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**SENATE BILL 5032**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Hasegawa, Warnick, Kuderer, and Wilson, C.

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1 AN ACT Relating to the reauthorization and improvements to  
2 alternative public works contracting procedures; amending RCW  
3 39.10.210, 39.10.220, 39.10.230, 39.10.240, 39.10.250, 39.10.300,  
4 39.10.330, 39.10.350, 39.10.360, 39.10.370, 39.10.380, 39.10.385,  
5 39.10.390, 39.10.400, 39.10.430, 39.10.440, 39.10.460, 39.10.490,  
6 43.131.407, and 43.131.408; adding a new section to chapter 39.10  
7 RCW; creating a new section; providing an expiration date; and  
8 declaring an emergency.

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

10 **Sec. 1.** RCW 39.10.210 and 2019 c 212 s 1 are each amended to  
11 read as follows:

12 Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

14 (1) "Alternative public works contracting procedure" means the  
15 design-build, general contractor/construction manager, and job order  
16 contracting procedures authorized in RCW 39.10.300, 39.10.340, and  
17 39.10.420, respectively.

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

19 (3) "Budget contingencies" means contingencies established by a  
20 public body outside of the design-build or general contractor/  
21 construction manager contract for payment of project costs that are

1 not the responsibility of the design-builder or general contractor/  
2 construction manager under the respective contract.

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

6 ~~((4))~~ (5) "Coefficient" means the job order contractor's  
7 competitively bid numerical factor applied to the public body's  
8 prices as published in the unit price book.

9 (6) "Committee," unless otherwise noted, means the project review  
10 committee.

11 ~~((5))~~ (7) "Design-build procedure" means a contract between a  
12 public body and another party in which the party agrees to both  
13 design and build the facility, portion of the facility, or other item  
14 specified in the contract.

15 ~~((6))~~ (8) "Disadvantaged business enterprise" means any  
16 business entity certified with the office of minority and women's  
17 business enterprises under chapter 39.19 RCW.

18 ~~((7))~~ (9) "General contractor/construction manager" means a  
19 firm with which a public body has selected to provide services during  
20 the design phase and negotiated a maximum allowable construction cost  
21 to act as construction manager and general contractor during the  
22 construction phase.

23 ~~((8))~~ (10) "Heavy civil construction project" means a civil  
24 engineering project, the predominant features of which are  
25 infrastructure improvements.

26 ~~((9))~~ (11) "Job order contract" means a contract in which the  
27 contractor agrees to a fixed period, indefinite quantity delivery  
28 order contract which provides for the use of ~~((negotiated,~~  
29 ~~definitive))~~ work orders for public works as defined in RCW  
30 39.04.010.

31 ~~((10))~~ (12) "Job order contractor" means a registered or  
32 licensed contractor awarded a job order contract.

33 ~~((11))~~ (13) "Maximum allowable construction cost" means the  
34 maximum cost of the work to construct the project including a  
35 percentage for risk contingency, negotiated support services, and  
36 approved change orders.

37 ~~((12))~~ (14) "Negotiated support services" means items a general  
38 contractor would normally manage or perform on a construction project  
39 including, but not limited to surveying, hoisting, safety  
40 enforcement, provision of toilet facilities, temporary heat, cleanup,

1 and trash removal, and that are negotiated as part of the maximum  
2 allowable construction cost.

3 ~~((13))~~ (15) "Percent fee" means the percentage amount to be  
4 earned by the general contractor/construction manager as overhead and  
5 profit.

6 ~~((14))~~ (16) "Price-related factor" means an evaluation factor  
7 that impacts costs which may include, but is not limited to overhead  
8 and profit, lump sum or guaranteed maximum price for the entire or a  
9 portion of the project, operating costs, or other similar factors  
10 that may apply to the project.

11 ~~((15))~~ (17) "Public body" means any general or special purpose  
12 government in the state of Washington, including but not limited to  
13 state agencies, institutions of higher education, counties, cities,  
14 towns, ports, school districts, and special purpose districts.

15 ~~((16))~~ (18) "Public works project" means any work for a public  
16 body within the definition of "public work" in RCW 39.04.010.

17 ~~((17))~~ (19) "Risk contingency" means a contingency for use as  
18 defined in the contract and established as part of the maximum  
19 allowable construction cost for unexpected cost of work items that  
20 have not otherwise been included or addressed in the maximum  
21 allowable construction cost.

22 (20) "Small business entity" means a small business as defined in  
23 RCW 39.26.010.

24 ~~((18))~~ (21) "Total contract cost" means the fixed amount for  
25 the detailed specified general conditions work, the negotiated  
26 maximum allowable construction cost, and the percent fee on the  
27 negotiated maximum allowable construction cost.

28 ~~((19))~~ (22) "Total project cost" means the cost of the project  
29 less financing and land acquisition costs.

30 ~~((20))~~ (23) "Unit price book" means a book containing specific  
31 prices, based on generally accepted industry standards and  
32 information, where available, for various items of work to be  
33 performed by the job order contractor. ~~((The prices may include: All~~  
34 ~~the costs of materials; labor; equipment; overhead, including bonding~~  
35 ~~costs; and profit for performing the items of work. The unit prices~~  
36 ~~for labor must be at the rates in effect at the time the individual~~  
37 ~~work order is issued.~~

38 ~~(21))~~ (24) "Work order" means an order issued for a definite  
39 scope of work to be performed pursuant to a job order contract.

1       **Sec. 2.** RCW 39.10.220 and 2013 c 222 s 2 are each amended to  
2 read as follows:

3       (1) The board is created in the department of enterprise services  
4 to provide an evaluation of public capital projects construction  
5 processes, including the impact of contracting methods on project  
6 outcomes, and to advise the legislature on policies related to public  
7 works delivery methods.

8       (2) Members of the board identified in (a) through (f) of this  
9 subsection must be knowledgeable or have experience in public works  
10 procurement and contracting and are appointed as follows:

11       (a) Two representatives from construction general contracting;  
12 one representative from the architectural profession; one  
13 representative from the engineering profession; two representatives  
14 from construction specialty subcontracting; two representatives from  
15 construction trades labor organizations; one representative from the  
16 office of minority and women's business enterprises; one  
17 representative from a higher education institution; one  
18 representative from the department of enterprise services; one  
19 individual representing Washington cities; two representatives from  
20 private industry; one individual from the private sector representing  
21 the interests of the disadvantaged business enterprises community;  
22 and one representative of a domestic insurer authorized to write  
23 surety bonds for contractors in Washington state, each appointed by  
24 the governor. (~~All appointed members must be knowledgeable about~~  
25 ~~public works contracting procedures.~~) If a vacancy occurs, the  
26 governor shall fill the vacancy for the unexpired term;

27       (b) One member representing counties, selected by the Washington  
28 state association of counties;

29       (c) One member representing public ports, selected by the  
30 Washington public ports association;

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

33       (e) One member representing school districts, selected by the  
34 Washington state school directors' association; (~~and~~)

35       (f) One member representing transit, selected by the Washington  
36 state transit association; and

37       (g) Two members of the house of representatives, one from each  
38 major caucus, appointed by the speaker of the house of  
39 representatives, and two members of the senate, one from each major

1 caucus, appointed by the president of the senate. Legislative members  
2 are nonvoting.

3 (3) Members selected under subsection (2)(a) of this section  
4 shall serve for terms of four years, with the terms expiring on June  
5 30th on the fourth year of the term.

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

8 (5) Legislative members of the board shall be reimbursed for  
9 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
10 members of the board, project review committee members, and committee  
11 chairs shall be reimbursed for travel expenses as provided in RCW  
12 43.03.050 and 43.03.060.

