

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2555

63rd Legislature
2014 Regular Session

Passed by the House March 10, 2014
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate February 26, 2014
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2555** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2555

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Dunshee and Tarleton

Read first time 01/21/14. Referred to Committee on Capital Budget.

1 AN ACT Relating to finalists for design-build contracts; amending
2 RCW 39.10.330 and 39.10.470; and reenacting and amending RCW
3 43.131.408.

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

5 **Sec. 1.** RCW 39.10.330 and 2013 c 222 s 11 are each amended to read
6 as follows:

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

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

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

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

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

8 (i) Evaluation factors for request for qualifications shall
9 include, but not be limited to, technical qualifications, such as
10 specialized experience and technical competence; capability to perform;
11 past performance of the proposers' team, including the architect-
12 engineer and construction members; and other appropriate factors.
13 Evaluation factors may also include: (A) The proposer's past
14 performance in utilization of small business entities; and (B)
15 disadvantaged business enterprises. Cost or price-related factors are
16 not permitted in the request for qualifications phase;

17 (ii) Evaluation factors for finalists' proposals shall include, but
18 not be limited to, the factors listed in (d)(i) of this subsection, as
19 well as technical approach design concept; ability of professional
20 personnel; past performance on similar projects; ability to meet time
21 and budget requirements; ability to provide a performance and payment
22 bond for the project; recent, current, and projected workloads of the
23 firm; location; and cost or price-related factors that may include
24 operating costs. The public body may also consider a proposer's
25 outreach plan to include small business entities and disadvantaged
26 business enterprises as subcontractor and suppliers for the project.
27 Alternatively, if the public body determines that all finalists will be
28 capable of producing a design that adequately meets project
29 requirements, the public body may award the contract to the firm that
30 submits the responsive proposal with the lowest price;

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

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

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

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

1 (i) Other information relevant to the project.

2 (2) The public body shall establish an evaluation committee to
3 evaluate the responses to the request for qualifications based solely
4 on the factors, weighting, and process identified in the request for
5 qualifications and any addenda issued by the public body. Based on the
6 evaluation committee's findings, the public body shall select not more
7 than five responsive and responsible finalists to submit proposals.
8 The public body may, in its sole discretion, reject all proposals and
9 shall provide its reasons for rejection in writing to all proposers.

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

21 (4) Upon selection of the finalists, the public body shall issue a
22 request for proposals to the finalists, which shall provide the
23 following information:

24 (a) A detailed description of the project including programmatic,
25 performance, and technical requirements and specifications; functional
26 and operational elements; building performance goals and validation
27 requirements; minimum and maximum net and gross areas of any building;
28 and, at the discretion of the public body, preliminary engineering and
29 architectural drawings; and

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

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

36 (a) The finalists' proposals shall be evaluated and scored based
37 solely on the factors, weighting, and process identified in the initial
38 request for qualifications and in any addenda published by the public

1 body. Public bodies may request best and final proposals from
2 finalists. The public body may initiate negotiations with the firm
3 submitting the highest scored proposal. If the public body is unable
4 to execute a contract with the firm submitting the highest scored
5 proposal, negotiations with that firm may be suspended or terminated
6 and the public body may proceed to negotiate with the next highest
7 scored firm. Public bodies shall continue in accordance with this
8 procedure until a contract agreement is reached or the selection
9 process is terminated.

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

14 (6) The public body shall notify all finalists of the selection
15 decision and make a selection summary of the final proposals available
16 to all proposers within two business days of such notification. If the
17 public body receives a timely written protest from a finalist firm, the
18 public body may not execute a contract until two business days after
19 the final protest decision is transmitted to the protestor. The
20 protestor must submit its protest in accordance with the published
21 protest procedures.

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

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

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

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

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

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

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

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

16 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
17 1994 c 132 s 1;

18 (2) RCW 39.10.210 and 2013 c 222 s 1, 2010 1st sp.s. c 36 s 6014,
19 2007 c 494 s 101, & 2005 c 469 s 3;

20 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c
21 377 s 1;

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

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

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

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

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

30 (9) RCW 39.10.280 and 2013 c 222 s 8 & 2007 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 222 s 9, 2009 c 75 s 4, & 2007 c 494
33 s 201;

34 (12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c
35 132 s 7;

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

1 (14) RCW 39.10.340 and 2013 c 222 s 12 & 2007 c 494 s 301;
2 (15) RCW 39.10.350 and 2007 c 494 s 302;
3 (16) RCW 39.10.360 and 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494
4 s 303;
5 (17) RCW 39.10.370 and 2007 c 494 s 304;
6 (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;
7 (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;
8 (20) RCW 39.10.390 and 2013 c 222 s 16 & 2007 c 494 s 306;
9 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
10 (22) RCW 39.10.410 and 2007 c 494 s 308;
11 (23) RCW 39.10.420 and 2013 c 222 s 18, 2013 c 186 s 1, 2012 c 102
12 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;
13 (24) RCW 39.10.430 and 2007 c 494 s 402;
14 (25) RCW 39.10.440 and 2013 c 222 s 19 & 2007 c 494 s 403;
15 (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
16 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
17 (28) RCW 39.10.470 and 2014 c ... s 2 (section 2 of this act), 2005
18 c 274 s 275₊ & 1994 c 132 s 10;
19 (29) RCW 39.10.480 and 1994 c 132 s 9;
20 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c
21 328 s 5;
22 (31) RCW 39.10.900 and 1994 c 132 s 13;
23 (32) RCW 39.10.901 and 1994 c 132 s 14;
24 (33) RCW 39.10.903 and 2007 c 494 s 510;
25 (34) RCW 39.10.904 and 2007 c 494 s 512; and
26 (35) RCW 39.10.905 and 2007 c 494 s 513.

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