

SSB 5760 - H AMD 917

By Representative Chase

NOT CONSIDERED 04/26/2009

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.20
4 RCW to read as follows:

5 (1) The board of regents may enter into any number of contracts
6 with one or more persons, companies, or entities for the planning,
7 design, renovation, erection, remodeling, demolition, or construction
8 of university buildings and facilities, or improvements thereto, using
9 a small works roster process for projects with an estimated cost of up
10 to one million dollars, and a design-build process or general
11 contractor-construction manager process for projects with an estimated
12 cost in excess of one million dollars. Such contract or contracts
13 shall be awarded after public notice and under such requirements and
14 procedures as shall be established by the board of regents, to the
15 person or persons able to perform on the most advantageous terms. The
16 requirements and procedures established by the board of regents may
17 include but are not limited to: (a) Setting the dollar amount for self
18 performance of work by the general contractor; (b) setting the schedule
19 for establishing the maximum allowable construction cost; and (c)
20 establishing the process for selection of subcontractors. This
21 authority shall apply only when the revenue source for the cost of the
22 planning, design, renovation, erection, remodeling, demolition, or
23 construction of the buildings and facilities, or improvements thereto,
24 is provided with federal assistance funds, research grants, patient
25 revenues, gift funding, housing revenues, and parking revenues. The
26 board of regents does not have the power to enter into any contract
27 that binds the board of regents to pay out any sum of money in excess
28 of the amount provided for said purpose. The requirements of chapters
29 39.08, 39.12, and 60.28 RCW apply to work completed under this

1 authority. If the board of regents chooses to exercise the authority
2 granted under this chapter, provisions included in chapter 39.10 RCW
3 and RCW 39.04.155(1) do not apply.

4 (2) Whenever the revenue source for a public works project is
5 provided with federal assistance funds, research grants, patient
6 revenues, gift funding, housing revenues, and parking revenues, the
7 University of Washington may, before asking for bids, require from any
8 person, firm, company, or corporation, interested in bidding, answers
9 to questions contained in a standard form of questionnaire, including
10 a complete statement of the financial ability and experience of the
11 person, firm, company, or corporation and that of any proposed
12 subcontractor. The completed questionnaire shall be sworn to before a
13 notary public or other person authorized to take acknowledgment of
14 deeds, and shall be submitted at such time as the University of
15 Washington may require. Whenever the University of Washington is not
16 satisfied with the sufficiency of the answers contained in a completed
17 questionnaire or whenever the University of Washington determines that
18 the person, firm, company, corporation, or subcontractor does not meet
19 all of the requirements in this section, that person, firm,
20 corporation, or subcontractor shall be disqualified from bidding. In
21 order to be qualified to bid, a person, firm, corporation, or
22 subcontractor shall have:

23 (a) Adequate financial resources or the ability to secure such
24 resources;

25 (b) The necessary experience, organization, and technical
26 qualifications to perform the proposed contract;

27 (c) The ability to comply with the required performance schedule
28 taking into consideration all of its existing business commitments;

29 (d) A satisfactory record of performance, integrity, judgment, and
30 skills; and

31 (e) Otherwise been qualified and eligible to receive an award under
32 applicable laws and rules.

33 A contractor may appeal the university's determination that the
34 contractor does not meet the qualifications' criteria to bid on a
35 project. Appeals must be made in writing and submitted to the board
36 within seven days. The board shall resolve an appeal within forty-five
37 days of receipt of the appeal and shall send a written determination of
38 its decision to the party making the appeal.

1 (3) The University of Washington shall report on the status and
2 performance of capital projects that are performed with federal
3 assistance funds, research grants, patient revenues, gift funding,
4 housing revenues, and parking revenues to the appropriate fiscal and
5 policy committees of the legislature annually on the use of the funds
6 for these projects, the status of the projects, any changes in revenues
7 from the fund sources, and women and minority business utilization on
8 the projects.