13 (6) Vacancies are filled in the same manner as appointed. Members  
14 of the board may be removed for malfeasance or misfeasance in office,  
15 upon specific written charges by the governor, under chapter 34.05  
16 RCW.

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

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

22 (9) The department of enterprise services shall provide staff  
23 support as may be required for the proper discharge of the function  
24 of the board.

25 (10) The board may establish committees as it desires and may  
26 invite nonmembers of the board to serve as committee members.

27 (11) The board shall encourage participation from persons and  
28 entities not represented on the board, including providing  
29 opportunities to gain insights from businesses owned by minorities,  
30 women, and veterans, and small businesses.

31 **Sec. 3.** RCW 39.10.230 and 2013 c 222 s 3 are each amended to  
32 read as follows:

33 The board has the following powers and duties:

34 (1) Develop and recommend to the legislature policies to  
35 encourage competition and to further enhance the quality, efficiency,  
36 and accountability of and equity in capital construction projects  
37 through the use of traditional and alternative delivery methods in  
38 Washington, and make recommendations regarding best practices,  
39 expansion, continuation, elimination, or modification of the

1 alternative public works contracting methods, including  
2 considerations for reducing barriers for and increasing participation  
3 by disadvantaged business enterprises;

4 (2) Evaluate the use of existing contracting procedures and the  
5 potential future use of other alternative contracting procedures  
6 including competitive negotiation contracts;

7 (3) Submit recommendations to the appropriate committees of the  
8 legislature evaluating alternative contracting procedures that are  
9 not authorized under this chapter;

10 (4) Appoint members of committees; and

11 (5) ~~((Develop and administer questionnaires designed to provide))~~  
12 Subject to the board's capacity and funding, collect quantitative and  
13 qualitative data on alternative public works contracting procedures  
14 ~~((on which evaluations are based.~~

15 ~~The capital projects advisory review board is directed to review~~  
16 ~~current statutes regarding life-cycle cost analysis and energy~~  
17 ~~efficiency as related to the design-build procurement method~~  
18 ~~performed under chapter 39.10 RCW. Capital projects advisory review~~  
19 ~~board shall report to the appropriate committees of the legislature~~  
20 ~~by December 31, 2013, with recommendations for statutory changes that~~  
21 ~~promote energy efficiency and reduce the total cost to construct,~~  
22 ~~operate and maintain public buildings. Recommendation must include~~  
23 ~~provisions for postoccupancy validation of estimated energy~~  
24 ~~efficiency measures, and operating and maintenance cost estimates.~~  
25 ~~Life-cycle estimates of energy use must include estimates of energy~~  
26 ~~consumptions for materials used in construction))~~ to support the  
27 board's work.

28 **Sec. 4.** RCW 39.10.240 and 2013 c 222 s 4 are each amended to  
29 read as follows:

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

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

1 and must include at least one member representing the interests of  
2 disadvantaged business enterprises.

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

9 (b) The committee shall, by a majority vote, elect a chair and  
10 vice chair for the committee.

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

14 (3) The chair of the committee, in consultation with the vice  
15 chair, may appoint one or more panels of at least six committee  
16 members to carry out the duties of the committee. Each panel shall  
17 have balanced representation of the private and public sector  
18 representatives serving on the committee, and shall, to the extent  
19 reasonably practicable, include a member representing the interests  
20 of disadvantaged business enterprises.

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  
25 precluded from subsequently bidding on or participating in projects  
26 that have 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 2019 c 212 s 2 are each amended to  
30 read as follows:

31 The committee shall:

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

35 (2) Review and approve the use of the design-build or general  
36 contractor/construction manager contracting procedures on a project  
37 by project basis for public bodies that are not certified under RCW  
38 39.10.270;

1       (3) Review and approve the use of alternative subcontractor  
2 selection under RCW 39.10.385 on a project-by-project basis for  
3 public bodies that are not certified under RCW 39.10.270, which  
4 review and approval may be concurrent with project approval; and

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

8       **Sec. 6.** RCW 39.10.300 and 2019 c 212 s 4 are each amended to  
9 read as follows:

10       (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or  
11 39.10.280, public bodies may utilize the design-build procedure,  
12 including progressive design-build, for public works projects in  
13 which the total project cost is over ~~((two million dollars))~~  
14 \$2,000,000 and where:

15       (a) The construction activities are highly specialized and a  
16 design-build approach is critical in developing the construction  
17 methodology; or

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

20       (c) Significant savings in project delivery time would be  
21 realized.

22       (2) Subject to the process in RCW 39.10.270 or 39.10.280, public  
23 bodies may use the design-build procedure, including progressive  
24 design-build, for parking garages and preengineered metal buildings,  
25 regardless of cost.

26       (3) The design-build procedure may be used for the construction  
27 or erection of portable facilities as defined in WAC 392-343-018,  
28 ~~((preengineered metal buildings,))~~ or not more than ~~((ten))~~ 10  
29 prefabricated modular buildings per installation site, regardless of  
30 cost and is not subject to approval by the committee.

31       (4) Except for utility projects and approved demonstration  
32 projects, the design-build procedure may not be used to procure  
33 operations and maintenance services for a period longer than three  
34 years. State agency projects that propose to use the design-build-  
35 operate-maintain procedure shall submit cost estimates for the  
36 construction portion of the project consistent with the office of  
37 financial management's capital budget requirements. Operations and  
38 maintenance costs must be shown separately and must not be included  
39 as part of the capital budget request.



1 (5) Subject to the process in RCW 39.10.280, a public body may  
2 seek committee approval for a design-build demonstration project that  
3 includes procurement of operations and maintenance services for a  
4 period longer than three years.

5 (6) Washington State University may perform design-build  
6 demonstration projects with a total project cost under \$2,000,000 to  
7 develop best practices in encouraging small business participation  
8 and in managing capital projects under \$2,000,000. Washington State  
9 University shall provide reports to the board every other year,  
10 starting with two years after the effective date of this section.  
11 Such reports shall include information on the type of projects  
12 performed, the initial and final project cost and schedule of the  
13 projects, small business entity participation, and the best practices  
14 derived from the projects. The report shall include outreach measures  
15 developed in concert with the office of minority and women's business  
16 enterprises.

17 **Sec. 7.** RCW 39.10.330 and 2019 c 212 s 6 are each amended to  
18 read as follows:

19 (1) Contracts for design-build services shall be awarded through  
20 a competitive process using public solicitation of proposals for  
21 design-build services. ((The)) At a minimum, the public body shall  
22 publish at least once in a legal newspaper of general circulation  
23 published in, or as near as possible to, that part of the county in  
24 which the public work will be done, a notice of its request for  
25 qualifications from proposers for design-build services, and the  
26 availability and location of the request for proposal documents. The  
27 public body is encouraged to post the design-build opportunity in  
28 additional areas, such as websites for business associations or the  
29 office of minority and women's business enterprises, to further  
30 publicize the opportunity for qualified design-build teams. The  
31 request for qualifications documents shall include:

32 (a) A description of the project including the estimated design-  
33 build contract value and the intended use of the project;

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

35 (c) A description of the qualifications to be required of the  
36 proposer;

37 (d) A description of the process the public body will use to  
38 evaluate qualifications and finalists' proposals, including

1 evaluation factors and the relative weight of factors and any  
2 specific forms to be used by the proposers;

3 (i) Evaluation factors for qualifications shall include technical  
4 qualifications, such as specialized experience and technical  
5 competence of the firms and the key design and construction  
6 personnel; capacity to perform; the proposer's past performance in  
7 utilization of (~~the office of minority and women's business~~  
8 ~~enterprises—certified—businesses~~) disadvantaged business  
9 enterprises, to the extent permitted by law; ability to provide a  
10 performance and payment bond for the project; and other appropriate  
11 factors. Evaluation factors may also include, but are not limited to,  
12 the proposer's past performance in utilization of small business  
13 entities. Cost or price-related factors are not permitted in the  
14 request for qualifications phase;

15 (ii) Evaluation factors for finalists' proposals shall include  
16 the management plan to meet time and budget requirements and one or  
17 more price-related factors. Evaluation factors may also include, but  
18 not be limited to, the technical approach, design concept, and the  
19 (~~outreach~~) inclusion plan (~~to include~~) for small business  
20 entities and disadvantaged business enterprises as subconsultants,  
21 subcontractors, and suppliers for the project;

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

26 (f) The proposed contract;

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

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

30 (i) Other information relevant to the project.

