

SB 5349 - H COMM AMD

By Committee on Capital Budget

NOT CONSIDERED

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

3 "Sec. 1. RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014 are each
4 reenacted and amended to read as follows:

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

7 (1) "Alternative public works contracting procedure" means the
8 design-build, general contractor/construction manager, and job order
9 contracting procedures authorized in RCW 39.10.300, 39.10.340, and
10 39.10.420, respectively.

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

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

15 (4) "Committee," unless otherwise noted, means the project review
16 committee.

17 (5) "Design-build procedure" means a contract between a public body
18 and another party in which the party agrees to both design and build
19 the facility, portion of the facility, or other item specified in the
20 contract.

21 (6) "Disadvantaged business enterprise" means any business entity
22 certified with the office of minority and women's business enterprises
23 under chapter 39.19 RCW.

24 (7) "General contractor/construction manager" means a firm with
25 which a public body has selected (~~and negotiated a maximum allowable~~
26 ~~construction cost~~) to provide services during the design phase and
27 negotiated a maximum allowable construction cost to act as construction
28 manager and general contractor during the construction phase.

29 ((+7)) (8) "Job order contract" means a contract in which the

1 contractor agrees to a fixed period, indefinite quantity delivery order
2 contract which provides for the use of negotiated, definitive work
3 orders for public works as defined in RCW 39.04.010.

4 ~~((+8+))~~ (9) "Job order contractor" means a registered or licensed
5 contractor awarded a job order contract.

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

10 ~~((+10+))~~ (11) "Negotiated support services" means items a general
11 contractor would normally manage or perform on a construction project
12 including, but not limited to surveying, hoisting, safety enforcement,
13 provision of toilet facilities, temporary heat, cleanup, and trash
14 removal, and that are negotiated as part of the maximum allowable
15 construction cost.

16 ~~((+11+))~~ (12) "Percent fee" means the percentage amount to be
17 earned by the general contractor/construction manager as overhead and
18 profit.

19 ~~((+12+))~~ (13) "Public body" means any general or special purpose
20 government in the state of Washington, including but not limited to
21 state agencies, institutions of higher education, counties, cities,
22 towns, ports, school districts, and special purpose districts(~~(-~~
23 ~~provided that for the 2009-2011 fiscal biennium, the definition of~~
24 ~~public body for this chapter does not include public bodies funded in~~
25 ~~section 1012, chapter 36, Laws of 2010 1st sp. sess. if alternative~~
26 ~~requirements or procedures of federal law or regulations are~~
27 ~~authorized)).~~

28 ~~((+13+))~~ (14) "Public works project" means any work for a public
29 body within the definition of "public work" in RCW 39.04.010.

30 ~~((+14+))~~ (15) "Small business entity" means a small business as
31 defined in RCW 39.26.010.

32 (16) "Total contract cost" means the fixed amount for the detailed
33 specified general conditions work, the negotiated maximum allowable
34 construction cost, and the percent fee on the negotiated maximum
35 allowable construction cost.

36 ~~((+15+))~~ (17) "Total project cost" means the cost of the project
37 less financing and land acquisition costs.

1 ~~((16))~~ (18) "Unit price book" means a book containing specific
2 prices, based on generally accepted industry standards and information,
3 where available, for various items of work to be performed by the job
4 order contractor. The prices may include: All the costs of materials;
5 labor; equipment; overhead, including bonding costs; and profit for
6 performing the items of work. The unit prices for labor must be at the
7 rates in effect at the time the individual work order is issued.

8 ~~((17))~~ (19) "Work order" means an order issued for a definite
9 scope of work to be performed pursuant to a job order contract.

10 **Sec. 2.** RCW 39.10.220 and 2007 c 494 s 102 are each amended to
11 read as follows:

12 (1) The board is created in the department of ~~((general~~
13 ~~administration))~~ enterprise services to provide an evaluation of public
14 capital projects construction processes, including the impact of
15 contracting methods on project outcomes, and to advise the legislature
16 on policies related to public works delivery methods.

17 (2) Members of the board are appointed as follows:

18 (a) ~~((The board shall consist of the following members appointed by~~
19 ~~the governor:))~~ Two representatives from construction general
20 contracting; one representative from the architectural profession; one
21 representative from the engineering profession; two representatives
22 from construction specialty subcontracting; two representatives from
23 construction trades labor organizations; one representative from the
24 office of minority and women's business enterprises; one representative
25 from a higher education institution; one representative from the
26 department of ~~((general administration))~~ enterprise services; one
27 individual representing Washington cities; two representatives from
28 private industry; and one representative of a domestic insurer
29 authorized to write surety bonds for contractors in Washington state,
30 each appointed by the governor. All appointed members must be
31 knowledgeable about public works contracting procedures. If a vacancy
32 occurs, the governor shall fill the vacancy for the unexpired term;

33 (b) ~~((Three members shall be positions representing different local~~
34 ~~public owners, selected by the association of Washington cities,))~~ One
35 member representing counties, selected by the Washington state
36 association of counties~~((, and the Washington public ports association,~~
37 ~~respectively.))~~;

1 (c) ~~((One member shall be a representative from the public hospital~~
2 ~~districts, selected by the association of Washington public hospital~~
3 ~~districts.~~

4 ~~(d))~~ One member representing public ports, selected by the
5 Washington public ports association;

6 (d) One member representing public hospital districts, selected by
7 the association of Washington public hospital districts;

8 (e) One member ~~((shall be a representative from))~~ representing
9 school districts, selected by the Washington state school directors'
10 association~~((-))~~; and

11 ~~((e) The board shall include))~~ (f) Two members of the house of
12 representatives, one from each major caucus, appointed by the speaker
13 of the house of representatives, and two members of the senate, one
14 from each major caucus, appointed by the president of the senate.
15 Legislative members are nonvoting.

16 (3) Members selected under subsection (2)(a) of this section shall
17 serve for terms of four years, with the terms expiring on June 30th on
18 the fourth year of the term.

19 (4) The board chair is selected from among the appointed members by
20 the majority vote of the voting members.

21 (5) Legislative members of the board shall be reimbursed for travel
22 expenses in accordance with RCW 44.04.120. Nonlegislative members of
23 the board, project review committee members, and ~~((subcommittee))~~
24 committee chairs shall be reimbursed for travel expenses as provided in
25 RCW 43.03.050 and 43.03.060.

