
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0075.4/07 4th draft

ATTY/TYPIST: SCG:seg

BRIEF DESCRIPTION: Changing alternative works provisions.

1 AN ACT Relating to alternative public works; amending RCW
2 39.10.010, 39.10.020, 39.10.800, 39.10.810, 39.10.080, 39.10.070,
3 39.10.130, 39.10.120, 60.28.011, and 70.150.070; reenacting and
4 amending RCW 39.10.051 and 39.10.061; adding new sections to chapter
5 43.131 RCW; adding new sections to chapter 39.10 RCW; recodifying RCW
6 39.10.010, 39.10.020, 39.10.800, 39.10.810, 39.10.051, 39.10.080,
7 39.10.070, 39.10.061, 39.10.130, 39.10.100, 39.10.090, 39.10.120,
8 39.10.900, and 39.10.901; repealing RCW 39.10.902, 39.10.030,
9 39.10.040, 39.10.063, 39.10.065, 39.10.067, 39.10.068, 39.10.115, and
10 39.10.117; providing effective dates; and declaring an emergency.

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

12 **Sec. 1.** RCW 39.10.010 and 1994 c 132 s 1 are each amended to read
13 as follows:

14 The legislature finds that the traditional process of awarding
15 public works contracts in lump sum to the lowest responsible bidder is
16 a fair and objective method of selecting a contractor. However, under
17 certain circumstances, alternative public works contracting procedures
18 may best serve the public interest if such procedures are implemented
19 in an open and fair process based on objective and equitable criteria.

1 The purpose of this chapter is to authorize the use of certain
2 supplemental alternative public works contracting procedures (~~by state~~
3 ~~agencies and large municipalities under limited circumstances~~), to
4 prescribe appropriate requirements to ensure that such contracting
5 procedures serve the public interest, and to establish a process for
6 evaluation of such contracting procedures.

7 **PART 1**

8 **GENERAL PROVISIONS**

9 **Sec. 101.** RCW 39.10.020 and 2005 c 469 s 3 are each amended to
10 read as follows:

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

13 (1) "Alternative public works contracting procedure" means the
14 design-build (~~and the~~), general contractor/construction manager, and
15 job order contracting procedures authorized in RCW 39.10.051 (~~and~~),
16 39.10.061, and 39.10.130 (as recodified by this act), respectively.
17 (~~Public bodies eligible to enter into agreements with service~~
18 ~~providers for the furnishing of services in connection with water~~
19 ~~pollution control facilities under the authority of chapter 70.150 RCW~~
20 ~~may elect to use either RCW 39.10.051 and 39.10.061 or chapter 70.150~~
21 ~~RCW as their method of procurement for such services.~~)

22 (2) (~~"Public body" means the state department of general~~
23 ~~administration; the University of Washington; Washington State~~
24 ~~University; every city with a population greater than seventy thousand~~
25 ~~and any public authority chartered by such city under RCW 35.21.730~~
26 ~~through 35.21.755 and specifically authorized as provided in RCW~~
27 ~~39.10.120(4); every county with a population greater than four hundred~~
28 ~~fifty thousand; every port district with total revenues greater than~~
29 ~~fifteen million dollars per year; every public hospital district with~~
30 ~~total revenues greater than fifteen million dollars per year utilizing~~
31 ~~the design-build procedure authorized by RCW 39.10.051 and every public~~
32 ~~hospital district, regardless of total revenues, proposing projects~~
33 ~~that are considered and approved by the public hospital district~~
34 ~~project review board under RCW 39.10.117; every public utility district~~
35 ~~with revenues from energy sales greater than twenty three million~~
36 ~~dollars per year; those school districts proposing projects that are~~

1 ~~considered and approved by the school district project review board~~
2 ~~under RCW 39.10.115; and the state ferry system.))~~ "Board" means the
3 capital projects advisory review board.

4 (3) (~~"Public works project" means any work for a public body~~
5 ~~within the definition of the term public work in RCW 39.04.010.))~~
6 "Committee" means the project review committee.

7 (4) "Design-build procedure" means a contract between a public body
8 and another party in which the party agrees to both design and build
9 the facility, portion of the facility, or other item specified in the
10 contract.

11 (5) "Total contract cost" means the fixed amount for the detailed
12 specified general conditions work, the negotiated maximum allowable
13 construction cost, and the percent fee on the negotiated maximum
14 allowable construction cost.

15 (6) "General contractor/construction manager" means a firm with
16 which a public body has selected and negotiated a maximum allowable
17 construction cost to provide services during the design phase and to
18 act as construction manager and general contractor during the
19 construction phase.

20 (7) "Job order contract" means a contract (~~between a public body~~
21 ~~or any school district and a registered or licensed contractor)) in
22 which the contractor agrees to a fixed period, indefinite quantity
23 delivery order contract which provides for the use of negotiated,
24 definitive work orders for public works as defined in RCW 39.04.010.~~

25 ((+5)) (8) "Job order contractor" means a registered or licensed
26 contractor awarded a job order contract.

