book to be used;~~

~~(e) The minimum contracted amount committed to the selected job order contractor;~~

~~(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; ability to provide a performance and payment bond for the job order contract; recent, current, and projected work loads of the proposer; location; and the concept of the proposal;~~

~~(g) The form of the contract to be awarded;~~

~~(h) The method for pricing renewals of or extensions to the job order contract;~~

~~(i) A notice that the proposals are subject to the provisions of RCW 39.10.100; and~~

~~(j) Other information relevant to the project.~~

1       ~~(3) A public body shall establish a committee to evaluate the~~  
2 ~~proposals. After the committee has selected the most qualified~~  
3 ~~finalists, the finalists shall submit final proposals, including sealed~~  
4 ~~bids based upon the identified unit price book. Such bids may be in~~  
5 ~~the form of coefficient markups from listed price book costs. The~~  
6 ~~public body shall award the contract to the firm submitting the highest~~  
7 ~~scored final proposal using the evaluation factors and the relative~~  
8 ~~weight of factors published in the public request for proposals.~~

9       ~~(4) The public body shall provide a protest period of at least ten~~  
10 ~~business days following the day of the announcement of the apparent~~  
11 ~~successful proposal to allow a protester to file a detailed statement~~  
12 ~~of the grounds of the protest. The public body shall promptly make a~~  
13 ~~determination on the merits of the protest and provide to all proposers~~  
14 ~~a written decision of denial or acceptance of the protest. The public~~  
15 ~~body shall not execute the contract until two business days following~~  
16 ~~the public body's decision on the protest.~~

17       ~~(5) The public body shall issue no work orders until it has~~  
18 ~~approved, in consultation with the office of minority and women's~~  
19 ~~business enterprises or the equivalent local agency, a plan prepared by~~  
20 ~~the job order contractor that equitably spreads certified women and~~  
21 ~~minority business enterprise subcontracting opportunities, to the~~  
22 ~~extent permitted by the Washington state civil rights act, RCW~~  
23 ~~49.60.400, among the various subcontract disciplines.~~

24       ~~(6) Job order contracts may be executed for an initial contract~~  
25 ~~term of not to exceed two years, with the option of extending or~~  
26 ~~renewing the job order contract for one year. All extensions or~~  
27 ~~renewals must be priced as provided in the request for proposals. The~~  
28 ~~extension or renewal must be mutually agreed to by the public body and~~  
29 ~~the job order contractor.~~

30       ~~(7) The maximum total dollar amount that may be awarded under a job~~  
31 ~~order contract shall not exceed three million dollars in the first year~~  
32 ~~of the job order contract, five million dollars over the first two~~  
33 ~~years of the job order contract, and, if extended or renewed, eight~~  
34 ~~million dollars over the three years of the job order contract.~~

35       ~~(8) For each job order contract, public bodies shall not issue more~~  
36 ~~than two work orders equal to or greater than one hundred fifty~~  
37 ~~thousand dollars in a twelve month contract performance period.~~

1       ~~(9) All work orders issued for the same project shall be treated as~~  
2 ~~a single work order for purposes of the one hundred fifty thousand~~  
3 ~~dollar limit on work orders in subsection (8) of this section and the~~  
4 ~~two hundred thousand dollar limit on work orders in subsection (1)(b)~~  
5 ~~of this section.~~

6       ~~(10) Any new permanent, enclosed building space constructed under~~  
7 ~~a work order shall not exceed two thousand gross square feet.~~

8       ~~(11) Each public body may have no more than two job order contracts~~  
9 ~~in effect at any one time.~~

10       ~~(12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,~~  
11 ~~each work order issued shall be treated as a separate contract. The~~  
12 ~~alternate filing provisions of RCW 39.12.040(2) shall apply to each~~  
13 ~~work order that otherwise meets the eligibility requirements of RCW~~  
14 ~~39.12.040(2).~~