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

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

13 (4) Upon selection of the finalists, the public body shall issue  
14 a request for proposals to the finalists. The request for proposal  
15 documents shall include:

16 (a) Any specific forms to be used by the finalists; and

17 (b) Submission of a summary of the finalist's accident prevention  
18 program and an overview of its implementation.

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

33 (6) The public body shall notify all finalists of the selection  
34 decision and make a selection summary of the final proposals  
35 available to all proposers within two business days of such  
36 notification. If the public body receives a timely written protest  
37 from a finalist firm, the public body may not execute a contract  
38 until two business days after the final protest decision is  
39 transmitted to the protestor. The protestor must submit its protest  
40 in accordance with the published protest procedures.

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

3 (8) Any contract must require the firm awarded the contract to  
4 track and report to the public body its utilization of the office of  
5 minority and women's business enterprises certified businesses and  
6 veteran certified businesses.

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

14 **Sec. 8.** RCW 39.10.350 and 2014 c 42 s 4 are each amended to read  
15 as follows:

16 (1) A public body using the general contractor/construction  
17 manager contracting procedure shall provide for:

18 (a) The preparation of appropriate, complete, and coordinated  
19 design documents;

20 (b) Confirmation that a constructability analysis of the design  
21 documents has been performed prior to solicitation of a subcontract  
22 bid package;

23 (c) Reasonable budget contingencies totaling not less than five  
24 percent of the anticipated contract value;

25 (d) To the extent appropriate, on-site architectural or  
26 engineering representatives during major construction or installation  
27 phases;

28 (e) Employment of staff or consultants with expertise and prior  
29 experience in the management of comparable projects, critical path  
30 method schedule review and analysis, and the administration, pricing,  
31 and negotiation of change orders;

32 (f) Contract documents that include alternative dispute  
33 resolution procedures to be attempted before the initiation of  
34 litigation;

35 (g) Contract documents that: (i) Obligate the public owner to, in  
36 writing, accept, dispute, or reject a request for equitable  
37 adjustment, change order request, or claim within a specified time  
38 period but no later than (~~sixty~~) 30 calendar days after the receipt  
39 by the public body of related documentation; (~~and~~) (ii) provide

1 that, if the request is disputed or rejected, the public owner shall  
2 state in writing why part or all of the request is disputed or  
3 rejected; and (iii) provide that if the public owner does not respond  
4 in writing to a request for equitable adjustment, change order  
5 request, or claim within the specified time period, the ((request is  
6 deemed denied)) contractor shall not be deemed to have waived any  
7 right to the claims process;

8 (h) Submission of project information, as required by the board;  
9 and

10 (i) Contract documents that require the contractor,  
11 subcontractors, and designers to submit project information required  
12 by the board.

13 (2) A public body using the general contractor/construction  
14 manager contracting procedure may include an incentive clause for  
15 early completion, cost savings, or other performance goals if such  
16 incentives are identified in the request for proposals. No incentives  
17 granted may exceed five percent of the maximum allowable construction  
18 cost. No incentives may be paid from any contingency fund established  
19 for coordination of the construction documents or coordination of the  
20 work.

21 (3) If the construction is completed for less than the maximum  
22 allowable construction cost, any savings not otherwise negotiated as  
23 part of an incentive clause shall accrue to the public body. If the  
24 construction is completed for more than the maximum allowable  
25 construction cost, the additional cost is the responsibility of the  
26 general contractor/construction manager.

27 (4) If the public body and the general contractor/construction  
28 manager agree, in writing, on a price for additional work, the public  
29 body must issue a change order within ((thirty)) 30 days of the  
30 written agreement. If the public body does not issue a change order  
31 within the ((thirty)) 30 days, interest shall accrue on the dollar  
32 amount of the additional work satisfactorily completed until a change  
33 order is issued. The public body shall pay this interest at a rate of  
34 one percent per month.

35 ((~~(5) For a project procured as a heavy civil construction~~  
36 ~~project, an independent audit, paid for by the public body, must be~~  
37 ~~conducted to confirm the proper accrual of costs as outlined in the~~  
38 ~~contract.~~))

1       **Sec. 9.** RCW 39.10.360 and 2014 c 42 s 5 are each amended to read  
2 as follows:

3       (1) Public bodies should select general contractor/construction  
4 managers (~~(early in the life of public works projects, and in most~~  
5 ~~situations no later than the completion of schematic design)) at a  
6 time in the project when the general contractor/construction  
7 manager's participation provides value.~~

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  
11 for general contractor/construction manager services. At a minimum,  
12 the public body shall publish at least once in a legal newspaper of  
13 general circulation published in, or as near as possible to, that  
14 part of the county in which the public work will be performed, a  
15 notice of its request for qualifications from proposers for general  
16 contractor/construction manager services, and the availability and  
17 location of the request for proposal documents. The public body is  
18 encouraged to post the general contractor/construction manager  
19 opportunity in additional areas, such as websites for business  
20 associations or the office of minority and women's business  
21 enterprises, to further publicize the opportunity for qualified  
22 general contractors/construction managers. The public solicitation of  
23 proposals shall include:

24       (a) A description of the project, including programmatic,  
25 performance, and technical requirements and specifications when  
26 available;

27       (b) The reasons for using the general contractor/construction  
28 manager procedure (~~(including, if applicable, a clear statement that~~  
29 ~~the public body is electing to procure the project as a heavy civil~~  
30 ~~construction project, in which case the solicitation must~~  
31 ~~additionally:~~

32       ~~(i) Indicate the minimum percentage of the cost of the work to~~  
33 ~~construct the project that will constitute the negotiated self-~~  
34 ~~perform portion of the project;~~

35       ~~(ii) Indicate whether the public body will allow the price to be~~  
36 ~~paid for the negotiated self-perform portion of the project to be~~  
37 ~~deemed a cost of the work to which the general contractor/~~  
38 ~~construction manager's percent fee applies; and~~

39       ~~(iii) Require proposals to indicate the proposer's fee for the~~  
40 ~~negotiated self-perform portion of the project));~~

1 (c) A description of the qualifications to be required of the  
2 firm, including submission of the firm's accident prevention program;

3 (d) A description of the process the public body will use to  
4 evaluate qualifications and proposals, including evaluation factors,  
5 the relative weight of factors, and protest procedures including time  
6 limits for filing a protest, which in no event may limit the time to  
7 file a protest to fewer than four business days from the date the  
8 proposer was notified of the selection decision;

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

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

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

14 (3) (a) Evaluation factors for ~~((selection))~~ qualifications of the  
15 general contractor/construction manager shall include, but not be  
16 limited to:

17 (i) ~~((Ability of the firm's professional))~~ Experience and  
18 technical competence of key personnel;

19 (ii) The ~~((firm's))~~ proposer's past performance ~~((in))~~ with  
20 negotiated ~~((and))~~ or similarly complex projects;

21 (iii) The ~~((firm's ability to meet time and budget requirements))~~  
22 proposer's capacity to perform the work;

23 (iv) The scope of work the firm proposes to self-perform and its  
24 ~~((ability to perform))~~ past performance of that scope of work;

25 (v) ~~((The firm's proximity to the project location;~~

26 ~~(vi) Recent, current, and projected workloads of the firm; and~~  
27 ~~(vii))~~ The ~~((firm's))~~ proposer's approach to executing the  
28 project, including ability to meet the project time and budget  
29 requirements; and

30 (vi) The proposer's past performance in utilization of  
31 disadvantaged business enterprises, to the extent permitted by law.