26 ~~((If a vacancy occurs of the appointive members of the board,~~
27 ~~the governor shall fill the vacancy for the unexpired term.))~~ Vacancies
28 are filled in the same manner as appointed. Members of the board may
29 be removed for malfeasance or misfeasance in office, upon specific
30 written charges by the governor, under chapter 34.05 RCW.

31 (7) The board shall meet as often as necessary.

32 (8) Board members are expected to consistently attend board
33 meetings. The chair of the board may ask the governor to remove any
34 member who misses more than two meetings in any calendar year without
35 cause.

36 (9) The department of ~~((general administration))~~ enterprise
37 services shall provide staff support as may be required for the proper
38 discharge of the function of the board.

1 (10) The board may establish (~~subcommittees~~) committees as it
2 desires and may invite nonmembers of the board to serve as committee
3 members.

4 (11) The board shall encourage participation from persons and
5 entities not represented on the board.

6 **Sec. 3.** RCW 39.10.230 and 2010 1st sp.s. c 21 s 3 are each amended
7 to read as follows:

8 The board has the following powers and duties:

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

15 (2) Evaluate the use of existing contracting procedures and the
16 potential future use of other alternative contracting procedures
17 including competitive negotiation contracts;

18 (3) Submit recommendations to the appropriate committees of the
19 legislature evaluating alternative contracting procedures that are not
20 authorized under this chapter;

21 (4) Appoint members of (~~the~~) committees; and

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

25 **Sec. 4.** RCW 39.10.240 and 2007 c 494 s 104 are each amended to
26 read as follows:

27 (1) The board shall establish a project review committee to review
28 and approve public works projects using the design-build and general
29 contractor/construction manager contracting procedures authorized in
30 RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in
31 RCW 39.10.270.

32 (2) The board shall, by a majority vote of the board, appoint
33 persons to the committee who are knowledgeable in the use of the
34 design-build and general contractor/construction manager contracting
35 procedures. Appointments must represent a balance among the industries
36 and public owners on the board listed in RCW 39.10.220.

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

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

11 ~~((c))~~ (b) The committee shall, by a majority vote, elect a chair
12 and vice chair for the committee.

13 ~~((d))~~ (c) The committee chair may select a person or persons on
14 a temporary basis as a nonvoting member if project specific expertise
15 is needed to assist in a review.

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

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

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

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

29 **Sec. 5.** RCW 39.10.250 and 2009 c 75 s 2 are each amended to read
30 as follows:

31 The committee shall:

32 (1) Certify, or ~~((recertify))~~ renew certification for, public
33 bodies ~~((for a period of three years))~~ to use ~~((the))~~ design-build or
34 general contractor/construction manager contracting procedures, or
35 both ~~((, contracting procedures for projects with a total project cost~~
36 ~~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 RCW
4 39.10.270;

5 ~~((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 ~~(4))~~ Review and approve not more than ~~((ten))~~ fifteen projects
10 using the design-build contracting procedure by ~~((certified and))~~
11 noncertified public bodies for projects that have a total project cost
12 between two million and ten million dollars. Projects must meet the
13 criteria in RCW 39.10.300(1). Where possible, the committee shall
14 approve projects among multiple public bodies. ~~((In June 2010))~~ At
15 least annually, the committee shall report to the board regarding the
16 committee's review procedure of these projects and its recommendations
17 for further use; and

18 ~~((+5))~~ (4) Review and approve not more than two design-build
19 demonstration projects that include procurement of operations and
20 maintenance services for a period longer than three years.

21 **Sec. 6.** RCW 39.10.260 and 2007 c 494 s 106 are each amended to
22 read as follows:

23 (1) The committee shall hold regular public meetings to carry out
24 its duties as described in RCW 39.10.250. Committee meetings are
25 subject to chapter 42.30 RCW.

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

32 (3) The meeting notice must identify the public body that is
33 seeking certification or project approval, and where applicable, a
34 description of projects to be considered at the meeting. The notice
35 must indicate when, where, and how the public may present comments
36 regarding the committee's certification of a public body or approval of

1 a project. Information submitted by a public body to be reviewed at
2 the meeting shall be available on the committee's web site at the time
3 the notice is published.

4 (4) The committee must allow for public comment on the
5 appropriateness of certification of a public body or on the
6 appropriateness of the use of the proposed contracting procedure and
7 the qualifications of a public body to use the contracting procedure.
8 The committee shall receive and record both written and oral comments
9 at the public ((hearing)) meeting.

10 **Sec. 7.** RCW 39.10.270 and 2009 c 75 s 3 are each amended to read
11 as follows:

12 (1) A public body may apply for certification to use the design-
13 build or general contractor/construction manager contracting procedure,
14 or both. Once certified, a public body may use the contracting
15 procedure for which it is certified on individual projects ((with a
16 total project cost over ten million dollars)) without seeking committee
17 approval((. The certification period is)) for a period of three years.
18 Public bodies certified to use the design-build procedure are limited
19 to no more than five projects with a total project cost between two and
20 ten million dollars during the certification period. A public body
21 seeking certification must submit to the committee an application in a
22 format and manner as prescribed by the committee. The application must
23 include a description of the public body's qualifications, its capital
24 plan during the certification period, and its intended use of
25 alternative contracting procedures.

26 (2) A public body seeking certification for the design-build
27 procedure must demonstrate successful management of at least one
28 design-build project within the previous five years. A public body
29 seeking certification for the general contractor/construction manager
30 procedure must demonstrate successful management of at least one
31 general contractor/construction manager project within the previous
32 five years.

33 (3) To certify a public body, the committee shall determine that
34 the public body:

35 (a) Has the necessary experience and qualifications to determine
36 which projects are appropriate for using alternative contracting
37 procedures;

1 (b) Has the necessary experience and qualifications to carry out
2 the alternative contracting procedure including, but not limited to:
3 (i) Project delivery knowledge and experience; (ii) personnel with
4 appropriate construction experience; (iii) a management plan and
5 rationale for its alternative public works projects; (iv) demonstrated
6 success in managing public works projects; (v) the ability to properly
7 manage its capital facilities plan including, but not limited to,
8 appropriate project planning and budgeting experience; and (vi) the
9 ability to meet requirements of this chapter; and

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

12 (4) The committee shall, if practicable, make its determination at
13 the public meeting during which an application for certification is
14 reviewed. Public comments must be considered before a determination is
15 made. Within ten business days of the public meeting, the committee
16 shall provide a written determination to the public body, and make its
17 determination available to the public on the committee's web site.

