

HB 2555 - S COMM AMD

By Committee on Governmental Operations

ADOPTED 02/26/2014

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

3 "Sec. 1. RCW 39.10.330 and 2013 c 222 s 11 are each amended to
4 read as follows:

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

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

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

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

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

24 (i) Evaluation factors for request for qualifications shall
25 include, but not be limited to, technical qualifications, such as
26 specialized experience and technical competence; capability to perform;
27 past performance of the proposers' team, including the architect-
28 engineer and construction members; and other appropriate factors.
29 Evaluation factors may also include: (A) The proposer's past

1 performance in utilization of small business entities; and (B)
2 disadvantaged business enterprises. Cost or price-related factors are
3 not permitted in the request for qualifications phase;

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

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

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

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

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

26 (i) Other information relevant to the project.

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

35 (3) The public body must notify all proposers of the finalists
36 selected to move to the next phase of the selection process. The
37 process may not proceed to the next phase until two business days after
38 all proposers are notified of the committee's selection decision. At

1 the request of a proposer not selected as a finalist, the public body
2 must provide the requesting proposer with a scoring summary of the
3 evaluation factors for its proposal. Proposers filing a protest on the
4 selection of the finalists must file the protest in accordance with the
5 published protest procedures. The selection process may not advance to
6 the next phase of selection until two business days after the final
7 protest decision is transmitted to the protestor.

8 (4) Upon selection of the finalists, the public body shall issue a
9 request for proposals to the finalists, which shall provide the
10 following information:

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

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

18 (5) The public body shall establish an evaluation committee to
19 evaluate the proposals submitted by the finalists. Design-build
20 contracts shall be awarded using the procedures in (a) or (b) of this
21 subsection. The public body must identify in the request for
22 qualifications which procedure will be used.

23 (a) The finalists' proposals shall be evaluated and scored based
24 solely on the factors, weighting, and process identified in the initial
25 request for qualifications and in any addenda published by the public
26 body. Public bodies may request best and final proposals from
27 finalists. The public body may initiate negotiations with the firm
28 submitting the highest scored proposal. If the public body is unable
29 to execute a contract with the firm submitting the highest scored
30 proposal, negotiations with that firm may be suspended or terminated
31 and the public body may proceed to negotiate with the next highest
32 scored firm. Public bodies shall continue in accordance with this
33 procedure until a contract agreement is reached or the selection
34 process is terminated.

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

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

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

11 (8) The public body shall provide appropriate honorarium payments
12 to finalists submitting responsive proposals that are not awarded a
13 design-build contract. Honorarium payments shall be sufficient to
14 generate meaningful competition among potential proposers on design-
15 build projects. In determining the amount of the honorarium, the
16 public body shall consider the level of effort required to meet the
17 selection criteria.

18 **Sec. 2.** RCW 39.10.470 and 2005 c 274 s 275 are each amended to
19 read as follows:

20 (1) Except as provided in subsections (2) and (3) of this section,
21 all proceedings, records, contracts, and other public records relating
22 to alternative public works transactions under this chapter shall be
23 open to the inspection of any interested person, firm, or corporation
24 in accordance with chapter 42.56 RCW.

25 (2) Trade secrets, as defined in RCW 19.108.010, or other
26 proprietary information submitted by a bidder, offeror, or contractor
27 in connection with an alternative public works transaction under this
28 chapter shall not be subject to chapter 42.56 RCW if the bidder,
29 offeror, or contractor specifically states in writing the reasons why
30 protection is necessary, and identifies the data or materials to be
31 protected.

32 (3) Proposals submitted by design-build finalists are exempt from
33 disclosure until the notification of the highest scoring finalist is
34 made in accordance with RCW 39.10.330(5) or the selection process is
35 terminated.

1 **Sec. 3.** RCW 43.131.408 and 2013 c 222 s 22 and 2013 c 186 s 2 are
2 each reenacted and amended to read as follows:

3 The following acts or parts of acts, as now existing or hereafter
4 amended, are each repealed, effective June 30, 2022:

5 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
6 1994 c 132 s 1;

7 (2) RCW 39.10.210 and 2013 c 222 s 1, 2010 1st sp.s. c 36 s 6014,
8 2007 c 494 s 101, & 2005 c 469 s 3;

9 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c
10 377 s 1;

11 (4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009
12 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

13 (5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

14 (6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494
15 s 105;

16 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

17 (8) RCW 39.10.270 and 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494
18 s 107;

19 (9) RCW 39.10.280 and 2013 c 222 s 8 & 2007 c 494 s 108;

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

21 (11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494
22 s 201;

23 (12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c
24 132 s 7;

25 (13) RCW 39.10.330 and 2014 c ... s 1 (section 1 of this act), 2013
26 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;

27 (14) RCW 39.10.340 and 2013 c 222 s 12 & 2007 c 494 s 301;

28 (15) RCW 39.10.350 and 2007 c 494 s 302;

29 (16) RCW 39.10.360 and 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494
30 s 303;

31 (17) RCW 39.10.370 and 2007 c 494 s 304;

32 (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;

33 (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;

34 (20) RCW 39.10.390 and 2013 c 222 s 16 & 2007 c 494 s 306;

35 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;

36 (22) RCW 39.10.410 and 2007 c 494 s 308;

37 (23) RCW 39.10.420 and 2013 c 222 s 18, 2013 c 186 s 1, 2012 c 102
38 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;

- 1 (24) RCW 39.10.430 and 2007 c 494 s 402;
2 (25) RCW 39.10.440 and 2013 c 222 s 19 & 2007 c 494 s 403;
3 (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
4 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
5 (28) RCW 39.10.470 and 2014 c ... s 2 (section 2 of this act), 2005
6 c 274 s 275, & 1994 c 132 s 10;
7 (29) RCW 39.10.480 and 1994 c 132 s 9;
8 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c
9 328 s 5;
10 (31) RCW 39.10.900 and 1994 c 132 s 13;
11 (32) RCW 39.10.901 and 1994 c 132 s 14;
12 (33) RCW 39.10.903 and 2007 c 494 s 510;
13 (34) RCW 39.10.904 and 2007 c 494 s 512; and
14 (35) RCW 39.10.905 and 2007 c 494 s 513."

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15 On page 1, line 1 of the title, after "Relating to" strike the
16 remainder of the title and insert "finalists for design-build
17 contracts; amending RCW 39.10.330 and 39.10.470; and reenacting and
18 amending RCW 43.131.408."

EFFECT: Exempts proposals of finalists for design-build contracts from public disclosure until the highest scoring finalist is notified or until the selection process is terminated.

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