9 (4) This section expires June 30, 2015.

10 **Sec. 2.** RCW 28B.20.140 and 1969 ex.s. c 223 s 28B.20.140 are each
11 amended to read as follows:

12 (1) The board of regents shall enter into such contracts with one
13 or more contractors for the erection and construction of university
14 buildings or improvements thereto as in their judgment shall be deemed
15 for the best interest of the university; subject to subsections (2) and
16 (3) of this section, such contract or contracts shall be let after
17 public notice and under such regulations as shall be established by
18 said board or as otherwise provided by law to the person or persons
19 able to perform the same on the most advantageous terms: PROVIDED,
20 That in all cases said board shall require from contractors a good and
21 sufficient bond for the faithful performance of the work, and the full
22 protection of the state against mechanics' and other liens: AND
23 PROVIDED FURTHER, That the board shall not have the power to enter into
24 any contract for the erection of any buildings or improvements which
25 shall bind said board to pay out any sum of money in excess of the
26 amount provided for said purpose.

27 (2) Except as provided under section 1 of this act, the board of
28 regents must comply with the requirements of chapter 39.10 RCW when
29 using any alternative contracting procedure authorized pursuant to
30 chapter 39.10 RCW.

31 (3) Except as provided under section 1 of this act, prior to
32 adoption of any alternative public works contracting procedure not
33 authorized in chapter 39.10 RCW, the board of regents must submit the
34 proposed contracting procedure to the capital projects advisory review
35 board established under chapter 39.10 RCW for evaluation and approval
36 pursuant to RCW 39.10.230. Final adoption and use of any alternative

1 public works contracting procedure is contingent on approval by the
2 capital projects advisory review board.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.30 RCW
4 to read as follows:

5 (1) The board of regents may enter into any number of contracts
6 with one or more persons, companies, or entities for the planning,
7 design, renovation, erection, remodeling, demolition, or construction
8 of university buildings and facilities, or improvements thereto, using
9 a small works roster process for projects with an estimated cost of up
10 to one million dollars, and a design-build process or general
11 contractor-construction manager process for projects with an estimated
12 cost in excess of one million dollars. Such contract or contracts
13 shall be awarded after public notice and under such requirements and
14 procedures as shall be established by the board of regents, to the
15 person or persons able to perform on the most advantageous terms. The
16 requirements and procedures established by the board of regents may
17 include but are not limited to: (a) Setting the dollar amount for self
18 performance of work by the general contractor; (b) setting the schedule
19 for establishing the maximum allowable construction cost; and (c)
20 establishing the process for selection of subcontractors. This
21 authority shall apply only when the revenue source for the cost of the
22 planning, design, renovation, erection, remodeling, demolition, or
23 construction of the buildings and facilities, or improvements thereto,
24 is provided with federal assistance funds, research grants, patient
25 revenues, gift funding, housing revenues, and parking revenues. The
26 board of regents does not have the power to enter into any contract
27 that binds the board of regents to pay out any sum of money in excess
28 of the amount provided for said purpose. The requirements of chapters
29 39.08, 39.12, and 60.28 RCW apply to work completed under this
30 authority. If the board of regents chooses to exercise the authority
31 granted under this chapter, provisions included in chapter 39.10 RCW
32 and RCW 39.04.155(1) do not apply.

33 (2) Whenever the revenue source for a public works project is
34 provided with federal assistance funds, research grants, patient
35 revenues, gift funding, housing revenues, and parking revenues,
36 Washington State University may, before asking for bids, require from
37 any person, firm, company, or corporation, interested in bidding,