27 ((+6)) (9) "Maximum allowable construction cost" means the maximum
28 cost of the work to construct the project including a percentage for
29 risk contingency, negotiated support services, and approved change
30 orders.

31 (10) "Negotiated support services" means items a general contractor
32 would normally manage or perform on a construction project including,
33 but not limited to surveying, hoisting, safety enforcement, provision
34 of toilet facilities, temporary heat, cleanup, and trash removal.

35 (11) "Percent fee" means the percentage amount to be earned by the
36 general contractor/construction manager as overhead and profit.

37 (12) "Public body" means any general or special purpose government,

1 including but not limited to state agencies, institutions of higher
2 education, counties, cities, towns, and special purpose districts.

3 (13) "Certified public body" means a public body certified to use
4 design-build or general contractor/construction manager contracting
5 procedures, or both, under section 107 of this act.

6 (14) "Public works project" means any work for a public body within
7 the definition of "public work" in RCW 39.04.010.

8 (15) "Total project cost" means the cost of the project less
9 financing and land acquisition costs.

10 (16) "Unit price book" means a book containing specific prices,
11 based on generally accepted industry standards and information, where
12 available, for various items of work to be performed by the job order
13 contractor. The prices may include: All the costs of materials;
14 labor; equipment; overhead, including bonding costs; and profit for
15 performing the items of work. The unit prices for labor must be at the
16 rates in effect at the time the individual work order is issued.

17 ((+7)) (17) "Work order" means an order issued for a definite
18 scope of work to be performed pursuant to a job order contract.

19 **Sec. 102.** RCW 39.10.800 and 2005 c 377 s 1 are each amended to
20 read as follows:

21 (1) The ((capital projects advisory review)) board is created in
22 the department of general administration to provide an evaluation of
23 public capital projects construction processes, including the impact of
24 contracting methods on project outcomes, and to advise the legislature
25 on policies related to ((alternative)) public works delivery methods.

26 (2)(a) The ((capital projects advisory review)) board shall consist
27 of the following members appointed by the governor: ((One)) Two
28 representatives from construction general contracting; one
29 representative from the ((design industries)) architectural profession;
30 one representative from the engineering profession; two representatives
31 from construction specialty subcontracting; ((one)) two representatives
32 from ((a)) construction trades labor organizations; one representative
33 from the office of minority and women's business enterprises; one
34 representative from a higher education institution; one representative
35 from the department of general administration; two representatives from
36 private industry; and one representative of a domestic insurer
37 authorized to write surety bonds for contractors in Washington state.

1 All appointed members must be (~~actively engaged in or authorized to~~
2 ~~use alternative~~) knowledgeable about public works contracting
3 procedures.

4 (b) (~~Two~~) Three members shall be (~~at-large~~) positions
5 representing different local public owners(~~. The two at-large~~
6 ~~positions shall serve on a rotating basis to be determined and~~
7 ~~appointed~~), selected by the association of Washington cities, the
8 Washington state association of counties, and the Washington public
9 ports association, respectively.

10 (c) One member shall be a (~~member of~~) representative from the
11 public hospital districts (~~project review board~~), selected by (~~that~~
12 ~~board, who shall be nonvoting~~) the association of Washington public
13 hospital districts.

14 (d) One member shall be a (~~member of the~~) representative from
15 school districts (~~project review board~~), selected by (~~that board,~~
16 ~~who shall be nonvoting~~) the Washington state school directors'
17 association.

18 (e) The (~~advisory review~~) board shall include two members of the
19 house of representatives, one from each major caucus, appointed by the
20 speaker of the house of representatives, and two members of the senate,
21 one from each major caucus, appointed by the president of the senate.
22 Legislative members are nonvoting.

23 (3) Members selected under subsection (2)(a) of this section shall
24 serve for terms of four years, with the terms expiring on June 30th on
25 the fourth year of the term. (~~However, in the case of the initial~~
26 ~~members, four members shall serve four year terms, four members shall~~
27 ~~serve three year terms, and three members shall serve a two year term,~~
28 ~~with each of the terms expiring on June 30th of the applicable year.~~
29 ~~Appointees may be reappointed to serve more than one term.~~)

30 (4) The (~~capital projects advisory review~~) board chair is
31 selected from among the appointed members by the majority vote of the
32 voting members.

33 (5) Legislative members of the (~~capital projects advisory review~~)
34 board shall be reimbursed for travel expenses in accordance with RCW
35 44.04.120. Nonlegislative members of the (~~capital projects advisory~~
36 ~~review~~) board, (~~including any subcommittee members, except those~~
37 ~~representing an employer or organization,~~) project review committee

1 members, and subcommittee chairs shall be reimbursed for travel
2 expenses as provided in RCW 43.03.050 and 43.03.060.

3 (6) If a vacancy occurs of the appointive members of the board, the
4 governor shall fill the vacancy for the unexpired term. Members of the
5 board may be removed for malfeasance or misfeasance in office, upon
6 specific written charges by the governor, under chapter 34.05 RCW.

7 (7) The ~~((capital projects advisory review))~~ board shall ~~((convene
8 as soon as practical after July 1, 2005, and may))~~ meet as often as
9 necessary ~~((thereafter))~~.

