
HOUSE BILL 2327

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Haigh, Dammeier, Hunt, and Ormsby

Read first time 01/11/12. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to alternative public works, including adding
2 outreach plans to selections, and clarifying the use of design-build;
3 and amending RCW 39.10.300, 39.10.330, 39.10.360, and 43.131.408.

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

5 **Sec. 1.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read
6 as follows:

7 (1) Subject to the process in RCW 39.10.270 or 39.10.280, public
8 bodies may utilize the design-build procedure for public works projects
9 in which the total project cost is over ten million dollars and where:

10 (a) The design and construction activities, technologies, or
11 schedule to be used are highly specialized and a design-build approach
12 is critical in developing the construction methodology or implementing
13 the proposed technology; or

14 (b) The project design is repetitive in nature and is an incidental
15 part of the installation or construction; or

16 (c) Regular interaction with and feedback from facilities users and
17 operators during design is not critical to an effective facility
18 design.

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

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

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

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

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

27 **Sec. 2.** RCW 39.10.330 and 2009 c 75 s 5 are each amended to read
28 as follows:

29 (1) Contracts for design-build services shall be awarded through a
30 competitive process using public solicitation of proposals for design-
31 build services. The public body shall publish at least once in a legal
32 newspaper of general circulation published in, or as near as possible
33 to, that part of the county in which the public work will be done, a
34 notice of its request for qualifications from proposers for design-
35 build services, and the availability and location of the request for
36 proposal documents. The request for qualifications documents shall
37 include:

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

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

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

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

11 (i) Evaluation factors for request for qualifications shall
12 include, but not be limited to, technical qualifications, such as
13 specialized experience and technical competence; capability to perform;
14 past performance of the proposers' team, including the architect-
15 engineer and construction members; the firm's outreach plan to include
16 small, economically and socially disadvantaged businesses and
17 Washington state-certified minority and women business enterprises, and
18 the firm's past performance in the utilization of small, economically
19 and socially disadvantaged businesses; and other appropriate factors.
20 Cost or price-related factors are not permitted in the request for
21 qualifications phase;

22 (ii) Evaluation factors for finalists' proposals shall include, but
23 not be limited to, the factors listed in (d)(i) of this subsection, as
24 well as technical approach design concept; proposal price; ability of
25 professional personnel; past performance on similar projects; ability
26 to meet time and budget requirements; ability to provide a performance
27 and payment bond for the project; recent, current, and projected
28 workloads of the firm; and location. Alternatively, if the public body
29 determines that all finalists will be capable of producing a design
30 that adequately meets project requirements, the public body may award
31 the contract to the firm that submits the responsive proposal with the
32 lowest price;

33 (e) The form of the contract to be awarded;

34 (f) The amount to be paid to finalists submitting responsive
35 proposals and who are not awarded a design-build contract;

36 (g) The schedule for the procurement process and the project; and

37 (h) Other information relevant to the project.

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

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

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

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

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

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

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

1 (5) The firm awarded the contract shall provide a performance and
2 payment bond for the contracted amount. The public body shall provide
3 appropriate honorarium payments to finalists submitting responsive
4 proposals that are not awarded a design-build contract. Honorarium
5 payments shall be sufficient to generate meaningful competition among
6 potential proposers on design-build projects. In determining the
7 amount of the honorarium, the public body shall consider the level of
8 effort required to meet the selection criteria.

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

11 (1) Public bodies should select general contractor/construction
12 managers early in the life of public works projects, and in most
13 situations no later than the completion of schematic design.

14 (2) Contracts for the services of a general contractor/
15 construction manager under this section shall be awarded through a
16 competitive process requiring the public solicitation of proposals for
17 general contractor/construction manager services. The public
18 solicitation of proposals shall include:

19 (a) A description of the project, including programmatic,
20 performance, and technical requirements and specifications when
21 available;

22 (b) The reasons for using the general contractor/construction
23 manager procedure;

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

26 (d) A description of the process the public body will use to
27 evaluate qualifications and proposals, including evaluation factors and
28 the relative weight of factors;

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

31 (f) The estimated maximum allowable construction cost; (~~and~~)

32 (g) The bid instructions to be used by the general contractor/
33 construction manager finalists; and

34 (h) The firm's outreach plan to include small, economically and
35 socially disadvantaged businesses and Washington state-certified
36 minority and women business enterprises, and the firm's past

1 performance in the utilization of small, economically and socially
2 disadvantaged businesses.