18 (5) The committee may revoke any public body's certification upon
19 a finding, after a public hearing, that its use of design-build or
20 general contractor/construction manager contracting procedures no
21 longer serves the public interest.

22 (6) The committee may renew the certification of a public body for
23 ~~((one))~~ additional three-year periods. The public body must submit an
24 application for recertification at least three months before the
25 initial certification expires. The application shall include updated
26 information on the public body's ~~((capital plan for the next three
27 years, its intended use of the procedures))~~ experience and current
28 staffing with the procedure it is applying to renew, and any other
29 information requested in advance by the committee. The committee must
30 review the application for recertification at a meeting held before
31 expiration of the applicant's initial certification period. A public
32 body must reapply for certification under the process described in
33 subsection (1) of this section once the period of recertification
34 expires.

35 (7) Certified public bodies must submit project data information as
36 required in RCW 39.10.320 and 39.10.350.

1 **Sec. 8.** RCW 39.10.280 and 2007 c 494 s 108 are each amended to
2 read as follows:

3 (1) A public body not certified under RCW 39.10.270 must apply for
4 approval from the committee to use the design-build or general
5 contractor/construction manager contracting procedure on a project. A
6 public body seeking approval must submit to the committee an
7 application in a format and manner as prescribed by the committee. The
8 application must include a description of the public body's
9 qualifications, a description of the project, and its intended use of
10 alternative contracting procedures.

11 (2) To approve a proposed project, the committee shall determine
12 that:

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

17 (b) The proposed project meets the requirements for using the
18 alternative contracting procedure as described in RCW 39.10.300 or
19 39.10.340;

20 (c) The public body has the necessary experience or qualified team
21 to carry out the alternative contracting procedure including, but not
22 limited to: (i) Project delivery knowledge and experience; (ii)
23 sufficient personnel with construction experience to administer the
24 contract; (iii) a written management plan that shows clear and logical
25 lines of authority; (iv) the necessary and appropriate funding and time
26 to properly manage the job and complete the project; (v) continuity of
27 project management team, including personnel with experience managing
28 projects of similar scope and size to the project being proposed; and
29 (vi) necessary and appropriate construction budget;

30 (d) For design-build projects, (~~(construction)~~) public body
31 personnel (~~(independent of the design-build team)~~) or consultants are
32 knowledgeable in the design-build process and are able to oversee and
33 administer the contract; and

34 (e) The public body has resolved any audit findings related to
35 previous public works projects in a manner satisfactory to the
36 committee.

37 (3) The committee shall, if practicable, make its determination at

1 the public meeting during which a submittal is reviewed. Public
2 comments must be considered before a determination is made.

3 (4) Within ten business days after the public meeting, the
4 committee shall provide a written determination to the public body, and
5 make its determination available to the public on the committee's web
6 site. If the committee fails to make a written determination within
7 ten business days of the public meeting, the request of the public body
8 to use the alternative contracting procedure on the requested project
9 shall be deemed approved.

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

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

17 **Sec. 9.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read
18 as follows:

19 (1) Subject to the ~~((process))~~ requirements in RCW 39.10.250,
20 39.10.270, or 39.10.280, public bodies may utilize the design-build
21 procedure for public works projects in which the total project cost is
22 over ten million dollars and where:

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

29 (b) ~~The ((project design is repetitive in nature and is an
30 incidental part of the installation or construction))~~ projects selected
31 provide opportunity for greater innovation or efficiencies between the
32 designer and the builder; or

33 (c) ~~((Regular interaction with and feedback from facilities users
34 and operators during design is not critical to an effective facility
35 design.))~~ Significant savings in project delivery time would be
36 realized.

1 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
2 bodies may use the design-build procedure for parking garages,
3 regardless of cost.

4 (3) The design-build procedure may be used for the construction or
5 erection of portable facilities as defined in WAC 392-343-018,
6 preengineered metal buildings, or not more than ten prefabricated
7 modular buildings per installation site, regardless of cost and is not
8 subject to approval by the committee.

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

18 (5) Subject to the process in RCW 39.10.280, public bodies may use
19 the design-build procedure for public works projects in which the total
20 project cost is between two million and ten million dollars and that
21 meet one of the criteria in subsection (1)(a), (b), or (c) of this
22 section.

23 (6) Subject to the process in RCW 39.10.280, a public body may seek
24 committee approval for a design-build demonstration project that
25 includes procurement of operations and maintenance services for a
26 period longer than three years.

27 **Sec. 10.** RCW 39.10.320 and 2007 c 494 s 203 are each amended to
28 read as follows:

29 (1) A public body utilizing the design-build contracting procedure
30 shall provide (~~for~~):

31 (a) Reasonable budget contingencies totaling not less than five
32 percent of the anticipated contract value;

33 (b) (~~Employment of~~) Staff or consultants with expertise and prior
34 experience in the management of comparable projects;

35 (c) Contract documents that include alternative dispute resolution
36 procedures to be attempted prior to the initiation of litigation;

1 (d) Submission of project information, as required by the board;
2 (~~and~~)

3 (e) Contract documents that require the contractor, subcontractors,
4 and designers to submit project information required by the board; and
5 (f) Contract documents that include the life-cycle cost model to be
6 used in the submittal if required by the public body.

7 (2) A public body utilizing the design-build contracting procedure
8 may provide incentive payments to contractors for early completion,
9 cost savings, or other goals if such payments are identified in the
10 request for proposals.

11 **Sec. 11.** RCW 39.10.330 and 2009 c 75 s 5 are each amended to read
12 as follows:

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

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

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

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

28 (d) A description of the process the public body will use to
29 evaluate qualifications and finalists' proposals, including evaluation
30 factors and the relative weight of factors and any specific forms to be
31 used by the proposers;

32 (i) Evaluation factors for request for qualifications shall
33 include, but not be limited to, technical qualifications, such as
34 specialized experience and technical competence; capability to perform;
35 past performance of the proposers' team, including the architect-
36 engineer and construction members; and other appropriate factors.