1 answers to questions contained in a standard form of questionnaire,
2 including a complete statement of the financial ability and experience
3 of the person, firm, company, or corporation and that of any proposed
4 subcontractor. The completed questionnaire shall be sworn to before a
5 notary public or other person authorized to take acknowledgment of
6 deeds, and shall be submitted at such time as Washington State
7 University may require. Whenever Washington State University is not
8 satisfied with the sufficiency of the answers contained in a completed
9 questionnaire or whenever Washington State University determines that
10 the person, firm, company, corporation, or subcontractor does not meet
11 all of the requirements in this section, that person, firm,
12 corporation, or subcontractor shall be disqualified from bidding. In
13 order to be qualified to bid, a person, firm, corporation, or
14 subcontractor shall have:

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

17 (b) The necessary experience, organization, and technical
18 qualifications to perform the proposed contract;

19 (c) The ability to comply with the required performance schedule
20 taking into consideration all of its existing business commitments;

21 (d) A satisfactory record of performance, integrity, judgment, and
22 skills; and

23 (e) Otherwise been qualified and eligible to receive an award under
24 applicable laws and rules.

25 A contractor may appeal the university's determination that the
26 contractor does not meet the qualifications criteria to bid on a
27 project. Appeals must be made in writing and submitted to the board
28 within seven days. The board shall resolve an appeal within forty-five
29 days of receipt of the appeal and shall send a written determination of
30 its decision to the party making the appeal.

31 (3) Washington State University shall report on the status and
32 performance of capital projects that are performed with federal
33 assistance funds, research grants, patient revenues, gift funding,
34 housing revenues, and parking revenues to the appropriate fiscal and
35 policy committees of the legislature annually on the use of the funds
36 for these projects, the status of the projects, any changes in revenues
37 from the fund sources, and women and minority business utilization on
38 the projects.

1 (4) This section expires June 30, 2015.

2 **Sec. 4.** RCW 28B.30.700 and 1985 c 390 s 41 are each amended to
3 read as follows:

4 (1) The board of regents of Washington State University is
5 empowered, in accordance with the provisions of RCW 28B.30.700 through
6 28B.30.780, to provide for the construction, completion,
7 reconstruction, remodeling, rehabilitation and improvement of buildings
8 and facilities authorized by the legislature, subject to subsections
9 (2) and (3) of this section, for the use of the university and to
10 finance the payment thereof by bonds payable out of a special fund from
11 revenues hereafter derived from the payment of building fees, gifts,
12 bequests or grants, and such additional funds as the legislature may
13 provide.

14 (2) Except as provided in section 1 of this act, the board of
15 regents must comply with the requirements of chapter 39.10 RCW when
16 using any alternative contracting procedure authorized pursuant to
17 chapter 39.10 RCW.

18 (3) Except as provided in section 1 of this act, prior to adoption
19 of any alternative public works contracting procedure not authorized in
20 chapter 39.10 RCW, the board of regents must submit the proposed
21 contracting procedure to the capital projects advisory review board
22 established under chapter 39.10 RCW for evaluation and approval
23 pursuant to RCW 39.10.230. Final adoption and use of any alternative
24 public works contracting procedure is contingent on approval by the
25 capital projects advisory review board.

26 **Sec. 5.** RCW 39.10.200 and 2007 c 494 s 1 are each amended to read
27 as follows:

28 The legislature finds that the traditional process of awarding
29 public works contracts in lump sum to the lowest responsible bidder is
30 a fair and objective method of selecting a contractor. However, under
31 certain circumstances, alternative public works contracting procedures
32 may best serve the public interest if such procedures are implemented
33 in an open and fair process based on objective and equitable criteria.
34 The purpose of this chapter is to authorize the use of certain
35 supplemental alternative public works contracting procedures, to
36 prescribe appropriate requirements to ensure that such contracting

1 procedures serve the public interest, and to establish a process for
2 evaluation of such contracting procedures. It is the intent of the
3 legislature to establish that, unless otherwise specifically provided
4 for in law, including section 1 of this act, public bodies may use only
5 those alternative public works contracting procedures either
6 specifically authorized in this chapter, subject to the requirements of
7 this chapter, or those approved for use on a demonstration project by
8 the capital projects advisory review board.