15       ~~(13) The requirements of RCW 39.30.060 do not apply to requests for~~  
16 ~~proposals for job order contracts.~~

17       ~~(14) Job order contractors shall pay prevailing wages for all work~~  
18 ~~that would otherwise be subject to the requirements of chapter 39.12~~  
19 ~~RCW. Prevailing wages for all work performed pursuant to each work~~  
20 ~~order must be the rates in effect at the time the individual work order~~  
21 ~~is issued.~~

22       ~~(15) If, in the initial contract term, the public body, at no fault~~  
23 ~~of the job order contractor, fails to issue the minimum amount of work~~  
24 ~~orders stated in the public request for proposals, the public body~~  
25 ~~shall pay the contractor an amount equal to the difference between the~~  
26 ~~minimum work order amount and the actual total of the work orders~~  
27 ~~issued multiplied by an appropriate percentage for overhead and profit~~  
28 ~~contained in the general conditions for Washington state facility~~  
29 ~~construction. This will be the contractor's sole remedy.~~

30       ~~(16) All job order contracts awarded under this section must be~~  
31 ~~executed before July 1, 2007, however the job order contract may be~~  
32 ~~extended or renewed as provided for in this section.~~

33       ~~(17) For purposes of this section, "public body" includes any~~  
34 ~~school district)).~~

35       NEW SECTION.   **Sec. 402.**   CONTRACT AWARD.   (1) Job order contracts  
36 shall be awarded through a competitive process using public requests  
37 for proposals.

1 (2) The public body shall make an effort to solicit proposals from  
2 certified minority or certified woman-owned contractors to the extent  
3 permitted by the Washington state civil rights act, RCW 49.60.400.

4 (3) The public body shall publish, at least once in a statewide  
5 publication and legal newspaper of general circulation published in  
6 every county in which the public works project is anticipated, a  
7 request for proposals for job order contracts and the availability and  
8 location of the request for proposal documents. The public body shall  
9 ensure that the request for proposal documents at a minimum includes:

10 (a) A detailed description of the scope of the job order contract  
11 including performance, technical requirements and specifications,  
12 functional and operational elements, minimum and maximum work order  
13 amounts, duration of the contract, and options to extend the job order  
14 contract;

15 (b) The reasons for using job order contracts;

16 (c) A description of the qualifications required of the proposer;

17 (d) The identity of the specific unit price book to be used;

18 (e) The minimum contracted amount committed to the selected job  
19 order contractor;

20 (f) A description of the process the public body will use to  
21 evaluate qualifications and proposals, including evaluation factors and  
22 the relative weight of factors. The public body shall ensure that  
23 evaluation factors include, but are not limited to, proposal price and  
24 the ability of the proposer to perform the job order contract. In  
25 evaluating the ability of the proposer to perform the job order  
26 contract, the public body may consider: The ability of the  
27 professional personnel who will work on the job order contract; past  
28 performance on similar contracts; ability to meet time and budget  
29 requirements; ability to provide a performance and payment bond for the  
30 job order contract; recent, current, and projected work loads of the  
31 proposer; location; and the concept of the proposal;

32 (g) The form of the contract to be awarded;

33 (h) The method for pricing renewals of or extensions to the job  
34 order contract;

35 (i) A notice that the proposals are subject to RCW 39.10.100 (as  
36 recodified by this act); and

37 (j) Other information relevant to the project.

1 (4) A public body shall establish a committee to evaluate the  
2 proposals. After the committee has selected the most qualified  
3 finalists, the finalists shall submit final proposals, including sealed  
4 bids based upon the identified unit price book. Such bids may be in  
5 the form of coefficient markups from listed price book costs. The  
6 public body shall award the contract to the firm submitting the highest  
7 scored final proposal using the evaluation factors and the relative  
8 weight of factors published in the public request for proposals and  
9 will notify the board of the award of the contract.