10 (8) ~~((Capital projects advisory review))~~ Board members are expected
11 to consistently attend ~~((review))~~ board meetings. The chair of the
12 ~~((capital projects advisory review))~~ board may ask the governor to
13 remove any member who misses more than two meetings in any calendar
14 year without cause.

15 (9) The department of general administration shall provide staff
16 support as may be required for the proper discharge of the function of
17 the ~~((capital projects advisory review))~~ board.

18 (10) The ~~((capital projects advisory review))~~ board may establish
19 subcommittees as it desires and may invite nonmembers of the ~~((capital
20 projects advisory review))~~ board to serve as committee members.

21 (11) The board shall encourage participation from persons and
22 entities not represented on the ~~((capital projects advisory review))~~
23 board.

24 **Sec. 103.** RCW 39.10.810 and 2005 c 377 s 2 are each amended to
25 read as follows:

26 The ~~((capital projects advisory review))~~ board has the following
27 powers and duties:

28 (1) ~~((Develop and recommend to the legislature criteria that may be
29 used to determine effective and feasible use of alternative contracting
30 procedures;~~

31 ~~(2) Develop and recommend to the legislature qualification
32 standards for general contractors bidding on alternative public works
33 projects;~~

34 (3)) Develop and recommend to the legislature policies to further
35 enhance the quality, efficiency, and accountability of capital
36 construction projects through the use of traditional and alternative

1 delivery methods in Washington, and make recommendations regarding
2 expansion, continuation, elimination, or modification of the
3 alternative public works contracting methods;

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

7 (3) Appoint members of the committee; and

8 (4) Develop and administer questionnaires designed to provide
9 quantitative and qualitative data on alternative public works
10 contracting procedures on which evaluations are based.

11 NEW SECTION. Sec. 104. PROJECT REVIEW COMMITTEE--CREATED. (1)

12 The board shall establish a project review committee to review and
13 approve public works projects using the design-build and general
14 contractor/construction manager contracting procedures authorized in
15 RCW 39.10.051 and 39.10.061 (as recodified by this act) and to certify
16 public bodies as provided in section 107 of this act.

17 (2) The board shall, by a majority vote of the board, appoint
18 persons to the committee who are knowledgeable in the use of the
19 design-build and general contractor/construction manager contracting
20 procedures. Appointments must represent a balance among the industries
21 and public owners on the board listed in RCW 39.10.800 (as recodified
22 by this act).

23 (a) When making initial appointments to the committee, the board
24 shall consider for appointment former members of the school district
25 project review board and the public hospital district project review
26 board.

27 (b) Each member of the committee shall be appointed for a term of
28 three years. However, for initial appointments, the board shall
29 stagger the appointment of committee members so that the first members
30 are appointed to serve terms of one, two, or three years from the date
31 of appointment. Appointees may be reappointed to serve more than one
32 term.

33 (c) The committee shall, by a majority vote, elect a chair and
34 vice-chair for the committee.

35 (d) The committee chair may select a person or persons on a
36 temporary basis as a nonvoting member if project specific expertise is
37 needed to assist in a review.

1 (3) The chair of the committee, in consultation with the vice-
2 chair, may appoint one or more panels of at least six committee members
3 to carry out the duties of the committee. Each panel shall have
4 balanced representation of the private and public sector
5 representatives serving on the committee.

6 (4) Any member of the committee directly or indirectly affiliated
7 with a submittal before the committee must recuse himself or herself
8 from the committee consideration of that submittal.

9 (5) Any person who sits on the committee or panel is not precluded
10 from subsequently bidding on or participating in projects that have
11 been reviewed by the committee.

12 (6) The committee shall meet as often as necessary to ensure that
13 certification and approvals are completed in a timely manner.

14 NEW SECTION. **Sec. 105.** PROJECT REVIEW COMMITTEE DUTIES. The
15 committee shall:

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

20 (2) Review and approve the use of the design-build or general
21 contractor/construction manager contracting procedures on a project by
22 project basis for public bodies that are not certified under section
23 107 of this act; and

24 (3) Review and approve the use of the general
25 contractor/construction manager contracting procedure by certified
26 public bodies for projects with a total project cost under ten million
27 dollars.

28 NEW SECTION. **Sec. 106.** PROJECT REVIEW COMMITTEE MEETINGS--OPEN
29 AND PUBLIC. (1) The committee shall hold regular public meetings to
30 carry out its duties as described in section 105 of this act.
31 Committee meetings are subject to chapter 42.30 RCW.

32 (2) The committee shall publish notice of its public meetings at
33 least twenty days before the meeting in a legal newspaper circulated in
34 the area where the public body seeking certification is located, or
35 where each of the proposed projects under consideration will be

1 constructed. All meeting notices must be posted on the committee's web
2 site.

3 (3) The meeting notice must identify the public body that is
4 seeking certification or project approval, and where applicable, a
5 description of projects to be considered at the meeting. The notice
6 must indicate when, where, and how the public may present comments
7 regarding the committee's certification of a public body or approval of
8 a project. Information submitted by a public body to be reviewed at
9 the meeting shall be available on the committee's web site at the time
10 the notice is published.

