
HOUSE BILL 1690

State of Washington

61st Legislature

2009 Regular Session

By Representatives Hasegawa, Hunt, Hudgins, Anderson, and Kenney

Read first time 01/27/09. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to authorizing alternative public works contracting
2 procedures; amending RCW 28B.20.140, 39.10.200, 39.10.230, 39.10.210,
3 and 43.131.408; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The establishment of alternative public
6 works contracting procedures authorized for use by public bodies has
7 been a complex, controversial, and challenging undertaking, but it has
8 been successful. The key to the successful adoption and consideration
9 of these procedures has depended, in great part, on the review and
10 oversight mechanisms put in place by the legislature in chapter 39.10
11 RCW, as well as the countless hours of dedicated work by numerous
12 stakeholders over many years. It is the intent of the legislature to
13 clarify that, unless otherwise specifically provided for in law, public
14 bodies that want to use an alternative public works contracting
15 procedure may use only those procedures either specifically authorized
16 in chapter 39.10 RCW, subject to the requirements of chapter 39.10 RCW,
17 or those approved for use on a demonstration project by the capital
18 projects advisory review board established under chapter 39.10 RCW.

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

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

18 (2) The board must comply with the requirements of chapter 39.10
19 RCW when using any alternative contracting procedure authorized
20 pursuant to chapter 39.10 RCW.

21 (3) Prior to adoption of any alternative public works contracting
22 procedure not authorized in chapter 39.10 RCW, the board must submit
23 the proposed contracting procedure to the capital projects advisory
24 review board established under chapter 39.10 RCW for evaluation and
25 approval pursuant to RCW 39.10.230. Final adoption and use of any
26 alternative public works contracting procedure is contingent on
27 approval by the capital projects advisory review board.

28 **Sec. 3.** RCW 39.10.200 and 2007 c 494 s 1 are each amended to read
29 as follows:

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

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

10 **Sec. 4.** RCW 39.10.230 and 2007 c 494 s 103 are each amended to
11 read as follows:

12 The board has the following powers and duties:

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

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

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

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

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

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

32 ~~((+3))~~ (5) Appoint members of the committee; and

33 ~~((+4))~~ (6) Develop and administer questionnaires designed to
34 provide quantitative and qualitative data on alternative public works
35 contracting procedures on which evaluations are based.

1 **Sec. 5.** 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 **Sec. 6.** RCW 43.131.408 and 2007 c 494 s 507 are each amended to
24 read as follows:

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

- 27 (1) RCW 39.10.200 and section 3 of this act, 2007 c 494 § 1, & 1994
28 c 132 § 1;
- 29 (2) RCW 39.10.210 and section 5 of this act, 2007 c 494 § 101, &
30 2005 c 469 § 3;
- 31 (3) RCW 39.10.220 and 2007 c 494 § 102 & 2005 c 377 § 1;
- 32 (4) RCW 39.10.230 and section 4 of this act, 2007 c 494 § 103, &
33 2005 c 377 § 2;
- 34 (5) RCW 39.10.240 and 2007 c 494 § 104;
- 35 (6) RCW 39.10.250 and 2007 c 494 § 105;
- 36 (7) RCW 39.10.260 and 2007 c 494 § 106;
- 37 (8) RCW 39.10.270 and 2007 c 494 § 107;

- 1 (9) RCW 39.10.280 and 2007 c 494 § 108;
- 2 (10) RCW 39.10.290 and 2007 c 494 § 109;
- 3 (11) RCW 39.10.300 and 2007 c 494 § 201, 2003 c 352 § 2, 2003 c 300
- 4 § 4, 2002 c 46 § 1, & 2001 c 328 § 2;
- 5 (12) RCW 39.10.310 and 2007 c 494 § 202 & 1994 c 132 § 8;
- 6 (13) RCW 39.10.320 and 2007 c 494 § 203 & 1994 c 132 § 7;
- 7 (14) RCW 39.10.330 and 2007 c 494 § 204;
- 8 (15) RCW 39.10.340 and 2007 c 494 § 301, 2003 c 352 § 3, 2003 c 300
- 9 § 5, 2002 c 46 § 2, & 2001 c 328 § 3;
- 10 (16) RCW 39.10.350 and 2007 c 494 § 302;
- 11 (17) RCW 39.10.360 and 2007 c 494 § 303;
- 12 (18) RCW 39.10.370 and 2007 c 494 § 304;
- 13 (19) RCW 39.10.380 and 2007 c 494 § 305;
- 14 (20) RCW 39.10.390 and 2007 c 494 § 306;
- 15 (21) RCW 39.10.400 and 2007 c 494 § 307;
- 16 (22) RCW 39.10.410 and 2007 c 494 § 308;
- 17 (23) RCW 39.10.420 and 2007 c 494 § 401 & 2003 c 301 § 1;
- 18 (24) RCW 39.10.430 and 2007 c 494 § 402;
- 19 (25) RCW 39.10.440 and 2007 c 494 § 403;
- 20 (26) RCW 39.10.450 and 2007 c 494 § 404;
- 21 (27) RCW 39.10.460 and 2007 c 494 § 405;
- 22 (28) RCW 39.10.470 and 2005 c 274 § 275 & 1994 c 132 § 10;
- 23 (29) RCW 39.10.480 and 1994 c 132 § 9;
- 24 (30) RCW 39.10.490 and 2007 c 494 § 501 & 2001 c 328 § 5;
- 25 (31) RCW 39.10.500 and 2007 c 494 § 502;
- 26 (32) RCW 39.10.510 and 2007 c 494 § 503;
- 27 (33) RCW 39.10.900 and 1994 c 132 § 13;
- 28 (34) RCW 39.10.901 and 1994 c 132 § 14; and
- 29 (35) RCW 39.10.903 and 2007 c 494 § 510.

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