
SENATE BILL 6546

State of Washington

65th Legislature

2018 Regular Session

By Senators Hasegawa and Warnick

1 AN ACT Relating to design-build and job order contracting for
2 alternative public works; amending RCW 39.10.250, 39.10.270,
3 39.10.300, 39.10.420, 39.10.440, and 39.10.450; and reenacting and
4 amending RCW 43.131.408.

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

6 **Sec. 1.** RCW 39.10.250 and 2013 c 222 s 5 are each amended to
7 read as follows:

8 The committee shall:

9 (1) Certify, or renew certification for, public bodies to use
10 design-build or general contractor/construction manager contracting
11 procedures, or both;

12 (2) Review and approve the use of the design-build or general
13 contractor/construction manager contracting procedures on a project
14 by project basis for public bodies that are not certified under RCW
15 39.10.270; and

16 ~~(3) ((Review and approve not more than fifteen projects using the~~
17 ~~design-build contracting procedure by noncertified public bodies for~~
18 ~~projects that have a total project cost between two million and ten~~
19 ~~million dollars. Projects must meet the criteria in RCW 39.10.300(1).~~
20 ~~Where possible, the committee shall approve projects among multiple~~
21 ~~public bodies. At least annually, the committee shall report to the~~

1 ~~board regarding the committee's review procedure of these projects~~
2 ~~and its recommendations for further use; and~~

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

6 **Sec. 2.** RCW 39.10.270 and 2017 c 211 s 1 are each amended to
7 read as follows:

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

21 (2) A public body seeking certification for the design-build
22 procedure must demonstrate successful management of at least one
23 design-build project within the previous five years. A public body
24 seeking certification for the general contractor/construction manager
25 procedure must demonstrate successful management of at least one
26 general contractor/construction manager project within the previous
27 five years.

28 (3) To certify a public body, the committee shall determine that
29 the public body:

30 (a) Has the necessary experience and qualifications to determine
31 which projects are appropriate for using alternative contracting
32 procedures;

33 (b) Has the necessary experience and qualifications to carry out
34 the alternative contracting procedure including, but not limited to:
35 (i) Project delivery knowledge and experience; (ii) personnel with
36 appropriate construction experience; (iii) a management plan and
37 rationale for its alternative public works projects; (iv)
38 demonstrated success in managing public works projects; (v) the
39 ability to properly manage its capital facilities plan including, but

1 not limited to, appropriate project planning and budgeting
2 experience; and (vi) the ability to meet requirements of this
3 chapter; and

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

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

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

17 (6) The committee may renew the certification of a public body
18 for additional three-year periods. The public body must submit an
19 application for recertification at least three months before the
20 initial certification expires. The committee may accept late
21 applications, if administratively feasible, to avoid expiration of
22 certification on a case-by-case basis. The application shall include
23 updated information on the public body's experience and current
24 staffing with the procedure it is applying to renew, and any other
25 information requested in advance by the committee. The committee must
26 review the application for recertification at a meeting held before
27 expiration of the applicant's initial certification period. A public
28 body must reapply for certification under the process described in
29 subsection (1) of this section once the period of recertification
30 expires.

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

33 **Sec. 3.** RCW 39.10.300 and 2013 c 222 s 9 are each amended to
34 read as follows:

35 (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or
36 39.10.280, public bodies may utilize the design-build procedure for
37 public works projects in which the total project cost is (~~over ten~~)
38 equal to or greater than two million dollars and where:

1 (a) The construction activities are highly specialized and a
2 design-build approach is critical in developing the construction
3 methodology; or

4 (b) The projects selected provide opportunity for greater
5 innovation or efficiencies between the designer and the builder; or

6 (c) Significant savings in project delivery time would be
7 realized.

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

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

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

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

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

34 **Sec. 4.** RCW 39.10.420 and 2017 c 136 s 1 are each amended to
35 read as follows:

36 (1) ~~((The following))~~ All public bodies of the state of
37 Washington are authorized to award job order contracts and use the
38 job order contracting procedure(~~(-~~

39 ~~(a) The department of enterprise services;~~

1 ~~(b) The state universities, regional universities, and The~~
2 ~~Evergreen State College;~~

3 ~~(c) Sound transit (central Puget Sound regional transit~~
4 ~~authority);~~

5 ~~(d) Every city with a population greater than seventy thousand~~
6 ~~and any public authority chartered by such city under RCW 35.21.730~~
7 ~~through 35.21.755;~~

8 ~~(e) Every county with a population greater than four hundred~~
9 ~~fifty thousand;~~

10 ~~(f) Every port district with total revenues greater than fifteen~~
11 ~~million dollars per year;~~

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

14 ~~(h) Every school district;~~

15 ~~(i) The state ferry system;~~

16 ~~(j) The Washington state department of transportation, for the~~
17 ~~administration of building improvement, replacement, and renovation~~
18 ~~projects only;~~

19 ~~(k) Every public hospital district with total revenues greater~~
20 ~~than fifteen million dollars per year; and~~

21 ~~(l) Every public transportation benefit area authority as defined~~
22 ~~under RCW 36.57A.010)).~~

23 (2)(a) The department of enterprise services may issue job order
24 contract work orders for Washington state parks department projects
25 and public hospital districts.