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

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

6 (b) The firm's past performance in negotiated and complex projects;

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

8 (d) The scope of work the firm proposes to self-perform and its
9 ability to perform that work;

10 (e) The firm's proximity to the project location;

11 (f) Recent, current, and projected workloads of the firm; and

12 (g) The firm's approach to executing the project.

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

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

36 **Sec. 4.** RCW 43.131.408 and 2010 1st sp.s. c 21 s 5 are each
37 amended to read as follows:

1 The following acts or parts of acts, as now existing or hereafter
2 amended, are each repealed, effective June 30, 2014:

3 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
4 1994 c 132 s 1;

5 (2) RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014, 2007 c 494 s 101,
6 & 2005 c 469 s 3;

7 (3) RCW 39.10.220 and 2007 c 494 s 102 & 2005 c 377 s 1;

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

10 (5) RCW 39.10.240 and 2007 c 494 s 104;

11 (6) RCW 39.10.250 and 2009 c 75 s 2 & 2007 c 494 s 105;

12 (7) RCW 39.10.260 and 2007 c 494 s 106;

13 (8) RCW 39.10.270 and 2009 c 75 s 3 & 2007 c 494 s 107;

14 (9) RCW 39.10.280 and 2007 c 494 s 108;

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

16 (11) RCW 39.10.300 and 2012 c . . . s 1 (section 1 of this act),
17 2009 c 75 s 4, & 2007 c 494 s 201((, 2003 c 352 s 2, 2003 c 300 s 4,
18 2002 c 46 s 1, & 2001 c 328 s 2)));

19 (12) RCW 39.10.320 and 2007 c 494 s 203 & 1994 c 132 s 7;

20 (13) RCW 39.10.330 and 2012 c . . . s 2 (section 2 of this act),
21 2009 c 75 s 5, & 2007 c 494 s 204;

22 (14) RCW 39.10.340 and 2007 c 494 s 301((, ~~2003 c 352 s 3, 2003 c~~
23 ~~300 s 5, 2002 c 46 s 2, & 2001 c 328 s 3~~));

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

25 (16) RCW 39.10.360 and 2012 c . . . s 3 (section 3 of this act),
26 2009 c 75 s 6, & 2007 c 494 s 303;

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

28 (18) RCW 39.10.380 and 2007 c 494 s 305;

29 (19) RCW 39.10.385 and 2010 c 163 s 1;

30 (20) RCW 39.10.390 and 2007 c 494 s 306;

31 ((+20)) (21) RCW 39.10.400 and 2007 c 494 s 307;

32 ((+21)) (22) RCW 39.10.410 and 2007 c 494 s 308;

33 ((+22)) (23) RCW 39.10.420 and 2009 c 75 s 7, 2007 c 494 s 401, &
34 2003 c 301 s 1;

35 ((+23)) (24) RCW 39.10.430 and 2007 c 494 s 402;

36 ((+24)) (25) RCW 39.10.440 and 2007 c 494 s 403;

37 ((+25)) (26) RCW 39.10.450 and 2007 c 494 s 404;

38 ((+26)) (27) RCW 39.10.460 and 2007 c 494 s 405;

1 (~~(27)~~) (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;
2 (~~(28)~~) (29) RCW 39.10.480 and 1994 c 132 s 9;
3 (~~(29)~~) (30) RCW 39.10.490 and 2007 c 494 s 501 & 2001 c 328 s 5;
4 (~~(30)~~) (31) RCW 39.10.500 and 2007 c 494 s 502;
5 (~~(31)~~) (32) RCW 39.10.510 and 2007 c 494 s 503;
6 (~~(32)~~) (33) RCW 39.10.900 and 1994 c 132 s 13;
7 (~~(33)~~) (34) RCW 39.10.901 and 1994 c 132 s 14; (~~and~~
8 ~~(34)~~) (35) RCW 39.10.903 and 2007 c 494 s 510(~~(-)~~);
9 (36) RCW 39.10.904 and 2007 c 494 s 512; and
10 (37) RCW 39.10.905 and 2007 c 494 s 513.

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