11 (4) The committee must allow for public comment on the
12 appropriateness of certification of a public body or on the
13 appropriateness of the use of the proposed contracting procedure and
14 the qualifications of a public body to use the contracting procedure.
15 The committee shall receive and record both written and oral comments
16 at the public hearing.

17 NEW SECTION. **Sec. 107.** PROJECT REVIEW COMMITTEE--CERTIFICATION OF
18 PUBLIC BODIES. (1) A public body may apply for certification to use
19 the design-build or general contractor/construction manager contracting
20 procedure, or both. Once certified, a public body may use the
21 contracting procedure for which it is certified on individual projects
22 with a total project cost over ten million dollars without seeking
23 committee approval. The certification period is three years. A public
24 body seeking certification must submit to the committee an application
25 in a format and manner as prescribed by the committee. The application
26 must include a description of the public body's qualifications, its
27 capital plan during the certification period, and its intended use of
28 alternative contracting procedures.

29 (2) To certify a public body, the committee shall determine that
30 the public body:

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

34 (b) Has the necessary experience and qualifications to carry out
35 the alternative contracting procedure, including, but not limited to:

36 (i) Project delivery knowledge and experience; (ii) personnel with
37 appropriate construction experience; (iii) a management plan and

1 rationale for its alternative public works projects; (iv) demonstrated
2 success in managing public works projects; (v) demonstrated success in
3 managing at least one alternative public works project; (vi) the
4 ability to properly manage its capital facilities plan including, but
5 not limited to, appropriate project planning and budgeting experience;
6 and (vii) its ability to meet requirements of this chapter; and

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

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

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

19 (5) The committee may renew the certification of a public body for
20 one additional three-year period. The public body must submit an
21 application for recertification at least three months before the
22 initial certification expires. The application shall include updated
23 information on the public body's capital plan for the next three years,
24 its intended use of the procedures, and any other information requested
25 by the committee. The committee must review the application for
26 recertification at a meeting held before expiration of the applicant's
27 initial certification period. A public body must reapply for
28 certification under the process described in subsection (1) of this
29 section once the period of recertification expires.

30 (6) Certified public bodies must submit project data information as
31 required in RCW 39.10.070 (as recodified by this act) and section 302
32 of this act.

33 NEW SECTION. **Sec. 108.** PROJECT REVIEW COMMITTEE--PROJECT APPROVAL
34 PROCESS. (1) A public body not certified under section 107 of this act
35 may apply for approval to use the design-build or general
36 contractor/construction manager contracting procedure on a project. A
37 public body seeking approval must submit to the committee an

1 application in a format and manner as prescribed by the committee. The
2 application must include a description of the public body's
3 qualifications, a description of the project, and its intended use of
4 alternative contracting procedures.

5 (2) To approve a proposed project, the committee shall determine
6 that:

7 (a) The alternative contracting procedure will provide a
8 substantial fiscal benefit or the use of the traditional method of
9 awarding contracts in lump sum to the low responsive bidder is not
10 practical for meeting desired quality standards or delivery schedules;

11 (b) The proposed project meets the requirements for using the
12 alternative contracting procedure as described in section 201 or 301 of
13 this act;

14 (c) The public body has the necessary experience or qualified team
15 to carry out the alternative contracting procedure, including, but not
16 limited to: (i) Project delivery knowledge and experience; (ii)
17 sufficient personnel with construction experience to administer the
18 contract; (iii) clear and logical lines of authority/management plan;
19 (iv) the necessary and appropriate funding and time to properly manage
20 the job and complete the project; (v) continuity of project management
21 team, including personnel with experience managing projects of similar
22 scope and size to the project being proposed; and (vi) necessary and
23 appropriate construction budget;

24 (d) For design-build projects, construction personnel independent
25 of the design-build team are knowledgeable in the design-build process
26 and are able to oversee and administer the contract; and

27 (e) The public body has resolved any audit findings related to
28 previous public works projects in a manner satisfactory to the
29 committee.

30 (3) The committee shall, if practicable, make its determination at
31 the public meeting during which a submittal is reviewed. Public
32 comments must be considered before a determination is made.

33 (4) Within ten business days after the public meeting, the
34 committee shall provide a written determination to the public body, and
35 make its determination available to the public on the committee's web
36 site. If the committee fails to make a written determination within
37 ten business days of the public meeting, the request of the public body

1 to use the alternative procurement method on the requested project
2 shall be deemed approved.

3 (5) The requirements of subsection (1) of this section also apply
4 to certified public bodies seeking to use the general
5 contractor/construction manager contracting procedure on projects with
6 a total project cost of less than ten million dollars.

7 (6) Failure of the committee to meet within sixty calendar days of
8 a public body's application to use an alternative contracting procedure
9 on a project shall be deemed an approval of the application.

10 NEW SECTION. **Sec. 109.** APPEAL PROCESS. Final determinations by
11 the committee may be appealed to the board within seven days by the
12 public body or by an interested party. Notice of an appeal must be
13 provided to the committee and, as applicable, to the public body. The
14 board shall resolve an appeal within thirty days of receipt of the
15 appeal. The public body shall comply with the determination of the
16 board.