37 Evaluation factors may also include: (A) The proposer's past

1 performance in utilization of small business entities; (B)
2 disadvantaged business enterprises; and (C) the proposer's past
3 performance using life-cycle or energy performance design-build goals.
4 Cost or price-related factors are not permitted in the request for
5 qualifications phase;

6 (ii) Evaluation factors for finalists' proposals shall include, but
7 not be limited to, the factors listed in (d)(i) of this subsection, as
8 well as technical approach design concept; ~~((proposal price+))~~ ability
9 of professional personnel; past performance on similar projects;
10 ability to meet time and budget requirements; ability to provide a
11 performance and payment bond for the project; recent, current, and
12 projected workloads of the firm; ~~((and))~~ location; and cost or price-
13 related factors that may include operating costs. The public body may
14 also consider: (A) A proposer's outreach plan to include small
15 business entities and disadvantaged business enterprises as
16 subcontractor and suppliers for the project; and (B) life-cycle costs
17 including utility and other operating costs. Alternatively, if the
18 public body determines that all finalists will be capable of producing
19 a design that adequately meets project requirements, the public body
20 may award the contract to the firm that submits the responsive proposal
21 with the lowest price;

22 (e) Protest procedures including time limits for filing a protest,
23 which in no event may limit the time to file a protest to fewer than
24 four business days from the date the proposer was notified of the
25 selection decision;

26 (f) The form of the contract to be awarded;

27 ~~((+f+))~~ (g) The ~~((amount))~~ honorarium to be paid to finalists
28 submitting responsive proposals and who are not awarded a design-build
29 contract;

30 ~~((+g+))~~ (h) The schedule for the procurement process and the
31 project; and

32 ~~((+h+))~~ (i) Other information relevant to the project.

33 (2) The public body shall establish an evaluation committee to
34 evaluate the responses to the request for qualifications based solely
35 on the factors, weighting, and process identified in the request for
36 qualifications and any addenda issued by the public body. Based on the
37 evaluation committee's findings, the public body shall select not more

1 than five responsive and responsible finalists to submit proposals.
2 The public body may, in its sole discretion, reject all proposals and
3 shall provide its reasons for rejection in writing to all proposers.

4 (3) The public body must notify all proposers of the finalists
5 selected to move to the next phase of the selection process. The
6 process may not proceed to the next phase until two business days after
7 all proposers are notified of the committee's selection decision. At
8 the request of a proposer not selected as a finalist, the public body
9 must provide the requesting proposer with a scoring summary of the
10 evaluation factors for its proposal. Proposers filing a protest on the
11 selection of the finalists must file the protest in accordance with the
12 published protest procedures. The selection process may not advance to
13 the next phase of selection until two business days after the final
14 protest decision is transmitted to the protestor.

15 (4) Upon selection of the finalists, the public body shall issue a
16 request for proposals to the finalists, which shall provide the
17 following information:

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

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

24 ~~((+4))~~ (5) The public body shall establish an evaluation committee
25 to evaluate the proposals submitted by the finalists. Design-build
26 contracts shall be awarded using the procedures in (a) or (b) of this
27 subsection. The public body must identify in the request for
28 qualifications which procedure will be used.

29 (a) The finalists' proposals shall be evaluated and scored based
30 solely on the factors, weighting, and process identified in the initial
31 request for qualifications and in any addenda published by the public
32 body. Public bodies may request best and final proposals from
33 finalists. The public body ~~((shall))~~ may initiate negotiations with
34 the firm submitting the highest scored proposal. If the public body is
35 unable to execute a contract with the firm submitting the highest
36 scored proposal, negotiations with that firm may be suspended or
37 terminated and the public body may proceed to negotiate with the next

1 highest scored firm. Public bodies shall continue in accordance with
2 this procedure until a contract agreement is reached or the selection
3 process is terminated.

4 (b) If the public body determines that all finalists are capable of
5 producing a design that adequately meets project requirements, the
6 public body may award the contract to the firm that submits the
7 responsive proposal with the lowest price.

8 ~~((+5))~~ (6) The public body shall notify all finalists of the
9 selection decision and make a selection summary of the final proposals
10 available to all proposers within two business days of such
11 notification. If the public body receives a timely written protest
12 from a finalist firm, the public body may not execute a contract until
13 two business days after the final protest decision is transmitted to
14 the protestor. The protestor must submit its protest in accordance
15 with the published protest procedures.

16 (7) The firm awarded the contract shall provide a performance and
17 payment bond for the contracted amount.

18 (8) The public body shall provide appropriate honorarium payments
19 to finalists submitting responsive proposals that are not awarded a
20 design-build contract. Honorarium payments shall be sufficient to
21 generate meaningful competition among potential proposers on design-
22 build projects. In determining the amount of the honorarium, the
23 public body shall consider the level of effort required to meet the
24 selection criteria.

25 **Sec. 12.** RCW 39.10.340 and 2007 c 494 s 301 are each amended to
26 read as follows:

27 Subject to the process in RCW 39.10.270 or 39.10.280, public bodies
28 may utilize the general contractor/construction manager procedure for
29 public works projects where at least one of the following is met:

30 (1) Implementation of the project involves complex scheduling,
31 phasing, or coordination;

32 (2) The project involves construction at an occupied facility which
33 must continue to operate during construction;

34 (3) The involvement of the general contractor/construction manager
35 during the design stage is critical to the success of the project;

36 (4) The project encompasses a complex or technical work
37 environment; or

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

3 **Sec. 13.** RCW 39.10.360 and 2009 c 75 s 6 are each amended to read
4 as follows:

5 (1) Public bodies should select general contractor/construction
6 managers early in the life of public works projects, and in most
7 situations no later than the 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
22 ~~((and))~~, the relative weight of factors, and protest procedures
23 including time limits for filing a protest, which in no event may limit
24 the time to file a protest to fewer than four business days from the
25 date the proposer was notified of the selection decision;

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

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

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

31 (3)(a) Evaluation factors for selection of the general
32 contractor/construction manager shall include, but not be limited to:

33 ~~((+a))~~ (i) Ability of the firm's professional personnel;

34 ~~((+b))~~ (ii) The firm's past performance in negotiated and complex
35 projects;

36 ~~((+c))~~ (iii) The firm's ability to meet time and budget
37 requirements;

1 ~~((d))~~ (iv) The scope of work the firm proposes to self-perform
2 and its ability to perform that work;
3 ~~((e))~~ (v) The firm's proximity to the project location;
4 ~~((f))~~ (vi) Recent, current, and projected workloads of the firm;
5 and
6 ~~((g))~~ (vii) The firm's approach to executing the project.