10 (5) The public body shall provide a protest period of at least ten  
11 business days following the day of the announcement of the apparent  
12 successful proposal to allow a protester to file a detailed statement  
13 of the grounds of the protest. The public body shall promptly make a  
14 determination on the merits of the protest and provide to all proposers  
15 a written decision of denial or acceptance of the protest. The public  
16 body shall not execute the contract until two business days following  
17 the public body's decision on the protest.

18 (6) The requirements of RCW 39.30.060 do not apply to requests for  
19 proposals for job order contracts.

20 NEW SECTION. **Sec. 403.** JOB ORDER CONTRACT REQUIREMENTS. (1) The  
21 maximum total dollar amount that may be awarded under a job order  
22 contract is four million dollars per year for a maximum of three years.

23 (2) Job order contracts may be executed for an initial contract  
24 term of not to exceed two years, with the option of extending or  
25 renewing the job order contract for one year. All extensions or  
26 renewals must be priced as provided in the request for proposals. The  
27 extension or renewal must be mutually agreed to by the public body and  
28 the job order contractor.

29 (3) A public body may have no more than two job order contracts in  
30 effect at any one time, with the exception of the department of general  
31 administration, which may have four job order contracts in effect at  
32 any one time.

33 (4) At least ninety percent of work contained in a job order  
34 contract must be subcontracted to entities other than the job order  
35 contractor. The job order contractor must distribute contracts as  
36 equitably as possible among qualified and available subcontractors

1 including minority and woman-owned subcontractors to the extent  
2 permitted by law.

3 (5) The job order contractor shall publish notification of intent  
4 to perform public works projects at the beginning of each contract year  
5 in a statewide publication and in a legal newspaper of general  
6 circulation in every county in which the public works projects are  
7 anticipated.

8 (6) Job order contractors shall pay prevailing wages for all work  
9 that would otherwise be subject to the requirements of chapter 39.12  
10 RCW. Prevailing wages for all work performed pursuant to each work  
11 order must be the rates in effect at the time the individual work order  
12 is issued.

13 (7) If, in the initial contract term, the public body, at no fault  
14 of the job order contractor, fails to issue the minimum amount of work  
15 orders stated in the public request for proposals, the public body  
16 shall pay the contractor an amount equal to the difference between the  
17 minimum work order amount and the actual total of the work orders  
18 issued multiplied by an appropriate percentage for overhead and profit  
19 contained in the contract award coefficient for services as specified  
20 in the request for proposals. This is the contractor's sole remedy.

21 (8) All job order contracts awarded under this section must be  
22 signed before July 1, 2013; however the job order contract may be  
23 extended or renewed as provided for in this section.

24 (9) Public bodies may amend job order contracts awarded prior to  
25 July 1, 2007, in accordance with this chapter.

26 NEW SECTION. **Sec. 404.** WORK ORDERS. (1) The maximum dollar  
27 amount for a work order is three hundred fifty thousand dollars. For  
28 each job order contract, public bodies shall not issue more than two  
29 work orders equal to or greater than three hundred thousand dollars in  
30 a twelve-month contract period.

31 (2) All work orders issued for the same project shall be treated as  
32 a single work order for purposes of the dollar limit on work orders.

33 (3) No more than twenty percent of the dollar value of a work order  
34 may consist of items of work not contained in the unit price book.

35 (4) Any new permanent, enclosed building space constructed under a  
36 work order shall not exceed two thousand gross square feet.

1 (5) A public body may issue no work orders under a job order  
2 contract until it has approved, in consultation with the office of  
3 minority and women's business enterprises or the equivalent local  
4 agency, a plan prepared by the job order contractor that equitably  
5 spreads certified women and minority business enterprise subcontracting  
6 opportunities, to the extent permitted by the Washington state civil  
7 rights act, RCW 49.60.400, among the various subcontract disciplines.