17 **PART 2**
18 **DESIGN-BUILD**

19 **Sec. 201.** RCW 39.10.051 and 2003 c 352 s 2 and 2003 c 300 s 4 are
20 each reenacted and amended to read as follows:

21 ~~(1) ((Notwithstanding any other provision of law, and after~~
22 ~~complying with RCW 39.10.030, the following public bodies may utilize~~
23 ~~the design build procedure of public works contracting for public works~~
24 ~~projects authorized under this section: The state department of~~
25 ~~general administration; the state ferry system; the University of~~
26 ~~Washington; Washington State University; every city with a population~~
27 ~~greater than seventy thousand and any public authority chartered by~~
28 ~~such city under RCW 35.21.730 through 35.21.755 and specifically~~
29 ~~authorized as provided in RCW 39.10.120(4); every county with a~~
30 ~~population greater than four hundred fifty thousand; every public~~
31 ~~utility district with revenues from energy sales greater than twenty~~
32 ~~three million dollars per year; every public hospital district with~~
33 ~~total revenues greater than fifteen million dollars per year; and every~~
34 ~~port district with total revenues greater than fifteen million dollars~~
35 ~~per year. The authority granted to port districts in this section is~~

1 in addition to and does not affect existing contracting authority under
2 RCW 53.08.120 and 53.08.130. For the purposes of this section,
3 "design build procedure" means a contract between a public body and
4 another party in which the party agrees to both design and build the
5 facility, portion of the facility, or other item specified in the
6 contract.

7 ~~(2) Public bodies authorized under this section))~~ Subject to the
8 process in section 107 or 108 of this act, public bodies may utilize
9 the design-build procedure for public works projects ~~((valued))~~ in
10 which the total project cost is over ten million dollars and where:

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

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

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

20 ~~((3) Public bodies authorized under this section may also use))~~
21 (2) The design-build procedure also may be used for the ~~((following~~
22 ~~projects that meet the criteria in subsection (2)(b) and (c) of this~~
23 ~~section:~~

24 ~~(a) The))~~ construction or erection of preengineered metal buildings
25 or prefabricated modular buildings, regardless of cost ~~((; or~~

26 ~~(b) The construction of new student housing projects valued over~~
27 ~~five million dollars.~~

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

36 ~~(a) A detailed description of the project including programmatic,~~
37 ~~performance, and technical requirements and specifications, functional~~

1 ~~and operational elements, minimum and maximum net and gross areas of~~
2 ~~any building, and, at the discretion of the public body, preliminary~~
3 ~~engineering and architectural drawings;~~

4 ~~(b) The reasons for using the design build procedure;~~

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

8 ~~(d) A description of the process the public body will use to~~
9 ~~evaluate qualifications and proposals, including evaluation factors and~~
10 ~~the relative weight of factors. Evaluation factors shall include, but~~
11 ~~not be limited to: Proposal price; ability of professional personnel;~~
12 ~~past performance on similar projects; ability to meet time and budget~~
13 ~~requirements; ability to provide a performance and payment bond for the~~
14 ~~project; recent, current, and projected work loads of the firm;~~
15 ~~location; and the concept of the proposal;~~

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

17 ~~(f) The amount to be paid to finalists submitting best and final~~
18 ~~proposals who are not awarded a design build contract; and~~

19 ~~(g) Other information relevant to the project.~~

20 ~~(5) The public body shall establish a committee to evaluate the~~
21 ~~proposals based on the factors, weighting, and process identified in~~
22 ~~the request for proposals. Based on its evaluation, the public body~~
23 ~~shall select not fewer than three nor more than five finalists to~~
24 ~~submit best and final proposals. The public body may, in its sole~~
25 ~~discretion, reject all proposals. Design build contracts shall be~~
26 ~~awarded using the procedures in (a) or (b) of this subsection.~~

27 ~~(a) Best and final proposals shall be evaluated and scored based on~~
28 ~~the factors, weighting, and process identified in the initial request~~
29 ~~for proposals. The public body may score the proposals using a system~~
30 ~~that measures the quality and technical merits of the proposal on a~~
31 ~~unit price basis. Final proposals may not be considered if the~~
32 ~~proposal cost is greater than the maximum allowable construction cost~~
33 ~~identified in the initial request for proposals. The public body shall~~
34 ~~initiate negotiations with the firm submitting the highest scored best~~
35 ~~and final proposal. If the public body is unable to execute a contract~~
36 ~~with the firm submitting the highest scored best and final proposal,~~
37 ~~negotiations with that firm may be suspended or terminated and the~~

1 ~~public body may proceed to negotiate with the next highest scored firm.~~
2 ~~Public bodies shall continue in accordance with this procedure until a~~
3 ~~contract agreement is reached or the selection process is terminated.~~

4 ~~(b) If the public body determines that all finalists are capable of~~
5 ~~producing plans and specifications that adequately meet project~~
6 ~~requirements, the public body may award the contract to the firm that~~
7 ~~submits the responsive best and final proposal with the lowest price.~~