7 (b) An agency may also consider the firm's outreach plan to include
8 small business entities and disadvantaged business enterprises, and the
9 firm's past performance in the utilization of such firms as an
10 evaluation factor.

11 (4) A public body shall establish a committee to evaluate the
12 proposals. After the committee has selected the most qualified
13 finalists, at the time specified by the public body, these finalists
14 shall submit final proposals, including sealed bids for the percent fee
15 on the estimated maximum allowable construction cost and the fixed
16 amount for the general conditions work specified in the request for
17 proposal. The public body shall establish a time and place for the
18 opening of sealed bids for the percent fee on the estimated maximum
19 allowable construction cost and the fixed amount for the general
20 conditions work specified in the request for proposal. At the time and
21 place named, these bids must be publicly opened and read and the public
22 body shall make all previous scoring available to the public. The
23 public body shall select the firm submitting the highest scored final
24 proposal using the evaluation factors and the relative weight of
25 factors published in the public solicitation of proposals. A public
26 body shall not evaluate or disqualify a proposal based on the terms of
27 a collective bargaining agreement.

28 (5) The public body shall notify all finalists of the selection
29 decision and make a selection summary of the final proposals available
30 to all proposers within two business days of such notification. If the
31 public body receives a timely written protest from a proposer, the
32 public body may not execute a contract until two business days after
33 the final protest decision is transmitted to the protestor. The
34 protestor must submit its protest in accordance with the published
35 protest procedures.

36 (6) Public bodies may contract with the selected firm to provide
37 services during the design phase that may include life-cycle cost
38 design considerations, value engineering, scheduling, cost estimating,

1 constructability, alternative construction options for cost savings,
2 and sequencing of work, and to act as the construction manager and
3 general contractor during the construction phase.

4 **Sec. 14.** RCW 39.10.380 and 2007 c 494 s 305 are each amended to
5 read as follows:

6 (1) All subcontract work and equipment and material purchases shall
7 be competitively bid with public bid openings. Subcontract bid
8 packages and equipment and materials purchases shall be awarded to the
9 responsible bidder submitting the lowest responsive bid. In preparing
10 subcontract bid packages, the general contractor/construction manager
11 shall not be required to violate or waive terms of a collective
12 bargaining agreement.

13 (2) All subcontract bid packages in which bidder eligibility was
14 not determined in advance shall include the specific objective criteria
15 that will be used by the general contractor/construction manager and
16 the public body to evaluate bidder responsibility. If the lowest
17 bidder submitting a responsive bid is determined by the general
18 contractor/construction manager and the public body not to be
19 responsible, the general contractor/construction manager and the public
20 body must provide written documentation to that bidder explaining their
21 intent to reject the bidder as not responsible and afford the bidder
22 the opportunity to establish that it is a responsible bidder.
23 Responsibility shall be determined in accordance with criteria listed
24 in the bid documents. Protests concerning bidder responsibility
25 determination by the general contractor/construction manager and the
26 public body shall be in accordance with subsection (4) of this section.

27 (3) All subcontractors who bid work over three hundred thousand
28 dollars shall post a bid bond. All subcontractors who are awarded a
29 contract over three hundred thousand dollars shall provide a
30 performance and payment bond for the contract amount. All other
31 subcontractors shall provide a performance and payment bond if required
32 by the general contractor/construction manager.

33 (4) If the general contractor/construction manager receives a
34 written protest from a subcontractor bidder or an equipment or material
35 supplier, the general contractor/construction manager shall not execute
36 a contract for the subcontract bid package or equipment or material
37 purchase order with anyone other than the protesting bidder without

1 first providing at least two full business days' written notice to all
2 bidders of the intent to execute a contract for the subcontract bid
3 package. The protesting bidder must submit written notice of its
4 protest no later than two full business days following the bid opening.
5 Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

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

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

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

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

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

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

25 **Sec. 15.** RCW 39.10.385 and 2010 c 163 s 1 are each amended to read
26 as follows:

27 As an alternative to the subcontractor selection process outlined
28 in RCW 39.10.380, a general contractor/construction manager may, with
29 the approval of the public body, select ((~~a~~)) mechanical
30 subcontractors, ((~~an~~)) electrical subcontractors, or both, using the
31 process outlined in this section. This alternative selection process
32 may only be used when the anticipated value of the subcontract will
33 exceed three million dollars. When using the alternative selection
34 process, the general contractor/construction manager should select the
35 subcontractor early in the life of the public works project.

36 (1) In order to use this alternative selection process, the general

1 contractor/construction manager and the public body must determine that
2 it is in the best interest of the public. In making this determination
3 the general contractor/construction manager and the public body must:

4 (a) Publish a notice of intent to use this alternative selection
5 process in a legal newspaper published in or as near as possible to
6 that part of the county where the public work will be constructed.
7 Notice must be published at least fourteen calendar days before
8 conducting a public hearing. The notice must include the date, time,
9 and location of the hearing; a statement justifying the basis and need
10 for the alternative selection process; ~~((and))~~ how interested parties
11 may, prior to the hearing, obtain the evaluation criteria and
12 applicable weight given to each criteria that will be used for
13 evaluation; and protest procedures including time limits for filing a
14 protest, which may in no event, limit the time to file a protest to
15 fewer than four business days from the date the proposer was notified
16 of the selection decision;

17 (b) Conduct a hearing and provide an opportunity for any interested
18 party to submit written and verbal comments regarding the justification
19 for using this selection process, the evaluation criteria, ~~((and))~~
20 weights for each criteria, and protest procedures;

21 (c) After the public hearing, consider the written and verbal
22 comments received and determine if using this alternative selection
23 process is in the best interests of the public; and

24 (d) Issue a written final determination to all interested parties.
25 All protests of the decision to use the alternative selection process
26 must be in writing and submitted to the public body within seven
27 calendar days of the final determination. Any modifications to the
28 criteria ~~((and))~~, weights, and protest procedures based on comments
29 received during the public hearing process must be included in the
30 final determination.