32 (b) ~~((An agency may also consider the firm's outreach plan to~~  
33 ~~include))~~ Evaluation factors may include, but are not limited to: A  
34 proposer's inclusion plan for small business entities and  
35 disadvantaged business enterprises, and the ~~((firm's))~~ proposer's  
36 past performance in the utilization of ~~((such firms as an evaluation~~  
37 ~~factor))~~ small business entities, to the extent permitted by law.

38 (4) A public body shall establish a committee to evaluate the  
39 proposals. After the committee has selected the most qualified  
40 finalists, at the time specified by the public body, these finalists

1 shall submit final proposals, (~~including~~) which must include sealed  
2 bids for the percent fee on the estimated maximum allowable  
3 construction cost and (~~the fixed amount for the general conditions~~  
4 ~~work specified~~) which may include other price-related factors  
5 identified in the request for proposal. In no event shall a price-  
6 related factor include a request for overall project budget,  
7 estimate, or bid. The public body shall establish a time and place  
8 for the opening of sealed bids (~~for the percent fee on the estimated~~  
9 ~~maximum allowable construction cost and the fixed amount for the~~  
10 ~~general conditions work specified in the request for proposal~~). At  
11 the time and place named, these bids must be publicly opened and read  
12 and the public body shall make all previous scoring available to the  
13 public. The public body shall select the firm submitting the highest  
14 scored final proposal using the evaluation factors and the relative  
15 weight of factors published in the public solicitation of proposals.  
16 A public body shall not evaluate or disqualify a proposal based on  
17 the terms of a collective bargaining agreement.

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

26 (6) Public bodies may contract with the selected firm to provide  
27 services during the design phase that may include life-cycle cost  
28 design considerations, value engineering, scheduling, cost  
29 estimating, constructability, alternative construction options for  
30 cost savings, and sequencing of work, and to act as the construction  
31 manager and general contractor during the construction phase.

32 **Sec. 10.** RCW 39.10.370 and 2014 c 42 s 6 are each amended to  
33 read as follows:

34 (1) The maximum allowable construction cost shall be used to  
35 establish a total contract cost for which the general contractor/  
36 construction manager shall provide a performance and payment bond.  
37 The maximum allowable construction cost shall be negotiated between  
38 the public body and the selected firm when the construction documents  
39 and specifications are at least ninety percent complete.



1 (2) Major bid packages may be bid in accordance with RCW  
2 39.10.380 before agreement on the maximum allowable construction cost  
3 between the public body and the selected general contractor/  
4 construction manager. The general contractor/construction manager may  
5 issue an intent to award to the responsible bidder submitting the  
6 lowest responsive bid.

7 (3) The public body may, at its option, authorize the general  
8 contractor/construction manager to proceed with the bidding and award  
9 of bid packages and construction before receipt of complete project  
10 plans and specifications. Any contracts awarded under this subsection  
11 shall be incorporated in the negotiated maximum allowable  
12 construction cost.

13 (4) The total contract cost includes the fixed amount for the  
14 detailed specified general conditions work, the negotiated maximum  
15 allowable construction cost, the negotiated support services, and the  
16 percent fee on the negotiated maximum allowable construction cost.  
17 (~~Negotiated support services may be included in the specified~~  
18 ~~general conditions at the discretion of the public body.~~) Unless  
19 portions or all are converted to lump sum, negotiated support  
20 services shall be treated as a contractual allowance, subject to  
21 reconciliation at the conclusion of work.

22 (5) If the public body is unable to negotiate a satisfactory  
23 maximum allowable construction cost with the firm selected that the  
24 public body determines to be fair, reasonable, and within the  
25 available funds, negotiations with that firm shall be formally  
26 terminated and the public body shall negotiate with the next highest  
27 scored firm and continue until an agreement is reached or the process  
28 is terminated.

29 (6) If the maximum allowable construction cost varies more than  
30 (~~fifteen~~) 15 percent from the bid estimated maximum allowable  
31 construction cost due to requested and approved changes in the scope  
32 by the public body, the percent fee shall be renegotiated.

33 (~~(7) As part of the negotiation of the maximum allowable~~  
34 ~~construction cost under subsection (1) of this section, on a project~~  
35 ~~that the public body has elected to procure as a heavy civil~~  
36 ~~construction project:~~

37 ~~(a) The general contractor/construction manager shall submit a~~  
38 ~~proposed construction management and contracting plan, which must~~  
39 ~~include, at a minimum:~~

40 ~~(i) The scope of work and cost estimates for each bid package;~~

1 ~~(ii) A proposed price and scope of work for the negotiated self-~~  
2 ~~perform portion of the project;~~

3 ~~(iii) The bases used by the general contractor/construction~~  
4 ~~manager to develop all cost estimates, including the negotiated self-~~  
5 ~~perform portion of the project; and~~

6 ~~(iv) The general contractor/construction manager's updated~~  
7 ~~outreach plan to include small business entities, disadvantaged~~  
8 ~~business entities, and any other disadvantaged or underutilized~~  
9 ~~businesses as the public body may designate in the public~~  
10 ~~solicitation of proposals, as subcontractors and suppliers for the~~  
11 ~~project;~~

12 ~~(b) The public body and general contractor/construction manager~~  
13 ~~may negotiate the scopes of work to be procured by bid and the price~~  
14 ~~and scope of work for the negotiated self-perform portion of the~~  
15 ~~project, if any;~~

16 ~~(c) The negotiated self-perform portion of the project must not~~  
17 ~~exceed fifty percent of the cost of the work to construct the~~  
18 ~~project;~~

19 ~~(d) Subject to the limitation of RCW 39.10.390(4), the public~~  
20 ~~body may additionally negotiate with the general contractor/~~  
21 ~~construction manager to determine on which scopes of work the general~~  
22 ~~contractor/construction manager will be permitted to bid, if any;~~

23 ~~(e) The public body and general contractor/construction manager~~  
24 ~~shall negotiate, to the public body's satisfaction, a fair and~~  
25 ~~reasonable outreach plan;~~

26 ~~(f) If the public body is unable to negotiate to its reasonable~~  
27 ~~satisfaction a component of this subsection (7), negotiations with~~  
28 ~~the firm must be terminated and the public body shall negotiate with~~  
29 ~~the next highest scored firm and continue until an agreement is~~  
30 ~~reached or the process is terminated.)~~

31 **Sec. 11.** RCW 39.10.380 and 2013 c 222 s 14 are each amended to  
32 read as follows:

33 (1) All subcontract work and equipment and material purchases  
34 shall be competitively bid with public bid openings and require the  
35 public solicitation of the bid documents. At a minimum, the general  
36 contractor/construction manager shall publish at least once in a  
37 legal newspaper of general circulation published in, or as near as  
38 possible to, that part of the county in which the subcontract work  
39 will be performed, a notice of its request for bid, and the

1 availability and location of the bid documents. The general  
2 contractor/construction manager is encouraged to post the subcontract  
3 opportunity in additional areas beyond the legal newspaper as  
4 required by this subsection, such as websites for business  
5 associations or the office of minority and women's business  
6 enterprises, to further publicize the opportunity for qualified  
7 subcontractors. Subcontract bid packages and equipment and materials  
8 purchases shall be awarded to the responsible bidder submitting the  
9 lowest responsive bid. In preparing subcontract bid packages, the  
10 general contractor/construction manager shall not be required to  
11 violate or waive terms of a collective bargaining agreement.  
12 Individual bid packages are to be prepared with trades separated in  
13 the manner consistent with industry practice to maximize  
14 participation and competition across all trades. Bundling of trades  
15 not normally combined into one bid package is not allowed without  
16 justification and specific approval by the public body. Bid packages  
17 should be prepared to reduce barriers for and increase participation  
18 by disadvantaged business enterprises.