9 **Sec. 6.** RCW 39.10.230 and 2009 c 75 s 1 are each amended to read
10 as follows:

11 The board has the following powers and duties:

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

18 (2) Evaluate the use of existing contracting procedures (~~and~~
19 ~~potential future use of~~);

20 (3) Evaluate other alternative contracting procedures including
21 competitive negotiation contracts for: (a) Potential future use; and
22 (b) approval to use as a demonstration project;

23 (4) Submit a report to the appropriate committees of the
24 legislature evaluating any alternative contracting procedure that is
25 not authorized under this chapter and has been submitted to the board
26 for its review or approval. The report must:

27 (a) Include a recommendation regarding use of the alternative
28 contracting procedure by other public bodies; and

29 (b) Be submitted by December of the next regular legislative
30 session following completion of the evaluation;

31 ~~((+3))~~ (5) Develop guidelines to be used by the committee for the
32 review and approval of design-build demonstration projects that procure
33 operations and maintenance services;

34 ~~((+4))~~ (6) Appoint members of the committee; and

35 ~~((+5))~~ (7) Develop and administer questionnaires designed to
36 provide quantitative and qualitative data on alternative public works
37 contracting procedures on which evaluations are based.

1 **Sec. 7.** RCW 39.10.210 and 2007 c 494 s 101 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Alternative public works contracting procedure" means the
6 design-build, general contractor/construction manager, and job order
7 contracting procedures authorized in RCW 39.10.300, 39.10.340, and
8 39.10.420, respectively. It also means other contracting procedures
9 submitted to the board under RCW 39.10.230 for approval to use as a
10 demonstration project.

11 (2) "Board" means the capital projects advisory review board.

12 (3) "Committee" means the project review committee.

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

17 (5) "Total contract cost" means the fixed amount for the detailed
18 specified general conditions work, the negotiated maximum allowable
19 construction cost, and the percent fee on the negotiated maximum
20 allowable construction cost.

21 (6) "General contractor/construction manager" means a firm with
22 which a public body has selected and negotiated a maximum allowable
23 construction cost to provide services during the design phase and to
24 act as construction manager and general contractor during the
25 construction phase.

26 (7) "Job order contract" means a contract in which the contractor
27 agrees to a fixed period, indefinite quantity delivery order contract
28 which provides for the use of negotiated, definitive work orders for
29 public works as defined in RCW 39.04.010.

30 (8) "Job order contractor" means a registered or licensed
31 contractor awarded a job order contract.

32 (9) "Maximum allowable construction cost" means the maximum cost of
33 the work to construct the project including a percentage for risk
34 contingency, negotiated support services, and approved change orders.

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

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

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

7 (13) "Certified public body" means a public body certified to use
8 design-build or general contractor/construction manager contracting
9 procedures, or both, under RCW 39.10.270.

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

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

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

21 (17) "Work order" means an order issued for a definite scope of
22 work to be performed pursuant to a job order contract.

23 NEW SECTION. **Sec. 8.** The following acts or parts of acts, as now
24 existing or hereafter amended, are each repealed, effective June 30,
25 2014:

26 (1) RCW 39.10.200 (Finding--Purpose) and section 5 of this act,
27 2007 c 494 s 1, & 1994 c 132 s 1;

28 (2) RCW 39.10.210 (Definitions) and section 7 of this act, 2007 c
29 494 s 101, & 2005 c 469 s 3;

30 (3) RCW 39.10.220 (Board--Membership--Vacancies) and 2007 c 494 s
31 102 & 2005 c 377 s 1;

32 (4) RCW 39.10.230 (Board--Powers and duties) and section 6 of this
33 act, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

34 (5) RCW 39.10.240 (Project review committee--Creation--Members) and
35 2007 c 494 s 104;

36 (6) RCW 39.10.250 (Project review committee--Duties) and 2009 c 75
37 s 2 & 2007 c 494 s 105;