31 (2) Contracts for the services of a subcontractor under this
32 section must be awarded through a competitive process requiring a
33 public solicitation of proposals. Notice of the public solicitation of
34 proposals must be provided to the office of minority and women's
35 business enterprises. The public solicitation of proposals must
36 include:

37 (a) A description of the project, including programmatic,

1 performance, and technical requirements and specifications when
2 available;

3 (b) The reasons for using the alternative selection process;

4 (c) A description of the minimum qualifications required of the
5 firm;

6 (d) A description of the process used to evaluate qualifications
7 and proposals, including evaluation factors and the relative weight of
8 factors;

9 (e) Protest procedures;

10 (f) The form of the contract, including any contract for
11 preconstruction services, to be awarded;

12 (~~(f)~~) (g) The estimated maximum allowable subcontract cost; and

13 (~~(g)~~) (h) The bid instructions to be used by the finalists.

14 (3) Evaluation factors for selection of the subcontractor must
15 include, but not be limited to:

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

17 (b) The firm's past performance on similar projects;

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

19 (d) The scope of work the firm proposes to perform with its own
20 forces and its ability to perform that work;

21 (e) The firm's plan for outreach to minority and women-owned
22 businesses;

23 (f) The firm's proximity to the project location;

24 (g) The firm's capacity to successfully complete the project;

25 (h) The firm's approach to executing the project;

26 (i) The firm's approach to safety on the project;

27 (j) The firm's safety history; and

28 (k) If the firm is selected as one of the most qualified finalists,
29 the firm's fee and cost proposal.

30 (4) The general contractor/construction manager shall establish a
31 committee to evaluate the proposals. At least one representative from
32 the public body shall serve on the committee. Final proposals,
33 including sealed bids for the percent fee on the estimated maximum
34 allowable subcontract cost, and the fixed amount for the subcontract
35 general conditions work specified in the request for proposal, will be
36 requested from the most qualified firms.

37 (5) The general contractor/construction manager must notify all
38 proposers of the most qualified firms that will move to the next phase

1 of the selection process. The process may not proceed to the next
2 phase until two business days after all proposers are notified of the
3 committee's selection decision. At the request of a proposer, the
4 general contractor/construction manager must provide the requesting
5 proposer with a scoring summary of the evaluation factors for its
6 proposal. Proposers filing a protest on the selection of the most
7 qualified finalists must file the protest with the public body in
8 accordance with the published protest procedures. The selection
9 process may not advance to the next phase of selection until two
10 business days after the final protest decision issued by the public
11 body is transmitted to the protestor.

12 (6) The general contractor/construction manager and the public body
13 shall select the firm submitting the highest scored final proposal
14 using the evaluation factors and the relative weight of factors
15 identified in the solicitation of proposals. The scoring of the
16 nonprice factors must be made available at the opening of the fee and
17 cost proposals. The general contractor/construction manager shall
18 notify all proposers of the selection decision and make a selection
19 summary of the final proposals, which shall be available to all
20 proposers within two business days of such notification. The general
21 contractor/construction manager may not evaluate or disqualify a
22 proposal based on the terms of a collective bargaining agreement.

23 ~~((+5))~~ (7) If the public body receives a timely written protest
24 from a "most qualified firm," the general contractor/construction
25 manager may not execute a contract for the protested subcontract work
26 until two business days after the final protest decision issued by the
27 public body is transmitted to the protestor. The protestor must submit
28 its protest in accordance with the published protest procedures.

29 (8) If the general contractor/construction manager is unable to
30 negotiate a satisfactory maximum allowable subcontract cost with the
31 firm selected deemed by public body and the general
32 contractor/construction manager to be fair, reasonable, and within the
33 available funds, negotiations with that firm must be formally
34 terminated and the general contractor/construction manager may
35 negotiate with the next highest scored firm until an agreement is
36 reached or the process is terminated.

37 ~~((+6) If the general contractor/construction manager receives a~~
38 ~~written protest from a bidder, it may not execute a contract for the~~

1 ~~subject work with anyone other than the protesting bidder, without~~
2 ~~first providing at least two full business days' written notice to all~~
3 ~~bidders of the intent to execute a contract for the subcontract bid~~
4 ~~package. The protesting bidder must submit written notice to the~~
5 ~~general contractor/construction manager of its protest no later than~~
6 ~~two full business days following the bid opening.~~

7 (+7)) (9) With the approval of the public body, the general
8 contractor/construction manager may contract with the selected firm to
9 provide preconstruction services during the design phase that may
10 include life-cycle cost design considerations, value engineering,
11 scheduling, cost estimating, constructability, alternative construction
12 options for cost savings, and sequencing of work; and to act as the
13 mechanical or electrical subcontractor during the construction phase.

14 ((+8)) (10) The maximum allowable subcontract cost must be used to
15 establish a total subcontract cost for purposes of a performance and
16 payment bond. Total subcontract cost means the fixed amount for the
17 detailed specified general conditions work, the negotiated maximum
18 allowable subcontract cost, and the percent fee on the negotiated
19 maximum allowable subcontract cost. Maximum allowable subcontract cost
20 means the maximum cost to complete the work specified for the
21 subcontract, including the estimated cost of work to be performed by
22 the subcontractor's own forces, a percentage for risk contingency,
23 negotiated support services, and approved change orders. The maximum
24 allowable subcontract cost must be negotiated between the general
25 contractor/construction manager and the selected firm when the
26 construction documents and specifications are at least ninety percent
27 complete. Final agreement on the maximum allowable subcontract cost is
28 subject to the approval of the public body.

29 ((+9)) (11) If the work of the mechanical contractor or electrical
30 contractor is completed for less than the maximum allowable subcontract
31 cost, any savings not otherwise negotiated as part of an incentive
32 clause becomes part of the risk contingency included in the general
33 contractor/construction manager's maximum allowable construction cost.
34 If the work of the mechanical contractor or the electrical contractor
35 is completed for more than the maximum allowable subcontract cost, the
36 additional cost is the responsibility of that subcontractor. An
37 independent audit, paid for by the public body, must be conducted

1 ((upon completion of the contract)) to confirm the proper accrual of
2 costs as outlined in the contract.

3 ((+10)) (12) A mechanical or electrical contractor selected under
4 this section may perform work with its own forces. In the event it
5 elects to subcontract some of its work, it must select a subcontractor
6 utilizing the procedure outlined in RCW 39.10.380.

