

---

SENATE BILL 5397

---

State of Washington

61st Legislature

2009 Regular Session

By Senators Rockefeller and Shin; by request of Capital Projects  
Advisory Review Board

Read first time 01/21/09. Referred to Committee on Government  
Operations & Elections.

1 AN ACT Relating to alternative public works; amending RCW  
2 39.10.230, 39.10.250, 39.10.270, 39.10.300, 39.10.330, 39.10.360, and  
3 39.10.420; and repealing RCW 39.10.310.

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

5 **Sec. 1.** RCW 39.10.230 and 2007 c 494 s 103 are each amended to  
6 read as follows:

7 The board has the following powers and duties:

8 (1) Develop and recommend to the legislature policies to further  
9 enhance the quality, efficiency, and accountability of capital  
10 construction projects through the use of traditional and alternative  
11 delivery methods in Washington, and make recommendations regarding  
12 expansion, continuation, elimination, or modification of the  
13 alternative public works contracting methods;

14 (2) Evaluate the use of existing contracting procedures and  
15 potential future use of other alternative contracting procedures  
16 including competitive negotiation contracts;

17 (3) Develop guidelines to be used by the committee for the review  
18 and approval of design-build demonstration projects that procure  
19 operations and maintenance services;

1       (4) Appoint members of the committee; and  
2       (~~(4)~~) (5) Develop and administer questionnaires designed to  
3 provide quantitative and qualitative data on alternative public works  
4 contracting procedures on which evaluations are based.

5       **Sec. 2.** RCW 39.10.250 and 2007 c 494 s 105 are each amended to  
6 read as follows:

7       The committee shall:

8       (1) Certify, or recertify, public bodies for a period of three  
9 years to use the design-build or general contractor/construction  
10 manager, or both, contracting procedures for projects with a total  
11 project cost of ten million dollars or more;

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

16       (3) Review and approve the use of the general  
17 contractor/construction manager contracting procedure by certified  
18 public bodies for projects with a total project cost under ten million  
19 dollars;

20       (4) Review and approve not more than ten projects using the design-  
21 build contracting procedure by certified and noncertified public bodies  
22 for projects that have a total project cost between two million and ten  
23 million dollars. Projects must meet the criteria in RCW 39.10.300(1).  
24 Where possible, the committee shall approve projects among multiple  
25 public bodies. In June 2010, the committee shall report to the board  
26 regarding the committee's review procedure of these projects and its  
27 recommendations for further use; and

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

31       **Sec. 3.** RCW 39.10.270 and 2007 c 494 s 107 are each amended to  
32 read as follows:

33       (1) A public body may apply for certification to use the design-  
34 build or general contractor/construction manager contracting procedure,  
35 or both. Once certified, a public body may use the contracting  
36 procedure for which it is certified on individual projects with a total

1 project cost over ten million dollars without seeking committee  
2 approval. The certification period is three years. A public body  
3 seeking certification must submit to the committee an application in a  
4 format and manner as prescribed by the committee. The application must  
5 include a description of the public body's qualifications, its capital  
6 plan during the certification period, and its intended use of  
7 alternative contracting procedures.

8 (2) A public body seeking certification for the design-build  
9 procedure must demonstrate successful management of at least one  
10 design-build project within the previous five years. A public body  
11 seeking certification for the general contractor/construction manager  
12 procedure must demonstrate successful management of at least one  
13 general contractor/construction manager project within the previous  
14 five years.

15 (3) To certify a public body, the committee shall determine that  
16 the public body:

17 (a) Has the necessary experience and qualifications to determine  
18 which projects are appropriate for using alternative contracting  
19 procedures;

20 (b) Has the necessary experience and qualifications to carry out  
21 the alternative contracting procedure including, but not limited to:  
22 (i) Project delivery knowledge and experience; (ii) personnel with  
23 appropriate construction experience; (iii) a management plan and  
24 rationale for its alternative public works projects; (iv) demonstrated  
25 success in managing public works projects; (v) ~~((demonstrated success~~  
26 ~~in managing at least one general contractor/construction manager or~~  
27 ~~design-build project within the previous five years; (vi))~~ the ability  
28 to properly manage its capital facilities plan including, but not  
29 limited to, appropriate project planning and budgeting experience; and  
30 ~~((vii))~~ (vi) the ability to meet requirements of this chapter; and

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

33 ~~((+3))~~ (4) The committee shall, if practicable, make its  
34 determination at the public meeting during which an application for  
35 certification is reviewed. Public comments must be considered before  
36 a determination is made. Within ten business days of the public  
37 meeting, the committee shall provide a written determination to the

1 public body, and make its determination available to the public on the  
2 committee's web site.

3 ~~((+4))~~ (5) The committee may revoke any public body's  
4 certification upon a finding, after a public hearing, that its use of  
5 design-build or general contractor/construction manager contracting  
6 procedures no longer serves the public interest.

7 ~~((+5))~~ (6) The committee may renew the certification of a public  
8 body for one additional three-year period. The public body must submit  
9 an application for recertification at least three months before the  
10 initial certification expires. The application shall include updated  
11 information on the public body's capital plan for the next three years,  
12 its intended use of the procedures, and any other information requested  
13 by the committee. The committee must review the application for  
14 recertification at a meeting held before expiration of the applicant's  
15 initial certification period. A public body must reapply for  
16 certification under the process described in subsection (1) of this  
17 section once the period of recertification expires.

18 ~~((+6))~~ (7) Certified public bodies must submit project data  
19 information as required in RCW 39.10.320 and 39.10.350.