8 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
9 each work order issued shall be treated as a separate contract. The  
10 alternate filing provisions of RCW 39.12.040(2) apply to each work  
11 order that otherwise meets the eligibility requirements of RCW  
12 39.12.040(2).

13 (7) The job order contract shall not be used for the procurement of  
14 architectural or engineering services not associated with specific work  
15 orders. Architectural and engineering services shall be procured in  
16 accordance with RCW 39.80.040.

17 NEW SECTION. **Sec. 405.** A public body shall provide to the board  
18 the following information for each job order contract at the end of  
19 each contract year:

- 20 (1) A list of work orders issued;  
21 (2) The cost of each work order;  
22 (3) A list of subcontractors hired under each work order;  
23 (4) If requested by the board, a copy of the intent to pay  
24 prevailing wage and the affidavit of wages paid for each work order  
25 subcontract; and  
26 (5) Any other information requested by the board.

27 **PART 5**  
28 **OTHER PROVISIONS**

29 **Sec. 501.** RCW 39.10.120 and 2001 c 328 s 5 are each amended to  
30 read as follows:

31 ~~((1) Except as provided in subsections (2) and (3) of this~~  
32 ~~section,))~~ The alternative public works contracting procedures  
33 authorized under this chapter are limited to public works contracts  
34 signed before July 1, ~~((2007))~~ 2013. Methods of public works  
35 contracting authorized ~~((by RCW 39.10.050 and 39.10.060 or 39.10.051~~

1 and ~~39.10.061~~) under this chapter shall remain in full force and  
2 effect until completion of contracts signed before July 1, ~~((2007))~~  
3 2013.

4 ~~((2) For the purposes of a baseball stadium as defined in RCW  
5 82.14.0485, the design build contracting procedures under RCW 39.10.050  
6 shall remain in full force and effect until completion of contracts  
7 signed before December 31, 1997.~~

8 ~~(3) For the purposes of a stadium and exhibition center, as defined  
9 in RCW 36.102.010, the design build contracting procedures under RCW  
10 39.10.050 or 39.10.051 shall remain in full force and effect until  
11 completion of contracts signed before December 31, 2002.~~

12 ~~(4) A public authority chartered by a city that is a public body  
13 may utilize an alternative public works contracting procedure under  
14 this chapter only after receiving specific authorization on a project  
15 by project basis from the governing body of the city. For purposes of  
16 public authorities authorized to use alternative public works  
17 contracting procedures under this chapter, the city chartering any such  
18 public authority shall itself comply with RCW 39.10.030 on behalf of  
19 the public authority.))~~

20 NEW SECTION. Sec. 502. Projects approved by the school district  
21 project review board established under RCW 39.10.115, and the hospital  
22 district project review board established under RCW 39.10.117 before  
23 July 1, 2007, may proceed without the approval of the committee  
24 established in section 104 of this act. The board may grant an  
25 exemption from any provision of this act for projects advertised before  
26 the effective date of this section. A public body seeking an exemption  
27 must submit a request in writing to the board no later than December  
28 31, 2007. The board must respond to the request within sixty calendar  
29 days.

30 NEW SECTION. Sec. 503. Projects using the design-build or general  
31 contractor/construction manager contracting procedures in which  
32 advertising for selection of a contractor has begun by the effective  
33 date of this section but no contract has been awarded may proceed  
34 without seeking approval of the committee under the processes in  
35 sections 107 and 108 of this act.



1       **Sec. 504.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to  
2 read as follows:

3       (1) Public improvement contracts shall provide, and public bodies  
4 shall reserve, a contract retainage not to exceed five percent of the  
5 moneys earned by the contractor as a trust fund for the protection and  
6 payment of: (a) The claims of any person arising under the contract;  
7 and (b) the state with respect to taxes imposed pursuant to Title 82  
8 RCW which may be due from such contractor.