8 ~~(6) The firm awarded the contract shall provide a performance and~~
9 ~~payment bond for the contracted amount. The public body shall provide~~
10 ~~appropriate honorarium payments to finalists submitting best and final~~
11 ~~proposals who are not awarded a design build contract. Honorarium~~
12 ~~payments shall be sufficient to generate meaningful competition among~~
13 ~~potential proposers on design build projects.~~

14 ~~(7) The authority provided to the state ferry system in this~~
15 ~~section is limited to projects concerning construction, renovation,~~
16 ~~preservation, demolition, and reconstruction of ferry terminals and~~
17 ~~associated land based facilities)) and is not subject to approval by~~
18 ~~the committee.~~

19 ~~(3) The design-build procedure may not be used for operations and~~
20 ~~maintenance beyond three years.~~

21 **Sec. 202.** RCW 39.10.080 and 1994 c 132 s 8 are each amended to
22 read as follows:

23 Notwithstanding the provisions of RCW 39.04.015, a public body
24 using the design-build contracting procedure is authorized to negotiate
25 an adjustment to the lowest bid or proposal price for a public works
26 project ((~~awarded under RCW 39.10.050 and 39.10.060~~)) based upon agreed
27 changes to the contract plans and specifications under the following
28 conditions:

29 (1) All responsive bids or proposal prices exceed the available
30 funds, as certified by an appropriate fiscal officer;

31 (2) The apparent low-responsive bid or proposal does not exceed the
32 available funds by the greater of one hundred twenty-five thousand
33 dollars or two percent for projects valued over ten million dollars;
34 and

35 (3) The negotiated adjustment will bring the bid or proposal price
36 within the amount of available funds.

1 **Sec. 203.** RCW 39.10.070 and 1994 c 132 s 7 are each amended to
2 read as follows:

3 (1) A public body utilizing the ~~((alternative public works))~~
4 design-build contracting procedure~~((s authorized under RCW 39.10.050~~
5 ~~and 39.10.060))~~ shall provide for:

6 ~~(a) ((The preparation of appropriate, complete, and coordinated~~
7 ~~design documents consistent with the procedure utilized;~~

8 ~~(b) To the extent appropriate, an independent review of the~~
9 ~~contract documents through value engineering or constructability~~
10 ~~studies prior to bid or proposal solicitation;~~

11 ~~(c))~~ Reasonable budget contingencies totaling not less than five
12 percent of the anticipated contract value;

13 ~~((d) To the extent appropriate, on-site architectural or~~
14 ~~engineering representatives during major construction or installation~~
15 ~~phases;~~

16 ~~(e))~~ (b) Employment of staff or consultants with expertise and
17 prior experience in the management of comparable projects; ~~((and~~

18 ~~(f))~~ (c) Contract documents that include alternative dispute
19 resolution procedures to be attempted prior to the initiation of
20 litigation;

21 (d) Submission of project information, as required by the board;
22 and

23 (e) Contract documents that require the contractor, subcontractors,
24 and designers to submit project information required by the board.

25 (2) A public body utilizing the ~~((alternative public works))~~
26 design-build contracting procedure~~((s under RCW 39.10.050 and~~
27 ~~39.10.060))~~ may provide incentive payments to contractors for early
28 completion, cost savings, or other goals if such payments are
29 identified in the request for proposals.

30 NEW SECTION. **Sec. 204.** DESIGN-BUILD CONTRACT AWARD. (1)
31 Contracts for design-build services shall be awarded through a
32 competitive process using public solicitation of proposals for design-
33 build services. The public body shall publish at least once in a legal
34 newspaper of general circulation published in, or as near as possible
35 to, that part of the county in which the public work will be done, a
36 notice of its request for qualifications from proposers for design-

1 build services, and the availability and location of the request for
2 proposal documents. The request for qualifications documents shall
3 include:

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

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

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

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

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

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

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

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

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

36 (h) Other information relevant to the project.

37 (2) The public body shall establish a committee to evaluate the
38 responses to the request for qualifications and, based on the factors,

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

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

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

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

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

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

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

36 (5) The firm awarded the contract shall provide a performance and
37 payment bond for the contracted amount. The public body shall provide
38 appropriate honorarium payments to finalists submitting best and final

1 proposals that are not awarded a design-build contract. Honorarium
2 payments shall be sufficient to generate meaningful competition among
3 potential proposers on design-build projects. In determining the
4 amount of the honorarium, the public body shall consider the level of
5 effort required to meet the selection criteria.