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

34 (3) All subcontractors who bid work over (~~three hundred thousand~~  
35 ~~dollars~~) \$300,000 shall post a bid bond. All subcontractors who are  
36 awarded a contract over (~~three hundred thousand dollars~~) \$300,000  
37 shall provide a performance and payment bond for the contract amount.  
38 All other subcontractors shall provide a performance and payment bond  
39 if required by the general contractor/construction manager.

1 (4) If the general contractor/construction manager receives a  
2 written protest from a subcontractor bidder or an equipment or  
3 material supplier, the general contractor/construction manager shall  
4 not execute a contract for the subcontract bid package or equipment  
5 or material purchase order with anyone other than the protesting  
6 bidder without first providing at least two full business days'  
7 written notice to all bidders of the intent to execute a contract for  
8 the subcontract bid package. The protesting bidder must submit  
9 written notice of its protest no later than two full business days  
10 following the bid opening. Intermediate Saturdays, Sundays, and legal  
11 holidays are not counted.

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

15 (6) The general contractor/construction manager may negotiate  
16 with the lowest responsible and responsive bidder to negotiate an  
17 adjustment to the lowest bid or proposal price to reduce cost based  
18 upon agreed changes to the contract plans and specifications under  
19 the following conditions:

20 (a) All responsive bids or proposal prices exceed the ((available  
21 funds)) published bid package estimates; and

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

26 (c) ~~The negotiated adjustment will bring the bid or proposal~~  
27 ~~price within the amount of available funds))~~ published bid package  
28 estimates by more than 10 percent.

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

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

33 **Sec. 12.** RCW 39.10.385 and 2013 c 222 s 15 are each amended to  
34 read as follows:

35 The selection process in this section may be used by public  
36 bodies certified under RCW 39.10.270. It may also be used by  
37 noncertified public bodies if this selection process has been  
38 approved for the project by the project review committee. As an  
39 alternative to the subcontractor selection process outlined in RCW

1 39.10.380, a general contractor/construction manager may, with the  
2 approval of the public body, select (~~mechanical subcontractors,~~  
3 ~~electrical~~) one or more subcontractors(~~(, or both,)~~) using the  
4 process outlined in this section. This alternative selection process  
5 may only be used when the anticipated value of the subcontract will  
6 exceed three million dollars. When using the alternative selection  
7 process, the general contractor/construction manager should select  
8 the subcontractor early in the life of the public works project.

9 (1) In order to use this alternative selection process, the  
10 general contractor/construction manager and the public body must  
11 determine that it is in the best interest of the public. In making  
12 this determination the general contractor/construction manager and  
13 the public body must:

14 (a) Publish a notice of intent to use this alternative selection  
15 process in ((a)) the same legal newspaper where the public  
16 solicitation of proposals is published (~~in or as near as possible to~~  
17 ~~that part of the county where the public work will be constructed~~)).  
18 The general contractor/construction manager and public body are  
19 encouraged to post the notice in additional areas beyond the legal  
20 newspaper as required under this subsection, such as websites for  
21 business associations and other locations and mediums that will  
22 further publicize the intent to use this alternative selection  
23 process. Notice must be published at least fourteen calendar days  
24 before conducting a public hearing. The notice must include the date,  
25 time, and location of the hearing; a statement justifying the basis  
26 and need for the alternative selection process; how interested  
27 parties may, prior to the hearing, obtain the following: (i) The  
28 evaluation criteria and applicable weight given to each criteria that  
29 will be used for evaluation, including clear definitions of what  
30 should be considered specified general conditions work and what  
31 should be considered the fee; and (ii) protest procedures including  
32 time limits for filing a protest, which may, in no event, limit the  
33 time to file a protest to fewer than four business days from the date  
34 the proposer was notified of the selection decision. The evaluation  
35 criteria, weights assigned to each criteria, and justification for  
36 using this selection process must be made available upon request at  
37 least seven calendar days before the public hearing;

38 (b) Conduct a hearing and provide an opportunity for any  
39 interested party to submit written and verbal comments regarding the

1 justification for using this selection process, the evaluation  
2 criteria, weights for each criteria, and protest procedures;

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

6 (d) Issue a written final determination to all interested  
7 parties. (~~All protests of the decision to use the alternative~~  
8 ~~selection process must be in writing and submitted to the public body~~  
9 ~~within seven calendar days of the final determination.~~) The final  
10 determination shall reasonably address the comments received  
11 regarding the criteria and weights for each criterion. Any  
12 modifications to the criteria, weights, and protest procedures based  
13 on comments received during the public hearing process must be  
14 included in the final determination. All protests of the decision to  
15 use the alternative selection process must be in writing and  
16 submitted to the public body within seven calendar days of the final  
17 determination. The public body shall not proceed with the selection  
18 process until after responding in writing to the protest.

19 (2) Contracts for the services of a subcontractor under this  
20 section must be awarded through a competitive process requiring a  
21 public solicitation of proposals. Notice of the public solicitation  
22 of proposals must be provided to the office of minority and women's  
23 business enterprises. The public solicitation of proposals must  
24 include:

25 (a) A description of the project, including programmatic,  
26 performance, and technical requirements and specifications when  
27 available, along with a description of the project's unique aspects,  
28 complexities, and challenges;

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

30 (c) A description of the minimum qualifications required of the  
31 firm;

32 (d) A description of the process used to evaluate qualifications  
33 and proposals, including evaluation factors and the relative weight  
34 of factors;

35 (e) Protest procedures;

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

38 (g) The estimated maximum allowable subcontract cost; and

39 (h) The bid instructions to be used by the finalists.

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

3 (a) Ability of the firm's professional personnel to deliver  
4 projects similar in size, scope, or complexity;

5 (b) The firm's past performance on (~~similar~~) projects similar  
6 in size, scope, or complexity;

7 (c) The firm's ability to meet time and budget requirements on  
8 projects similar in size, scope, or complexity;

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

11 (e) The firm's plan for (~~outreach to minority and women-owned~~  
12 ~~businesses~~) inclusion of disadvantaged business enterprises, to the  
13 extent permitted by law;

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

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

16 ~~h~~) The firm's approach to executing the project based on its  
17 delivery of other projects similar in size, scope, or complexity;

18 (~~i~~) (h) The firm's approach to safety on the project;

19 (~~j~~) (i) The firm's safety history;

20 (j) If interviews are part of the selection process, the  
21 solicitation shall describe how interviews will be scored or  
22 evaluated, and evaluations shall be included in the written selection  
23 summary; and

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

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

33 (5) The general contractor/construction manager must notify all  
34 proposers of the most qualified firms that will move to the next  
35 phase of the selection process. The process may not proceed to the  
36 next phase until two business days after all proposers are notified  
37 of the committee's selection decision. At the request of a proposer,  
38 the general contractor/construction manager must provide the  
39 requesting proposer with a scoring summary of the evaluation factors  
40 for its proposal. Proposers filing a protest on the selection of the

1 most qualified finalists must file the protest with the public body  
2 in accordance with the published protest procedures. The selection  
3 process may not advance to the next phase of selection until two  
4 business days after the final protest decision issued by the public  
5 body is transmitted to the protestor.