9       (2) Every person performing labor or furnishing supplies toward the  
10 completion of a public improvement contract shall have a lien upon  
11 moneys reserved by a public body under the provisions of a public  
12 improvement contract. However, the notice of the lien of the claimant  
13 shall be given within forty-five days of completion of the contract  
14 work, and in the manner provided in RCW 39.08.030.

15       (3) The contractor at any time may request the contract retainage  
16 be reduced to one hundred percent of the value of the work remaining on  
17 the project.

18       (a) After completion of all contract work other than landscaping,  
19 the contractor may request that the public body release and pay in full  
20 the amounts retained during the performance of the contract, and sixty  
21 days thereafter the public body must release and pay in full the  
22 amounts retained (other than continuing retention of five percent of  
23 the moneys earned for landscaping) subject to the provisions of  
24 chapters 39.12 and 60.28 RCW.

25       (b) Sixty days after completion of all contract work the public  
26 body must release and pay in full the amounts retained during the  
27 performance of the contract subject to the provisions of chapters 39.12  
28 and 60.28 RCW.

29       (4) The moneys reserved by a public body under the provisions of a  
30 public improvement contract, at the option of the contractor, shall be:

31       (a) Retained in a fund by the public body;

32       (b) Deposited by the public body in an interest bearing account in  
33 a bank, mutual savings bank, or savings and loan association. Interest  
34 on moneys reserved by a public body under the provision of a public  
35 improvement contract shall be paid to the contractor;

36       (c) Placed in escrow with a bank or trust company by the public  
37 body. When the moneys reserved are placed in escrow, the public body  
38 shall issue a check representing the sum of the moneys reserved payable

1 to the bank or trust company and the contractor jointly. This check  
2 shall be converted into bonds and securities chosen by the contractor  
3 and approved by the public body and the bonds and securities shall be  
4 held in escrow. Interest on the bonds and securities shall be paid to  
5 the contractor as the interest accrues.

6 (5) The contractor or subcontractor may withhold payment of not  
7 more than five percent from the moneys earned by any subcontractor or  
8 sub-subcontractor or supplier contracted with by the contractor to  
9 provide labor, materials, or equipment to the public project. Whenever  
10 the contractor or subcontractor reserves funds earned by a  
11 subcontractor or sub-subcontractor or supplier, the contractor or  
12 subcontractor shall pay interest to the subcontractor or sub-  
13 subcontractor or supplier at a rate equal to that received by the  
14 contractor or subcontractor from reserved funds.

15 (6) A contractor may submit a bond for all or any portion of the  
16 contract retainage in a form acceptable to the public body and from a  
17 bonding company meeting standards established by the public body. The  
18 public body shall accept a bond meeting these requirements unless the  
19 public body can demonstrate good cause for refusing to accept it. This  
20 bond and any proceeds therefrom are subject to all claims and liens and  
21 in the same manner and priority as set forth for retained percentages  
22 in this chapter. The public body shall release the bonded portion of  
23 the retained funds to the contractor within thirty days of accepting  
24 the bond from the contractor. Whenever a public body accepts a bond in  
25 lieu of retained funds from a contractor, the contractor shall accept  
26 like bonds from any subcontractors or suppliers from which the  
27 contractor has retained funds. The contractor shall then release the  
28 funds retained from the subcontractor or supplier to the subcontractor  
29 or supplier within thirty days of accepting the bond from the  
30 subcontractor or supplier.

31 (7) If the public body administering a contract, after a  
32 substantial portion of the work has been completed, finds that an  
33 unreasonable delay will occur in the completion of the remaining  
34 portion of the contract for any reason not the result of a breach  
35 thereof, it may, if the contractor agrees, delete from the contract the  
36 remaining work and accept as final the improvement at the stage of  
37 completion then attained and make payment in proportion to the amount  
38 of the work accomplished and in this case any amounts retained and

1 accumulated under this section shall be held for a period of sixty days  
2 following the completion. In the event that the work is terminated  
3 before final completion as provided in this section, the public body  
4 may thereafter enter into a new contract with the same contractor to  
5 perform the remaining work or improvement for an amount equal to or  
6 less than the cost of the remaining work as was provided for in the  
7 original contract without advertisement or bid. The provisions of this  
8 chapter are exclusive and shall supersede all provisions and  
9 regulations in conflict herewith.