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

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

1 **Sec. 5.** RCW 39.10.440 and 2015 c 173 s 1 are each amended to
2 read as follows:

3 (1) The maximum total dollar amount that may be awarded under a
4 job order contract is four million dollars per year for a maximum of
5 three years. Any unused capacity from the previous year may be
6 carried over and added to the next year's limit. The maximum total
7 dollar amount that may be awarded under a job order contract for the
8 department of enterprise services, counties with a population of more
9 than one million, and cities with a population of more than four
10 hundred thousand is six million dollars per year for a maximum of
11 three years. The maximum total dollar amounts are exclusive of
12 Washington state sales tax.

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

19 (3) A public body may have no more than (~~two~~) three job order
20 contracts in effect at any one time, with the exception of the
21 department of enterprise services, which may have six job order
22 contracts in effect at any one time.

23 (4) At least ninety percent of work contained in a job order
24 contract must be subcontracted to entities other than the job order
25 contractor. The job order contractor must distribute contracts as
26 equitably as possible among qualified and available subcontractors
27 including certified minority and woman-owned subcontractors to the
28 extent permitted by law.

29 (5) The job order contractor shall publish notification of intent
30 to perform public works projects at the beginning of each contract
31 year in a statewide publication and in a legal newspaper of general
32 circulation in every county in which the public works projects are
33 anticipated.

34 (6) Job order contractors shall pay prevailing wages for all work
35 that would otherwise be subject to the requirements of chapter 39.12
36 RCW. Prevailing wages for all work performed pursuant to each work
37 order must be the rates in effect at the time the individual work
38 order is issued.

39 (7) If, in the initial contract term, the public body, at no
40 fault of the job order contractor, fails to issue the minimum amount

1 of work orders stated in the public request for proposals, the public
2 body shall pay the contractor an amount equal to the difference
3 between the minimum work order amount and the actual total of the
4 work orders issued multiplied by an appropriate percentage for
5 overhead and profit contained in the contract award coefficient for
6 services as specified in the request for proposals. This is the
7 contractor's sole remedy.

8 (8) All job order contracts awarded under this section must be
9 signed before July 1, 2021; however the job order contract may be
10 extended or renewed as provided for in this section.

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

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

15 (1) The maximum dollar amount for a work order is (~~three hundred~~
16 ~~fifty~~) five hundred thousand dollars, excluding Washington state
17 sales tax.

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

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

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

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

34 (~~(6))~~) (5) For purposes of chapters 39.08, 39.12, 39.76, and
35 60.28 RCW, each work order issued shall be treated as a separate
36 contract. The alternate filing provisions of RCW 39.12.040(2) apply
37 to each work order that otherwise meets the eligibility requirements
38 of RCW 39.12.040(2).

1 (~~(7)~~) (6) The job order contract shall not be used for the
2 procurement of architectural or engineering services not associated
3 with specific work orders. Architectural and engineering services
4 shall be procured in accordance with RCW 39.80.040.

5 **Sec. 7.** RCW 43.131.408 and 2017 c 211 s 2 and 2017 c 136 s 2 are
6 each reenacted and amended to read as follows:

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

9 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
10 1994 c 132 s 1;

11 (2) RCW 39.10.210 and 2014 c 42 s 1 & 2013 c 222 s 1;

12 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c
13 377 s 1;

14 (4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3,
15 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

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

17 (6) RCW 39.10.250 and 2018 c . . . s 1 (section 1 of this act),
18 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

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

20 (8) RCW 39.10.270 and 2018 c . . . s 2 (section 2 of this act),
21 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

22 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494
23 s 108;

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

25 (11) RCW 39.10.300 and 2018 c . . . s 3 (section 3 of this act),
26 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

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

29 (13) RCW 39.10.330 and 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75
30 s 5, & 2007 c 494 s 204;

31 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c
32 494 s 301;

33 (15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;

34 (16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75
35 s 6, & 2007 c 494 s 303;

36 (17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;

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

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

- 1 (20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c
2 494 s 306;
- 3 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
- 4 (22) RCW 39.10.410 and 2007 c 494 s 308;
- 5 (23) RCW 39.10.420 and 2018 c . . . s 4 (section 4 of this act),
6 2017 c 136 s 1, & 2016 c 52 s 1;
- 7 (24) RCW 39.10.430 and 2007 c 494 s 402;
- 8 (25) RCW 39.10.440 and 2018 c . . . s 5 (section 5 of this act),
9 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;
- 10 (26) RCW 39.10.450 and 2018 c . . . s 6 (section 6 of this act),
11 2012 c 102 s 2, & 2007 c 494 s 404;
- 12 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
- 13 (28) RCW 39.10.470 and 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c
14 132 s 10;
- 15 (29) RCW 39.10.480 and 1994 c 132 s 9;
- 16 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001
17 c 328 s 5;
- 18 (31) RCW 39.10.900 and 1994 c 132 s 13;
- 19 (32) RCW 39.10.901 and 1994 c 132 s 14;
- 20 (33) RCW 39.10.903 and 2007 c 494 s 510;
- 21 (34) RCW 39.10.904 and 2007 c 494 s 512; and
- 22 (35) RCW 39.10.905 and 2007 c 494 s 513.

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