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

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

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

35 (9) With the approval of the public body, the general contractor/  
36 construction manager may contract with the selected firm to provide  
37 preconstruction services during the design phase that may include  
38 life-cycle cost design considerations, value engineering, scheduling,  
39 cost estimating, constructability, alternative construction options  
40 for cost savings, and sequencing of work; and to act as the



1 ((~~mechanical or electrical~~)) subcontractor during the construction  
2 phase.

3 (10) The maximum allowable subcontract cost must be used to  
4 establish a total subcontract cost for purposes of a performance and  
5 payment bond. Total subcontract cost means the fixed amount for the  
6 detailed specified general conditions work, the negotiated maximum  
7 allowable subcontract cost, and the percent fee on the negotiated  
8 maximum allowable subcontract cost. Maximum allowable subcontract  
9 cost means the maximum cost to complete the work specified for the  
10 subcontract, including the estimated cost of work to be performed by  
11 the subcontractor's own forces, a percentage for risk contingency,  
12 negotiated support services, and approved change orders. The maximum  
13 allowable subcontract cost must be negotiated between the general  
14 contractor/construction manager and the selected firm when the  
15 construction documents and specifications are at least ninety percent  
16 complete. Final agreement on the maximum allowable subcontract cost  
17 is subject to the approval of the public body.

18 (11) If the work of the ((~~mechanical contractor or electrical~~  
19 ~~contractor~~)) subcontractor is completed for less than the maximum  
20 allowable subcontract cost, any savings not otherwise negotiated as  
21 part of an incentive clause becomes part of the risk contingency  
22 included in the general contractor/construction manager's maximum  
23 allowable construction cost. If the work of the ((~~mechanical~~  
24 ~~contractor or the electrical contractor~~)) subcontractor is completed  
25 for more than the maximum allowable subcontract cost, the additional  
26 cost is the responsibility of that subcontractor. An independent  
27 audit, paid for by the public body, must be conducted to confirm the  
28 proper accrual of costs ((~~as outlined in the contract~~)). The public  
29 body or general contractor/construction manager shall define the  
30 scope of the audit in the contract.

31 (12) A ((~~mechanical or electrical contractor~~)) subcontractor  
32 selected under this section may perform work with its own forces. In  
33 the event it elects to subcontract some of its work, it must select a  
34 subcontractor utilizing the procedure outlined in RCW 39.10.380.

35 **Sec. 13.** RCW 39.10.390 and 2014 c 42 s 7 are each amended to  
36 read as follows:

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

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

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

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

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

12 (3) In no event may the general contractor/construction manager  
13 or its subsidiaries assign warranty responsibility or the terms of  
14 its contract or purchase order with vendors for equipment or material  
15 purchases to subcontract bid package bidders or subcontractors who  
16 have been awarded a contract. The value of subcontract work performed  
17 and equipment and materials supplied by the general contractor/  
18 construction manager may not exceed (~~(thirty)~~) 30 percent of the  
19 negotiated maximum allowable construction cost, unless procured as a  
20 heavy civil construction project under this chapter. Negotiated  
21 support services performed by the general contractor/construction  
22 manager shall not be considered subcontract work for purposes of this  
23 subsection.

24 (~~((4) Notwithstanding any contrary provision of this chapter, for  
25 a project that a public body has elected to procure as a heavy civil  
26 construction project under this chapter, at least thirty percent of  
27 the cost of the work to construct the project included in the  
28 negotiated maximum allowable construction cost must be procured  
29 through competitive sealed bidding in which bidding by the general  
30 contractor/construction manager or its subsidiaries is prohibited.))~~)

31 **Sec. 14.** RCW 39.10.400 and 2013 c 222 s 17 are each amended to  
32 read as follows:

33 (1) If determination of subcontractor eligibility prior to  
34 seeking bids is in the best interest of the project and critical to  
35 the successful completion of a subcontract bid package, the general  
36 contractor/construction manager and the public body may determine  
37 subcontractor eligibility to bid. The general contractor/construction  
38 manager and the public body must:

1 (a) Conduct a hearing and provide an opportunity for any  
2 interested party to submit written and verbal comments regarding the  
3 justification for conducting bidder eligibility, the evaluation  
4 criteria, and weights for each criteria and subcriteria;

5 (b) Publish a notice of intent to evaluate and determine bidder  
6 eligibility in a legal newspaper published in or as near as possible  
7 to that part of the county where the public work will be constructed  
8 at least (~~fourteen~~) 14 calendar days before conducting a public  
9 hearing. The general contractor/construction manager and public body  
10 are encouraged to post the notice in additional areas beyond the  
11 legal newspaper as required under this subsection, such as websites  
12 for business associations and other locations and mediums that will  
13 further publicize the intent to use subcontractor eligibility prior  
14 to seeking bids;

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

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

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

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

1       **Sec. 15.** RCW 39.10.430 and 2019 c 212 s 8 are each amended to  
2 read as follows:

3       (1) Job order contracts shall be awarded through a competitive  
4 process using public requests for proposals.

5       (2) The public body shall make an effort to solicit proposals  
6 from certified minority or certified woman-owned contractors to the  
7 extent permitted by the Washington state civil rights act, RCW  
8 49.60.400.

9       (3) The public body shall publish, at least once in a statewide  
10 publication and legal newspaper of general circulation published in  
11 every county in which the public works project is anticipated, a  
12 request for proposals for job order contracts and the availability  
13 and location of the request for proposal documents. The public body  
14 is encouraged to post the request for proposals for job order  
15 contracts and the availability and location of the request for  
16 proposal documents in other areas, such as websites for business  
17 associations or the office of minority and women's business  
18 enterprises, to further publicize the opportunities. The public body  
19 shall ensure that the request for proposal documents at a minimum  
20 includes:

21       (a) A detailed description of the scope of the job order contract  
22 including performance, technical requirements and specifications,  
23 functional and operational elements, minimum and maximum work order  
24 amounts, duration of the contract, and options to extend the job  
25 order contract;

26       (b) The reasons for using job order contracts;

27       (c) A description of the qualifications required of the proposer;

28       (d) The identity of the specific unit price book to be used and a  
29 description of which elements shall be included in the coefficient as  
30 necessary to establish a firm fixed price on work orders to be  
31 awarded under the job order contract;

32       (e) The minimum contracted amount committed to the selected job  
33 order contractor;

34       (f) A description of the process the public body will use to  
35 evaluate qualifications and proposals, including evaluation factors  
36 and the relative weight of factors. The public body shall ensure that  
37 evaluation factors include, but are not limited to, (~~proposal~~  
38 ~~price~~) the coefficient and the ability of the proposer to perform  
39 the job order contract. In evaluating the ability of the proposer to  
40 perform the job order contract, the public body may consider: The

1 ability of the professional personnel who will work on the job order  
2 contract; past performance on similar contracts; ability to meet time  
3 and budget requirements; past performance on approved subcontractor  
4 inclusion plans; ability to provide a performance and payment bond  
5 for the job order contract; recent, current, and projected workloads  
6 of the proposer; location; and the concept of the proposal;

7 (g) The form of the contract to be awarded;

8 (h) The method for pricing renewals of or extensions to the job  
9 order contract;

10 (i) A notice that the proposals are subject to RCW 39.10.470; and

11 (j) Other relevant information (~~((relevant to the project))~~).