10 (8) Whenever the department of transportation has contracted for  
11 the construction of two or more ferry vessels, sixty days after  
12 completion of all contract work on each ferry vessel, the department  
13 must release and pay in full the amounts retained in connection with  
14 the construction of the vessel subject to the provisions of RCW  
15 60.28.020 and chapter 39.12 RCW. However, the department of  
16 transportation may at its discretion condition the release of funds  
17 retained in connection with the completed ferry upon the contractor  
18 delivering a good and sufficient bond with two or more sureties, or  
19 with a surety company, in the amount of the retained funds to be  
20 released to the contractor, conditioned that no taxes shall be  
21 certified or claims filed for work on the ferry after a period of sixty  
22 days following completion of the ferry; and if taxes are certified or  
23 claims filed, recovery may be had on the bond by the department of  
24 revenue and the materialmen and laborers filing claims.

25 (9) Except as provided in subsection (1) of this section,  
26 reservation by a public body for any purpose from the moneys earned by  
27 a contractor by fulfilling its responsibilities under public  
28 improvement contracts is prohibited.

29 (10) Contracts on projects funded in whole or in part by farmers  
30 home administration and subject to farmers home administration  
31 regulations are not subject to subsections (1) through (9) of this  
32 section.

33 (11) This subsection applies only to a public body that has  
34 contracted for the construction of a facility using the general  
35 contractor/construction manager procedure, as defined under RCW  
36 (~~(39.10.061)~~) 39.10.020 (as recodified by this act). If the work  
37 performed by a subcontractor on the project has been completed within  
38 the first half of the time provided in the general

1 contractor/construction manager contract for completing the work, the  
2 public body may accept the completion of the subcontract. The public  
3 body must give public notice of this acceptance. After a forty-five  
4 day period for giving notice of liens, and compliance with the  
5 retainage release procedures in RCW 60.28.021, the public body may  
6 release that portion of the retained funds associated with the  
7 subcontract. Claims against the retained funds after the forty-five  
8 day period are not valid.

9 (12) Unless the context clearly requires otherwise, the definitions  
10 in this subsection apply throughout this section.

11 (a) "Contract retainage" means an amount reserved by a public body  
12 from the moneys earned by a person under a public improvement contract.

13 (b) "Person" means a person or persons, mechanic, subcontractor, or  
14 materialperson who performs labor or provides materials for a public  
15 improvement contract, and any other person who supplies the person with  
16 provisions or supplies for the carrying on of a public improvement  
17 contract.

18 (c) "Public body" means the state, or a county, city, town,  
19 district, board, or other public body.

20 (d) "Public improvement contract" means a contract for public  
21 improvements or work, other than for professional services, or a work  
22 order as defined in RCW 39.10.020 (as recodified by this act).

23 **Sec. 505.** RCW 70.150.070 and 2005 c 469 s 2 are each amended to  
24 read as follows:

25 RCW 70.150.030 through 70.150.060 shall be deemed to provide an  
26 additional method for the provision of services from and in connection  
27 with facilities and shall be regarded as supplemental and additional to  
28 powers conferred by other state laws and by federal laws. (~~A public  
29 body that is also eligible to enter into agreements with service  
30 providers under the alternative public works contracting procedures in  
31 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061  
32 or this chapter as its method of procurement for such services.~~)