20 **Sec. 4.** RCW 39.10.300 and 2007 c 494 s 201 are each amended to  
21 read as follows:

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

25 (a) The design and construction activities, technologies, or  
26 schedule to be used are highly specialized and a design-build approach  
27 is critical in developing the construction methodology or implementing  
28 the proposed technology; or

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

31 (c) Regular interaction with and feedback from facilities users and  
32 operators during design is not critical to an effective facility  
33 design.

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

1 (3) The design-build procedure (~~(also)~~) may be used for the  
2 construction or erection of preengineered metal buildings or  
3 prefabricated modular buildings, regardless of cost and is not subject  
4 to approval by the committee.

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

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

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

23 **Sec. 5.** RCW 39.10.330 and 2007 c 494 s 204 are each amended to  
24 read as follows:

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

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

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

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

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

8 (i) Evaluation factors for request for qualifications shall  
9 include, but not be limited to, technical qualifications, such as  
10 specialized experience and technical competence; capability to perform;  
11 past performance of the proposers' team, including the architect-  
12 engineer and construction members; and other appropriate factors. Cost  
13 or price-related factors are not permitted in the request for  
14 qualifications phase;

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

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

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

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

30 (h) 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 on the  
33 factors, weighting, and process identified in the request for  
34 qualifications. Based on the evaluation committee's findings, the  
35 public body shall select not more than five responsive and responsible  
36 finalists to submit proposals. The public body may, in its sole  
37 discretion, reject all proposals and shall provide its reasons for  
38 rejection in writing to all proposers.

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

4 (a) A detailed description of the project including programmatic,  
5 performance, and technical requirements and specifications; functional  
6 and operational elements; minimum and maximum net and gross areas of  
7 any building; and, at the discretion of the public body, preliminary  
8 engineering and architectural drawings; and

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

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

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

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

30 (5) The firm awarded the contract shall provide a performance and  
31 payment bond for the contracted amount. The public body shall provide  
32 appropriate honorarium payments to finalists submitting (~~best and~~  
33 ~~final~~) responsive proposals that are not awarded a design-build  
34 contract. Honorarium payments shall be sufficient to generate  
35 meaningful competition among potential proposers on design-build  
36 projects. In determining the amount of the honorarium, the public body  
37 shall consider the level of effort required to meet the selection  
38 criteria.

1       **Sec. 6.** RCW 39.10.360 and 2007 c 494 s 303 are each amended to  
2 read 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.

6       (2) Contracts for the services of a general contractor/  
7 construction manager under this section shall be awarded through a  
8 competitive process requiring the public solicitation of proposals for  
9 general contractor/construction manager services. The public  
10 solicitation of proposals shall include:

11       (a) A description of the project, including programmatic,  
12 performance, and technical requirements and specifications when  
13 available;

14       (b) The reasons for using the general contractor/construction  
15 manager procedure;

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

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

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

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

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

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

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

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

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

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

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

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

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

37       (4) A public body shall establish a committee to evaluate the  
38 proposals. After the committee has selected the most qualified



1 finalists, at the time specified by the public body, these finalists  
2 shall submit final proposals, including sealed bids for the percent fee  
3 on the estimated maximum allowable construction cost and the fixed  
4 amount for the general conditions work specified in the request for  
5 proposal. The public body shall establish a time and place for the  
6 opening of sealed bids for the percent fee on the estimated maximum  
7 allowable construction cost and the fixed amount for the general  
8 conditions work specified in the request for proposal. At the time and  
9 place named, these bids must be publicly opened and read and the public  
10 body shall make all previous scoring available to the public. The  
11 public body shall select the firm submitting the highest scored final  
12 proposal using the evaluation factors and the relative weight of  
13 factors published in the public solicitation of proposals. A public  
14 body shall not evaluate or disqualify a proposal based on the terms of  
15 a collective bargaining agreement.

16 (5) Public bodies may contract with the selected firm to provide  
17 services during the design phase that may include life-cycle cost  
18 design considerations, value engineering, scheduling, cost estimating,  
19 constructability, alternative construction options for cost savings,  
20 and sequencing of work, and to act as the construction manager and  
21 general contractor during the construction phase.

22 **Sec. 7.** RCW 39.10.420 and 2007 c 494 s 401 are each amended to  
23 read as follows:

24 (1) The following public bodies are authorized to use the job order  
25 contracting procedure:

26 (a) The department of general administration;

27 (b) The University of Washington;

28 (c) Washington State University;

29 (d) Every city with a population greater than seventy thousand and  
30 any public authority chartered by such city under RCW 35.21.730 through  
31 35.21.755;

32 (e) Every county with a population greater than four hundred fifty  
33 thousand;

34 (f) Every port district with total revenues greater than fifteen  
35 million dollars per year;

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

1 (h) Every school district; and

2 (i) The state ferry system.

3 (2)(a) The department of general administration may issue job order  
4 contract work orders for Washington state parks department projects.

5 (b) The department of general administration, the University of  
6 Washington, and Washington State University may issue job order  
7 contract work orders for the state regional universities and The  
8 Evergreen State College.

9 (3) Public bodies may use a job order contract for public works  
10 projects when a determination is made that the use of job order  
11 contracts will benefit the public by providing an effective means of  
12 reducing the total lead-time and cost for the construction of public  
13 works projects for repair and renovation required at public facilities  
14 through the use of unit price books and work orders by eliminating  
15 time-consuming, costly aspects of the traditional public works process,  
16 which require separate contracting actions for each small project.

17 NEW SECTION. Sec. 8. RCW 39.10.310 (Design-build procedure--  
18 Negotiated adjustments to lowest bid or proposal--When allowed) and  
19 2007 c 494 s 202 & 1994 c 132 s 8 are each repealed.

--- END ---