12 (4) A public body shall establish a committee to evaluate the  
13 proposals. After the committee has selected the most qualified  
14 finalists, the finalists shall submit (~~((final proposals, including  
15 sealed bids based upon the identified unit price book))~~) a sealed bid  
16 including, but not limited to, coefficient(s). Such bids may be in  
17 the form of coefficient (~~((markups from))~~) adjustments to the listed  
18 unit price book ((costs)). The public body shall award the contract  
19 to the firm submitting the highest scored final proposal using the  
20 evaluation factors and the relative weight of factors published in  
21 the public request for proposals and will notify the board of the  
22 award of the contract.

23 (5) The public body shall provide a protest period of at least  
24 ten business days following the day of the announcement of the  
25 apparent successful proposal to allow a protester to file a detailed  
26 statement of the grounds of the protest. The public body shall  
27 promptly make a determination on the merits of the protest and  
28 provide to all proposers a written decision of denial or acceptance  
29 of the protest. The public body shall not execute the contract until  
30 two business days following the public body's decision on the  
31 protest.

32 (6) The requirements of RCW 39.30.060 do not apply to requests  
33 for proposals for job order contracts.

34 **Sec. 16.** RCW 39.10.440 and 2019 c 212 s 9 are each amended to  
35 read as follows:

36 (1) The maximum total dollar amount that may be awarded under a  
37 job order contract is (~~((four million dollars))~~) \$4,000,000 per year  
38 for a maximum of three years. Any unused capacity from the previous  
39 year may be carried over for one year and added to the immediate

1 following year's limit. The maximum annual volume including unused  
2 capacity shall not exceed the limit of two years. The maximum total  
3 dollar amount that may be awarded under a job order contract for the  
4 department of enterprise services, counties with a population of more  
5 than (~~one million~~) 1,000,000, and cities with a population of more  
6 than (~~four hundred thousand~~) 400,000 is (~~six million dollars~~)  
7 \$6,000,000 per year for a maximum of three years. The maximum total  
8 dollar amounts are exclusive of Washington state sales and use tax.

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

15 (3) A public body may have no more than three job order contracts  
16 in effect at any one time, with the exception of the department of  
17 enterprise services, which may have six job order contracts in effect  
18 at any one time.

19 (4) At least (~~ninety~~) 90 percent of work contained in a job  
20 order contract must be subcontracted to entities other than the job  
21 order contractor. The job order contractor must distribute contracts  
22 as equitably as possible among qualified and available subcontractors  
23 including certified minority and woman-owned subcontractors to the  
24 extent permitted by law as demonstrated on the subcontractor and  
25 supplier project submission, and shall limit subcontractor bonding  
26 requirements to the greatest extent possible.

27 (5) The job order contractor shall publish notification of intent  
28 to perform public works projects at the beginning of each contract  
29 year in a statewide publication and in a legal newspaper of general  
30 circulation in every county in which the public works projects are  
31 anticipated. The job order contractor is encouraged to post the  
32 notification of intent to perform public works projects in other  
33 areas, such as websites for business associations or the office of  
34 minority and women's business enterprises, to further publicize  
35 subcontractor opportunities.

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

1 (7) If, in the initial contract term, the public body, at no  
2 fault of the job order contractor, fails to issue the minimum amount  
3 of work orders stated in the public request for proposals, the public  
4 body shall pay the contractor an amount equal to the difference  
5 between the minimum work order amount and the actual total of the  
6 work orders issued multiplied by an appropriate percentage for  
7 overhead and profit contained in the contract award coefficient for  
8 services as specified in the request for proposals. This is the  
9 contractor's sole remedy.

10 (8) All job order contracts awarded under this section must be  
11 signed before July 1, ~~((2021))~~ 2031; however the job order contract  
12 may be extended or renewed as provided for in this section.

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

15 **Sec. 17.** RCW 39.10.460 and 2012 c 102 s 3 are each amended to  
16 read as follows:

17 Each ~~((year, a))~~ public body shall ~~((provide to the board))~~  
18 maintain and make available the following information for each job  
19 order contract ~~((for the period July 1st through June 30th))~~:

20 (1) A list of work orders issued;

21 (2) The cost of each work order;

22 (3) A list of subcontractors hired under each work order,  
23 including whether those subcontractors were certified small,  
24 minority, women, or veteran-owned businesses; and

25 (4) ~~((If requested by the board, a))~~ A copy of the intent to pay  
26 prevailing wage and the affidavit of wages paid for each work order  
27 subcontract ~~((; and~~

28 ~~(5) Any other information requested by the board)).~~

29 **Sec. 18.** RCW 39.10.490 and 2013 c 222 s 20 are each amended to  
30 read as follows:

31 The alternative public works contracting procedures authorized  
32 under this chapter are limited to public works contracts signed  
33 before July 1, ~~((2021))~~ 2031. Methods of public works contracting  
34 authorized under this chapter shall remain in full force and effect  
35 until completion of contracts signed before July 1, ~~((2021))~~ 2031.

36 NEW SECTION. **Sec. 19.** A new section is added to chapter 39.10  
37 RCW to read as follows:

1 In addition to the general contractor/construction manager  
2 requirements established in this chapter, public bodies utilizing the  
3 general contractor/construction manager method for a heavy civil  
4 construction project must also comply with the following  
5 requirements:

6 (1) The heavy civil construction general contractor/construction  
7 manager contract solicitation must:

8 (a) Provide the reasons for using the general contractor/  
9 construction manager procedure, including a clear statement that the  
10 public body is electing to procure the project as a heavy civil  
11 construction project;

12 (b) Indicate the minimum percentage of the cost of the work to  
13 construct the project that will constitute the negotiated self-  
14 perform portion of the project;

15 (c) Indicate whether the public body will allow the price to be  
16 paid for the negotiated self-perform portion of the project to be  
17 deemed a cost of the work to which the general contractor/  
18 construction manager's percent fee applies; and

19 (d) Require proposals to indicate the proposer's fee for the  
20 negotiated self-perform portion of the project;

21 (2) As part of the negotiation of the maximum allowable  
22 construction cost established in RCW 39.10.370(1), the general  
23 contractor/construction manager shall submit a proposed construction  
24 management and contracting plan, which must include, at a minimum:

25 (a) The scope of work and cost estimates for each bid package;

26 (b) A proposed price and scope of work for the negotiated self-  
27 perform portion of the project;

28 (c) The bases used by the general contractor/construction manager  
29 to develop all cost estimates, including the negotiated self-perform  
30 portion of the project; and

31 (d) The general contractor/construction manager's updated  
32 inclusion plan for small business entities, disadvantaged business  
33 enterprises, and any other disadvantaged or underutilized businesses  
34 as the public body may designate in the public solicitation of  
35 proposals, as subcontractors and suppliers for the project;

36 (3) The public body and general contractor/construction manager  
37 may negotiate the scopes of work to be procured by bid and the price  
38 and scope of work for the negotiated self-perform portion of the  
39 project, if any;



1 (4) The negotiated self-perform portion of the project must not  
2 exceed 50 percent of the cost of the work to construct the project;