33 NEW SECTION. **Sec. 506.** A new section is added to chapter 43.131  
34 RCW to read as follows:

35 The alternative works contracting procedures under chapter 39.10

1 RCW shall be terminated June 30, 2013, as provided in section 507 of  
2 this act.

3 NEW SECTION. **Sec. 507.** A new section is added to chapter 43.131  
4 RCW to read as follows:

5 The following acts or parts of acts, as now existing or hereafter  
6 amended, are each repealed, effective June 30, 2014:

7 (1) RCW 39.10.010 (as recodified by this act) and section 1 of this  
8 act & 1994 c 132 s 1;

9 (2) RCW 39.10.020 (as recodified by this act) and section 101 of  
10 this act & 2005 c 469 s 3;

11 (3) RCW 39.10.800 (as recodified by this act) and section 102 of  
12 this act & 2005 c 377 s 1;

13 (4) RCW 39.10.810 (as recodified by this act) and section 103 of  
14 this act & 2005 c 377 s 2;

15 (5) RCW 39.10.--- and section 104 of this act;

16 (6) RCW 39.10.--- and section 105 of this act;

17 (7) RCW 39.10.--- and section 106 of this act;

18 (8) RCW 39.10.--- and section 107 of this act;

19 (9) RCW 39.10.--- and section 108 of this act;

20 (10) RCW 39.10.--- and section 109 of this act;

21 (11) RCW 39.10.051 (as recodified by this act) and section 201 of  
22 this act, 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328  
23 s 2;

24 (12) RCW 39.10.080 (as recodified by this act) and section 202 of  
25 this act & 1994 c 132 s 8;

26 (13) RCW 39.10.070 (as recodified by this act) and section 203 of  
27 this act & 1994 c 132 s 7;

28 (14) RCW 39.10.--- and section 204 of this act;

29 (15) RCW 39.10.061 (as recodified by this act) and section 301 of  
30 this act, 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328  
31 s 3;

32 (16) RCW 39.10.--- and section 302 of this act;

33 (17) RCW 39.10.--- and section 303 of this act;

34 (18) RCW 39.10.--- and section 304 of this act;

35 (19) RCW 39.10.--- and section 305 of this act;

36 (20) RCW 39.10.--- and section 306 of this act;

37 (21) RCW 39.10.--- and section 307 of this act;

- 1 (22) RCW 39.10.--- and section 308 of this act;  
2 (23) RCW 39.10.130 (as recodified by this act) and section 401 of  
3 this act & 2003 c 301 s 1;  
4 (24) RCW 39.10.--- and section 402 of this act;  
5 (25) RCW 39.10.--- and section 403 of this act;  
6 (26) RCW 39.10.--- and section 404 of this act;  
7 (27) RCW 39.10.--- and section 405 of this act;  
8 (28) RCW 39.10.100 (as recodified by this act) and 2005 c 274 s 275  
9 & 1994 c 132 s 10;  
10 (29) RCW 39.10.090 (as recodified by this act) and 1994 c 132 s 9;  
11 (30) RCW 39.10.120 (as recodified by this act) and section 501 of  
12 this act & 2001 c 328 s 5;  
13 (31) RCW 39.10.--- and section 502 of this act;  
14 (32) RCW 39.10.--- and section 503 of this act;  
15 (33) RCW 39.10.900 (as recodified by this act) and 1994 c 132 s 13;  
16 (34) RCW 39.10.901 (as recodified by this act) and 1994 c 132 s 14;  
17 and  
18 (35) RCW 39.10.--- and section 510 of this act.