6 **PART 3**

7 **GENERAL CONTRACTOR/CONSTRUCTION MANAGER**

8 **Sec. 301.** RCW 39.10.061 and 2003 c 352 s 3 and 2003 c 300 s 5 are
9 each reenacted and amended to read as follows:

10 ~~((1) Notwithstanding any other provision of law, and after~~
11 ~~complying with RCW 39.10.030, a public body may utilize the general~~
12 ~~contractor/construction manager procedure of public works contracting~~
13 ~~for public works projects authorized under subsection (2) of this~~
14 ~~section. For the purposes of this section, "general~~
15 ~~contractor/construction manager" means a firm with which a public body~~
16 ~~has selected and negotiated a maximum allowable construction cost to be~~
17 ~~guaranteed by the firm, after competitive selection through formal~~
18 ~~advertisement and competitive bids, to provide services during the~~
19 ~~design phase that may include life cycle cost design considerations,~~
20 ~~value engineering, scheduling, cost estimating, constructability,~~
21 ~~alternative construction options for cost savings, and sequencing of~~
22 ~~work, and to act as the construction manager and general contractor~~
23 ~~during the construction phase.~~

24 ~~(2) Except those school districts proposing projects that are~~
25 ~~considered and approved by the school district project review board and~~
26 ~~those public hospital districts proposing projects that are considered~~
27 ~~and approved by the public hospital district project review board))~~
28 Subject to the process in section 107 or 108 of this act, public bodies
29 ((authorized under this section)) may utilize the general
30 contractor/construction manager procedure for public works projects
31 ((valued over ten million dollars)), as determined by the committee and
32 where:

33 ~~((a))~~ (1) Implementation of the project involves complex
34 scheduling ((requirements)), phasing, or coordination; ((or

35 ~~(b))~~ (2) The project involves construction at an ((existing))

1 occupied facility which must continue to operate during construction;
2 (~~or~~
3 ~~(e)~~) (3) The involvement of the general contractor/construction
4 manager during the design stage is critical to the success of the
5 project(~~(-~~
6 ~~(3) Public bodies should select general contractor/construction~~
7 ~~managers early in the life of public works projects, and in most~~
8 ~~situations no later than the completion of schematic design.~~
9 ~~(4) Contracts for the services of a general contractor/construction~~
10 ~~manager under this section shall be awarded through a competitive~~
11 ~~process requiring the public solicitation of proposals for general~~
12 ~~contractor/construction manager services. The public solicitation of~~
13 ~~proposals shall include: A description of the project, including~~
14 ~~programmatic, performance, and technical requirements and~~
15 ~~specifications when available; the reasons for using the general~~
16 ~~contractor/construction manager procedure; a description of the~~
17 ~~qualifications to be required of the proposer, including submission of~~
18 ~~the proposer's accident prevention program; a description of the~~
19 ~~process the public body will use to evaluate qualifications and~~
20 ~~proposals, including evaluation factors and the relative weight of~~
21 ~~factors; the form of the contract to be awarded; the estimated maximum~~
22 ~~allowable construction cost; and the bid instructions to be used by the~~
23 ~~general contractor/construction manager finalists. Evaluation factors~~
24 ~~shall include, but not be limited to: Ability of professional~~
25 ~~personnel, past performance in negotiated and complex projects, and~~
26 ~~ability to meet time and budget requirements; the scope of work the~~
27 ~~general contractor/construction manager proposes to self perform and~~
28 ~~its ability to perform it; location; recent, current, and projected~~
29 ~~work loads of the firm; and the concept of their proposal. A public~~
30 ~~body shall establish a committee to evaluate the proposals. After the~~
31 ~~committee has selected the most qualified finalists, these finalists~~
32 ~~shall submit final proposals, including sealed bids for the percent~~
33 ~~fee, which is the percentage amount to be earned by the general~~
34 ~~contractor/construction manager as overhead and profit, on the~~
35 ~~estimated maximum allowable construction cost and the fixed amount for~~
36 ~~the detailed specified general conditions work. The public body shall~~
37 ~~select the firm submitting the highest scored final proposal using the~~

1 ~~evaluation factors and the relative weight of factors published in the~~
2 ~~public solicitation of proposals.~~

3 ~~(5) The maximum allowable construction cost may be negotiated~~
4 ~~between the public body and the selected firm after the scope of the~~
5 ~~project is adequately determined to establish a guaranteed contract~~
6 ~~cost for which the general contractor/construction manager will provide~~
7 ~~a performance and payment bond. The guaranteed contract cost includes~~
8 ~~the fixed amount for the detailed specified general conditions work,~~
9 ~~the negotiated maximum allowable construction cost, the percent fee on~~
10 ~~the negotiated maximum allowable construction cost, and sales tax. If~~
11 ~~the public body is unable to negotiate a satisfactory maximum allowable~~
12 ~~construction cost with the firm selected that the public body~~
13 ~~determines to be fair, reasonable, and within the available funds,~~
14 ~~negotiations with that firm shall be formally terminated and the public~~
15 ~~body shall negotiate with the next highest scored firm and continue~~
16 ~~until an agreement is reached or the process is terminated. If the~~
17 ~~maximum allowable construction cost varies more than fifteen percent~~
18 ~~from the bid estimated maximum allowable construction cost due to~~
19 ~~requested and approved changes in the scope by the public body, the~~
20 ~~percent fee shall be renegotiated.~~

21 ~~(6) All subcontract work shall be competitively bid with public bid~~
22 ~~openings. When critical to the successful completion of a~~
23 ~~subcontractor bid package and after publication of notice of intent to~~
24 ~~determine bidder eligibility in a legal newspaper of general~~
25 ~~circulation published in or as near as possible to that part of the~~
26 ~~county in which the public work will be done at least twenty days~~
27 ~~before requesting qualifications from interested subcontract bidders,~~
28 ~~the owner and general contractor/construction manager may determine~~
29 ~~subcontractor bidding eligibility using the following evaluation~~
30 ~~criteria:~~