3 (5) Notwithstanding any contrary provision of this chapter, for a  
4 project that a public body has elected to procure as a heavy civil  
5 construction project under this chapter, at least 30 percent of the  
6 cost of the work to construct the project included in the negotiated  
7 maximum allowable construction cost must be procured through  
8 competitive sealed bidding in which bidding by the general  
9 contractor/construction manager or its subsidiaries is prohibited;

10 (6) Subject to the limitation of subsection (5) of this section,  
11 the public body may additionally negotiate with the general  
12 contractor/construction manager to determine on which scopes of work  
13 the general contractor/construction manager will be permitted to bid,  
14 if any;

15 (7) The public body and general contractor/construction manager  
16 shall negotiate, to the public body's satisfaction, a fair and  
17 reasonable outreach plan;

18 (8) If the public body is unable to negotiate to its reasonable  
19 satisfaction a component of this section, negotiations with the firm  
20 must be terminated and the public body shall negotiate with the next  
21 highest scored firm and continue until an agreement is reached or the  
22 process is terminated; and

23 (9) For a project procured as a heavy civil construction project,  
24 an independent audit, paid for by the public body, must be conducted  
25 to confirm the proper accrual of costs as outlined in the contract.  
26 The public body shall define the scope of the audit in the contract.

27 NEW SECTION. **Sec. 20.** (1) The capital projects advisory review  
28 board shall coordinate and consult with the office of minority and  
29 women's business enterprises, the department of enterprise services,  
30 the office of equity, community stakeholders and advocates, and  
31 subject matter experts to create best practices guidelines for  
32 increasing and sustaining access to contracting opportunities in  
33 alternative public works for minority, women, and veteran-owned  
34 businesses, and small businesses. In creating the guidelines, the  
35 board shall take into consideration the barriers to participation  
36 identified in the local government contracting report produced  
37 pursuant to section 16, chapter 434, Laws of 2019, information and  
38 recommendations from the 2019 Washington state disparity study and  
39 disparity studies of any other public body in Washington state, and

1 successful diversity and inclusion policies being implemented by  
2 state and local governmental agencies. The best practices shall  
3 address, at a minimum, guidelines for use of race-neutral and race-  
4 conscious programs, elements of successful inclusion plans, the use  
5 of aspirational inclusion goals, evaluation of inclusion plans in the  
6 contract award process, and the evaluation of inclusion plans and  
7 past performance in public body certification and project approval  
8 processes under RCW 39.10.270 and 39.10.280. The board shall make the  
9 best practices guidelines available on its website by June 30, 2022,  
10 and should have a plan to update the practices to keep them relevant  
11 for use. Additionally, by June 30, 2022, the board shall report to  
12 the appropriate committees of the legislature regarding any  
13 recommendations for changes to state law that are advisable based  
14 upon the best practices guidelines.

15 (2) This section expires July 1, 2023.

16 **Sec. 21.** RCW 43.131.407 and 2013 c 222 s 21 are each amended to  
17 read as follows:

18 The alternative public works contracting procedures under chapter  
19 39.10 RCW shall be terminated June 30, (~~2021~~) 2031, as provided in  
20 RCW 43.131.408.

21 **Sec. 22.** RCW 43.131.408 and 2019 c 212 s 13 are each amended to  
22 read as follows:

23 The following acts or parts of acts, as now existing or hereafter  
24 amended, are each repealed, effective June 30, (~~2022~~) 2032:

25 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &  
26 1994 c 132 s 1;

27 (2) RCW 39.10.210 and 2021 c ... s 1 (section 1 of this act),  
28 2019 c 212 s 1, 2014 c 42 s 1, & 2013 c 222 s 1;

29 (3) RCW 39.10.220 and 2021 c ... s 2 (section 2 of this act),  
30 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

31 (4) RCW 39.10.230 and 2021 c ... s 3 (section 3 of this act),  
32 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s  
33 103, & 2005 c 377 s 2;

34 (5) RCW 39.10.240 and 2021 c ... s 4 (section 4 of this act),  
35 2013 c 222 s 4, & 2007 c 494 s 104;

36 (6) RCW 39.10.250 and 2021 c ... s 5 (section 5 of this act),  
37 2019 c 212 s 2, 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

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

1 (8) RCW 39.10.270 and 2019 c 212 s 3, 2017 c 211 s 1, 2013 c 222  
2 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

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

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

6 (11) RCW 39.10.300 and 2021 c ... s 6 (section 6 of this act),  
7 2019 c 212 s 4, 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

8 (12) RCW 39.10.320 and 2019 c 212 s 5, 2013 c 222 s 10, 2007 c  
9 494 s 203, & 1994 c 132 s 7;

10 (13) RCW 39.10.330 and 2021 c ... s 7 (section 7 of this act),  
11 2019 c 212 s 6, 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007  
12 c 494 s 204;

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

15 (15) RCW 39.10.350 and 2021 c ... s 8 (section 8 of this act),  
16 2014 c 42 s 4, & 2007 c 494 s 302;

17 (16) RCW 39.10.360 and 2021 c ... s 9 (section 9 of this act),  
18 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

19 (17) RCW 39.10.370 and 2021 c ... s 10 (section 10 of this act),  
20 2014 c 42 s 6, & 2007 c 494 s 304;

21 (18) RCW 39.10.380 and 2021 c ... s 11 (section 11 of this act),  
22 2013 c 222 s 14, & 2007 c 494 s 305;

23 (19) RCW 39.10.385 and 2021 c ... s 12 (section 12 of this act),  
24 2013 c 222 s 15, & 2010 c 163 s 1;

25 (20) RCW 39.10.390 and 2021 c ... s 13 (section 13 of this act),  
26 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;

27 (21) RCW 39.10.400 and 2021 c ... s 14 (section 14 of this act),  
28 2013 c 222 s 17, & 2007 c 494 s 307;

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

30 (23) RCW 39.10.420 and 2019 c 212 s 7, 2017 c 136 s 1, & 2016 c  
31 52 s 1;

32 (24) RCW 39.10.430 and 2021 c ... s 15 (section 15 of this act),  
33 2019 c 212 s 8, & 2007 c 494 s 402;

34 (25) RCW 39.10.440 and 2021 c ... s 16 (section 16 of this act),  
35 2019 c 212 s 9, 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;

36 (26) RCW 39.10.450 and 2019 c 212 s 10, 2012 c 102 s 2, & 2007 c  
37 494 s 404;

38 (27) RCW 39.10.460 and 2021 c ... s 17 (section 17 of this act),  
39 2012 c 102 s 3, & 2007 c 494 s 405;

- 1 (28) RCW 39.10.470 and 2019 c 212 s 11, 2014 c 19 s 2, 2005 c 274  
2 s 275, & 1994 c 132 s 10;  
3 (29) RCW 39.10.480 and 1994 c 132 s 9;  
4 (30) RCW 39.10.490 and 2021 c ... s 18 (section 18 of this act),  
5 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;  
6 (31) RCW 39.10.900 and 1994 c 132 s 13;  
7 (32) RCW 39.10.901 and 1994 c 132 s 14;  
8 (33) RCW 39.10.903 and 2007 c 494 s 510;  
9 (34) RCW 39.10.904 and 2007 c 494 s 512; (~~and~~)  
10 (35) RCW 39.10.905 and 2007 c 494 s 513; and  
11 (36) RCW 39.10.--- and 2021 c ... s 19 (section 19 of this act).

12 NEW SECTION. **Sec. 23.** This act is necessary for the immediate  
13 preservation of the public peace, health, or safety, or support of  
14 the state government and its existing public institutions, and takes  
15 effect immediately.

--- END ---