7 **Sec. 16.** RCW 39.10.390 and 2007 c 494 s 306 are each amended to
8 read as follows:

9 (1) Except as provided in this section, bidding on subcontract work
10 or for the supply of equipment or materials by the general
11 contractor/construction manager or its subsidiaries is prohibited.

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

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

18 (b) The bid opening is managed by the public body and is in
19 compliance with RCW 39.10.380; and

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

23 (3) In no event may the general contractor/construction manager or
24 its subsidiaries (~~((purchase equipment or materials for assignment to
25 subcontract bid package bidders for installation or warranty))~~) assign
26 warranty responsibility or the terms of its contract or purchase order
27 with vendors for equipment or material purchases to subcontract bid
28 package bidders or subcontractors who have been awarded a contract.

29 The value of subcontract work performed and equipment and materials
30 supplied by the general contractor/construction manager may not exceed
31 thirty percent of the negotiated maximum allowable construction cost.
32 Negotiated support services performed by the general
33 contractor/construction manager shall not be considered subcontract
34 work for purposes of this subsection.

35 **Sec. 17.** RCW 39.10.400 and 2007 c 494 s 307 are each amended to
36 read as follows:

1 (1) If determination of subcontractor eligibility prior to seeking
2 bids is in the best interest of the project and critical to the
3 successful completion of a subcontract bid package, the general
4 contractor/construction manager and the public body may determine
5 subcontractor eligibility to bid. The general contractor/construction
6 manager and the public body must:

7 (a) Conduct a hearing and provide an opportunity for any interested
8 party to submit written and verbal comments regarding the justification
9 for conducting bidder eligibility, the evaluation criteria, and weights
10 for each criteria and subcriteria;

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

15 (c) Ensure the public hearing notice includes the date, time, and
16 location of the hearing, a statement justifying the basis and need for
17 performing eligibility analysis before bid opening, and how interested
18 parties may, at least five days before the hearing, obtain the specific
19 eligibility criteria and applicable weights given to each criteria and
20 subcriteria that will be used during evaluation;

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

25 (e) Issue a written final determination to all interested parties.
26 All protests of the decision to establish bidder eligibility before
27 issuing a subcontractor bid package must be filed with the superior
28 court within seven calendar days of the final determination. Any
29 modifications to the eligibility criteria and weights shall be based on
30 comments received during the public hearing process and shall be
31 included in the final determination.

32 (2) Determinations of bidder eligibility shall be in accordance
33 with the evaluation criteria and weights for each criteria established
34 in the final determination and shall be provided to interested persons
35 upon request. Any potential bidder determined not to meet eligibility
36 criteria must be afforded ((the)) one opportunity to establish its
37 eligibility. Protests concerning bidder eligibility determinations
38 shall be in accordance with subsection (1) of this section.

1 **Sec. 18.** RCW 39.10.420 and 2012 c 102 s 1 are each amended to read
2 as follows:

3 (1) The following public bodies of the state of Washington are
4 authorized to award job order contracts and use the job order
5 contracting procedure:

6 (a) The department of enterprise services;

7 (b) The state universities, regional universities, and The
8 Evergreen State College;

9 (c) Sound transit (central Puget Sound regional transit authority);

10 (d) Every city with a population greater than seventy thousand and
11 any public authority chartered by such city under RCW 35.21.730 through
12 35.21.755;

13 (e) Every county with a population greater than four hundred fifty
14 thousand;

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

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

19 (h) Every school district; and

20 (i) The state ferry system.

21 (2)(a) The department of enterprise services may issue job order
22 contract work orders for Washington state parks department projects.

23 (b) The department of enterprise services, the University of
24 Washington, and Washington State University may issue job order
25 contract work orders for the state regional universities and The
26 Evergreen State College.

27 (3) Public bodies may use a job order contract for public works
28 projects when a determination is made that the use of job order
29 contracts will benefit the public by providing an effective means of
30 reducing the total lead-time and cost for the construction of public
31 works projects for repair and renovation required at public facilities
32 through the use of unit price books and work orders by eliminating
33 time-consuming, costly aspects of the traditional public works process,
34 which require separate contracting actions for each small project.

35 **Sec. 19.** RCW 39.10.440 and 2007 c 494 s 403 are each amended to
36 read as follows:

37 (1) The maximum total dollar amount that may be awarded under a job

1 order contract is four million dollars per year for a maximum of three
2 years. The maximum total dollar amount that may be awarded under a job
3 order contract for counties with a population of more than one million
4 is six million dollars per year for a maximum of three years.

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

11 (3) A public body may have no more than two job order contracts in
12 effect at any one time, with the exception of the department of
13 (~~general administration~~) enterprise services, which may have four job
14 order contracts in effect at any one time.

15 (4) At least ninety percent of work contained in a job order
16 contract must be subcontracted to entities other than the job order
17 contractor. The job order contractor must distribute contracts as
18 equitably as possible among qualified and available subcontractors
19 including minority and woman-owned subcontractors to the extent
20 permitted by law.

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

26 (6) Job order contractors shall pay prevailing wages for all work
27 that would otherwise be subject to the requirements of chapter 39.12
28 RCW. Prevailing wages for all work performed pursuant to each work
29 order must be the rates in effect at the time the individual work order
30 is issued.

31 (7) If, in the initial contract term, the public body, at no fault
32 of the job order contractor, fails to issue the minimum amount of work
33 orders stated in the public request for proposals, the public body
34 shall pay the contractor an amount equal to the difference between the
35 minimum work order amount and the actual total of the work orders
36 issued multiplied by an appropriate percentage for overhead and profit
37 contained in the contract award coefficient for services as specified
38 in the request for proposals. This is the contractor's sole remedy.

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

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

6 **Sec. 20.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to read
7 as follows:

8 (1) The maximum dollar amount for a work order is three hundred
9 fifty thousand dollars.

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

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

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

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

23 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
24 each work order issued shall be treated as a separate contract. The
25 alternate filing provisions of RCW 39.12.040(2) apply to each work
26 order that otherwise meets the eligibility requirements of RCW
27 39.12.040(2).

28 (7) The job order contract shall not be used for the procurement of
29 architectural or engineering services (~~(not associated with specific~~
30 ~~work orders)~~). Architectural and engineering services shall be
31 procured in accordance with RCW 39.80.040.