1 (7) RCW 39.10.260 (Project review committee--Meetings--Open and
2 public) and 2007 c 494 s 106;

3 (8) RCW 39.10.270 (Project review committee--Certification of
4 public bodies) and 2009 c 75 s 3 & 2007 c 494 s 107;

5 (9) RCW 39.10.280 (Project review committee--Project approval
6 process) and 2007 c 494 s 108;

7 (10) RCW 39.10.290 (Appeal process) and 2007 c 494 s 109;

8 (11) RCW 39.10.300 (Design-build procedure--Uses) and 2009 c 75 s
9 4 & 2007 c 494 s 201;

10 (12) RCW 39.10.320 (Design-build procedure--Project management and
11 contracting requirements) and 2007 c 494 s 203 & 1994 c 132 s 7;

12 (13) RCW 39.10.330 (Design-build contract award process) and 2009
13 c 75 s 5 & 2007 c 494 s 204;

14 (14) RCW 39.10.340 (General contractor/construction manager
15 procedure--Uses) and 2007 c 494 s 301;

16 (15) RCW 39.10.350 (General contractor/construction manager
17 procedure--Project management and contracting requirements) and 2007 c
18 494 s 302;

19 (16) RCW 39.10.360 (General contractor/construction manager
20 procedure--Contract award process) and 2009 c 75 s 6 & 2007 c 494 s
21 303;

22 (17) RCW 39.10.370 (General contractor/construction manager
23 procedure--Maximum allowable construction cost) and 2007 c 494 s 304;

24 (18) RCW 39.10.380 (General contractor/construction manager
25 procedure--Subcontract bidding procedure) and 2007 c 494 s 305;

26 (19) RCW 39.10.390 (General contractor/construction manager
27 procedure--Subcontract work) and 2007 c 494 s 306;

28 (20) RCW 39.10.400 (General contractor/construction manager
29 procedure--Prebid determination of subcontractor eligibility) and 2007
30 c 494 s 307;

31 (21) RCW 39.10.410 (General contractor/construction manager
32 procedure--Subcontract agreements) and 2007 c 494 s 308;

33 (22) RCW 39.10.420 (Job order procedure--Which public bodies may
34 use--Authorized use) and 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301
35 s 1;

36 (23) RCW 39.10.430 (Job order procedure--Contract award process)
37 and 2007 c 494 s 402;

1 (24) RCW 39.10.440 (Job order procedure--Contract requirements) and
2 2007 c 494 s 403;
3 (25) RCW 39.10.450 (Job order procedure--Work orders) and 2007 c
4 494 s 404;
5 (26) RCW 39.10.460 (Job order procedure--Required information to
6 board) and 2007 c 494 s 405;
7 (27) RCW 39.10.470 (Public inspection of certain records--
8 Protection of trade secrets) and 2005 c 274 s 275 & 1994 c 132 s 10;
9 (28) RCW 39.10.480 (Construction of chapter--Waiver of other limits
10 and requirements) and 1994 c 132 s 9;
11 (29) RCW 39.10.490 (Application of chapter) and 2007 c 494 s 501 &
12 2001 c 328 s 5;
13 (30) RCW 39.10.500 (Exemptions) and 2007 c 494 s 502;
14 (31) RCW 39.10.510 (Previously advertised projects) and 2007 c 494
15 s 503;
16 (32) RCW 39.10.900 (Captions not law--1994 c 132) and 1994 c 132 s
17 13;
18 (33) RCW 39.10.901 (Severability--1994 c 132) and 1994 c 132 s 14;
19 (34) RCW 39.10.903 (Part headings and captions not law--2007 c 494)
20 and 2007 c 494 s 510;
21 (35) RCW 39.10.904 (Effective dates--2007 c 494) and 2007 c 494 s
22 512; and
23 (36) RCW 39.10.905 (Severability--2007 c 494) and 2007 c 494 s
24 513."

25 Correct the title.

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