19 NEW SECTION. **Sec. 508.** RCW 39.10.902 (Repealer) and 2006 c 261 s  
20 3 & 2005 c 469 s 5 are each repealed.

21 NEW SECTION. **Sec. 509.** The following acts or parts of acts are  
22 each repealed:

- 23 (1) RCW 39.10.030 (Public notification and review process) and 1997  
24 c 376 s 2 & 1994 c 132 s 3;  
25 (2) RCW 39.10.040 (Baseball stadium project--Alternative procedure  
26 may be used) and 1994 c 132 s 4;  
27 (3) RCW 39.10.063 (City demonstration projects--Conditions--  
28 Contract deadline) and 2005 c 377 s 3;  
29 (4) RCW 39.10.065 (Demonstration projects--Contract deadline--  
30 Transfer of authority to other public body) and 1997 c 376 s 5;  
31 (5) RCW 39.10.067 (School district capital demonstration projects--  
32 Conditions) and 2006 c 261 s 1, 2003 c 301 s 3, 2002 c 46 s 3, & 2000  
33 c 209 s 3;  
34 (6) RCW 39.10.068 (Public hospital district capital demonstration  
35 projects--Conditions) and 2003 c 300 s 6;

1 (7) RCW 39.10.115 (School district project review board--  
2 Established--Procedures) and 2006 c 261 s 2, 2001 c 328 s 4, & 2000 c  
3 209 s 4; and

4 (8) RCW 39.10.117 (Public hospital district project review board--  
5 Established--Procedures) and 2003 c 300 s 7.

6 NEW SECTION. **Sec. 510.** PART HEADINGS AND CAPTIONS NOT LAW. Part  
7 headings and captions used in this act are not any part of the law.

8 NEW SECTION. **Sec. 511.** The following sections are codified or  
9 recodified in chapter 39.10 RCW in the following order:

- 10 RCW 39.10.010
- 11 RCW 39.10.020
- 12 RCW 39.10.800
- 13 RCW 39.10.810
- 14 Section 104 of this act
- 15 Section 105 of this act
- 16 Section 106 of this act
- 17 Section 107 of this act
- 18 Section 108 of this act
- 19 Section 109 of this act
- 20 RCW 39.10.051
- 21 RCW 39.10.080
- 22 RCW 39.10.070
- 23 Section 204 of this act
- 24 RCW 39.10.061
- 25 Section 302 of this act
- 26 Section 303 of this act
- 27 Section 304 of this act
- 28 Section 305 of this act
- 29 Section 306 of this act
- 30 Section 307 of this act
- 31 Section 308 of this act
- 32 RCW 39.10.130
- 33 Section 402 of this act
- 34 Section 403 of this act
- 35 Section 404 of this act
- 36 Section 405 of this act

1 RCW 39.10.100  
2 RCW 39.10.090  
3 RCW 39.10.120  
4 Section 502 of this act  
5 Section 503 of this act  
6 RCW 39.10.900  
7 RCW 39.10.901  
8 Section 510 of this act

9 NEW SECTION. **Sec. 512.** This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of the  
11 state government and its existing public institutions, and takes effect  
12 July 1, 2007, except for section 104 of this act, which takes effect  
13 immediately, and section 508 of this act, which takes effect June 30,  
14 2007.

15 NEW SECTION. **Sec. 513.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected."

**2SHB 1506** - S COMM AMD

By Committee on Government Operations & Elections

**ADOPTED 04/05/2007**

19 On page 1, line 1 of the title, after "works;" strike the remainder  
20 of the title and insert "amending RCW 39.10.010, 39.10.020, 39.10.800,  
21 39.10.810, 39.10.080, 39.10.070, 39.10.130, 39.10.120, 60.28.011, and  
22 70.150.070; reenacting and amending RCW 39.10.051 and 39.10.061; adding  
23 new sections to chapter 43.131 RCW; adding new sections to chapter  
24 39.10 RCW; recodifying RCW 39.10.010, 39.10.020, 39.10.800, 39.10.810,  
25 39.10.051, 39.10.080, 39.10.070, 39.10.061, 39.10.130, 39.10.100,  
26 39.10.090, 39.10.120, 39.10.900, and 39.10.901; repealing RCW  
27 39.10.902, 39.10.030, 39.10.040, 39.10.063, 39.10.065, 39.10.067,  
28 39.10.068, 39.10.115, and 39.10.117; providing effective dates; and



1 declaring an emergency."

--- END ---