32 **Sec. 21.** RCW 39.10.490 and 2007 c 494 s 501 are each amended to
33 read as follows:

34 The alternative public works contracting procedures authorized
35 under this chapter are limited to public works contracts signed before

1 July 1, ((2013)) 2021. Methods of public works contracting authorized
2 under this chapter shall remain in full force and effect until
3 completion of contracts signed before July 1, ((2013)) 2021.

4 **Sec. 22.** RCW 43.131.407 and 2007 c 494 s 506 are each amended to
5 read as follows:

6 The alternative ((~~public~~)) public works contracting procedures
7 under chapter 39.10 RCW shall be terminated June 30, ((2013)) 2021, as
8 provided in RCW 43.131.408.

9 **Sec. 23.** RCW 43.131.408 and 2012 c 102 s 4 are each amended to
10 read as follows:

11 The following acts or parts of acts, as now existing or hereafter
12 amended, are each repealed, effective June 30, ((2014)) 2022:

13 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
14 1994 c 132 s 1;

15 (2) RCW 39.10.210 and 2013 c ... s 1 (section 1 of this act), 2010
16 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

17 (3) RCW 39.10.220 and 2013 c ... s 2 (section 2 of this act), 2007
18 c 494 s 102, & 2005 c 377 s 1;

19 (4) RCW 39.10.230 and 2013 c ... s 3 (section 3 of this act), 2010
20 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

21 (5) RCW 39.10.240 and 2013 c ... s 4 (section 4 of this act) & 2007
22 c 494 s 104;

23 (6) RCW 39.10.250 and 2013 c ... s 5 (section 5 of this act), 2009
24 c 75 s 2, & 2007 c 494 s 105;

25 (7) RCW 39.10.260 and 2013 c ... s 6 (section 6 of this act) & 2007
26 c 494 s 106;

27 (8) RCW 39.10.270 and 2013 c ... s 7 (section 7 of this act), 2009
28 c 75 s 3, & 2007 c 494 s 107;

29 (9) RCW 39.10.280 and 2013 c ... s 8 (section 8 of this act) & 2007
30 c 494 s 108;

31 (10) RCW 39.10.290 and 2007 c 494 s 109;

32 (11) RCW 39.10.300 and 2013 c ... s 9 (section 9 of this act), 2009
33 c 75 s 4, & 2007 c 494 s 201;

34 (12) RCW 39.10.320 and 2013 c ... s 10 (section 10 of this act),
35 2007 c 494 s 203, & 1994 c 132 s 7;

1 (13) RCW 39.10.330 and 2013 c ... s 11 (section 11 of this act),
2 2009 c 75 s 5, & 2007 c 494 s 204;
3 (14) RCW 39.10.340 and 2013 c ... s 12 (section 12 of this act) &
4 2007 c 494 s 301;
5 (15) RCW 39.10.350 and 2007 c 494 s 302;
6 (16) RCW 39.10.360 and 2013 c ... s 13 (section 13 of this act),
7 2009 c 75 s 6, & 2007 c 494 s 303;
8 (17) RCW 39.10.370 and 2007 c 494 s 304;
9 (18) RCW 39.10.380 and 2013 c ... s 14 (section 14 of this act) &
10 2007 c 494 s 305;
11 (19) RCW 39.10.385 and 2013 c ... s 15 (section 15 of this act) &
12 2010 c 163 s 1;
13 (20) RCW 39.10.390 and 2013 c ... s 16 (section 16 of this act) &
14 2007 c 494 s 306;
15 (21) RCW 39.10.400 and 2013 c ... s 17 (section 17 of this act) &
16 2007 c 494 s 307;
17 (22) RCW 39.10.410 and 2007 c 494 s 308;
18 (23) RCW 39.10.420 and 2013 c ... s 18 (section 18 of this act),
19 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;
20 (24) RCW 39.10.430 and 2007 c 494 s 402;
21 (25) RCW 39.10.440 and 2013 c ... s 19 (section 19 of this act) &
22 2007 c 494 s 403;
23 (26) RCW 39.10.450 and 2013 c ... s 20 (section 20 of this act),
24 2012 c 102 s 2, & 2007 c 494 s 404;
25 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
26 (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;
27 (29) RCW 39.10.480 and 1994 c 132 s 9;
28 (30) RCW 39.10.490 and 2013 c ... s 21 (section 21 of this act),
29 2007 c 494 s 501, & 2001 c 328 s 5;
30 (~~(31) ((RCW 39.10.500 and 2007 c 494 s 502;~~
31 ~~(32) RCW 39.10.510 and 2007 c 494 s 503;~~
32 ~~(33))~~) RCW 39.10.900 and 1994 c 132 s 13;
33 ((~~(34)~~)) (32) RCW 39.10.901 and 1994 c 132 s 14;
34 ((~~(35)~~)) (33) RCW 39.10.903 and 2007 c 494 s 510;
35 ((~~(36)~~)) (34) RCW 39.10.904 and 2007 c 494 s 512; and
36 ((~~(37)~~)) (35) RCW 39.10.905 and 2007 c 494 s 513.

1 NEW SECTION. **Sec. 24.** The following acts or parts of acts are
2 each repealed:

- 3 (1) RCW 39.10.500 (Exemptions) and 2007 c 494 s 502; and
4 (2) RCW 39.10.510 (Previously advertised projects) and 2007 c 494
5 s 503.

6 NEW SECTION. **Sec. 25.** A new section is added to chapter 43.131
7 RCW to read as follows:

- 8 (1) If the sunset review process in RCW 43.131.010 through
9 43.131.150 expires before June 30, 2021, the joint legislative audit
10 and review committee must conduct a program and fiscal review of the
11 alternative public works contracting procedures authorized in chapter
12 39.10 RCW. The review must be completed by June 30, 2021, and findings
13 reported to the office of financial management and any affected
14 entities. The report must be prepared in the manner set forth in RCW
15 44.28.071 and 44.28.075.
16 (2) This section expires July 1, 2022.

17 NEW SECTION. **Sec. 26.** Section 25 of this act takes effect upon
18 the expiration of RCW 43.131.051.

19 NEW SECTION. **Sec. 27.** Sections 1 through 24 of this act are
20 necessary for the immediate preservation of the public peace, health,
21 or safety, or support of the state government and its existing public
22 institutions, and take effect June 30, 2013."

23 Correct the title.

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