31 ~~(a) Adequate financial resources or the ability to secure such~~
32 ~~resources;~~

33 ~~(b) History of successful completion of a contract of similar type~~
34 ~~and scope;~~

35 ~~(c) Project management and project supervision personnel with~~
36 ~~experience on similar projects and the availability of such personnel~~
37 ~~for the project;~~

1 ~~(d) Current and projected workload and the impact the project will~~
2 ~~have on the subcontractor's current and projected workload;~~

3 ~~(e) Ability to accurately estimate the subcontract bid package~~
4 ~~scope of work;~~

5 ~~(f) Ability to meet subcontract bid package shop drawing and other~~
6 ~~coordination procedures;~~

7 ~~(g) Eligibility to receive an award under applicable laws and~~
8 ~~regulations; and~~

9 ~~(h) Ability to meet subcontract bid package scheduling~~
10 ~~requirements.~~

11 ~~The owner and general contractor/construction manager shall weigh~~
12 ~~the evaluation criteria and determine a minimum acceptable score to be~~
13 ~~considered an eligible subcontract bidder.~~

14 ~~After publication of notice of intent to determine bidder~~
15 ~~eligibility, subcontractors requesting eligibility shall be provided~~
16 ~~the evaluation criteria and weighting to be used by the owner and~~
17 ~~general contractor/construction manager to determine eligible~~
18 ~~subcontract bidders. After the owner and general~~
19 ~~contractor/construction manager determine eligible subcontract bidders,~~
20 ~~subcontractors requesting eligibility shall be provided the results and~~
21 ~~scoring of the subcontract bidder eligibility determination.~~

22 ~~Subcontract bid packages shall be awarded to the responsible bidder~~
23 ~~submitting the low responsive bid. The requirements of RCW 39.30.060~~
24 ~~apply to each subcontract bid package. All subcontractors who bid work~~
25 ~~over three hundred thousand dollars shall post a bid bond and all~~
26 ~~subcontractors who are awarded a contract over three hundred thousand~~
27 ~~dollars shall provide a performance and payment bond for their contract~~
28 ~~amount. All other subcontractors shall provide a performance and~~
29 ~~payment bond if required by the general contractor/construction~~
30 ~~manager. If a general contractor/construction manager receives a~~
31 ~~written protest from a subcontractor bidder, the general~~
32 ~~contractor/construction manager shall not execute a contract for the~~
33 ~~subcontract bid package with anyone other than the protesting bidder~~
34 ~~without first providing at least two full business days' written notice~~
35 ~~of the general contractor/construction manager's intent to execute a~~
36 ~~contract for the subcontract bid package; provided that the protesting~~
37 ~~bidder submits notice in writing of its protest no later than two full~~
38 ~~business days following bid opening. Intermediate Saturdays, Sundays,~~

1 and legal holidays are not counted. A low bidder who claims error and
2 fails to enter into a contract is prohibited from bidding on the same
3 project if a second or subsequent call for bids is made for the
4 project. Except as provided for under subsection (7) of this section,
5 bidding on subcontract work by the general contractor/construction
6 manager or its subsidiaries is prohibited. The general
7 contractor/construction manager may negotiate with the low responsive
8 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such
9 negotiations, rebid.

10 (7) The general contractor/construction manager, or its
11 subsidiaries, may bid on subcontract work if:

12 (a) The work within the subcontract bid package is customarily
13 performed by the general contractor/construction manager;

14 (b) The bid opening is managed by the public body; and

15 (c) Notification of the general contractor/construction manager's
16 intention to bid is included in the public solicitation of bids for the
17 bid package.

18 In no event may the value of subcontract work performed by the
19 general contractor/construction manager exceed thirty percent of the
20 negotiated maximum allowable construction cost.

21 (8) A public body may include an incentive clause in any contract
22 awarded under this section for savings of either time or cost or both
23 from that originally negotiated. No incentives granted may exceed five
24 percent of the maximum allowable construction cost. If the project is
25 completed for less than the agreed upon maximum allowable construction
26 cost, any savings not otherwise negotiated as part of an incentive
27 clause shall accrue to the public body. If the project is completed
28 for more than the agreed upon maximum allowable construction cost,
29 excepting increases due to any contract change orders approved by the
30 public body, the additional cost shall be the responsibility of the
31 general contractor/construction manager.

32 (9) The authority provided to the state ferry system in this
33 section is limited to projects concerning construction, renovation,
34 preservation, demolition, and reconstruction of ferry terminals and
35 associated land based facilities);

36 (4) The project encompasses a complex or technical work
37 environment; or

1 exceed five percent of the maximum allowable construction cost. No
2 incentives may be paid from any contingency fund established for
3 coordination of the construction documents or coordination of the work.

4 (3) If the construction is completed for less than the maximum
5 allowable construction cost, any savings not otherwise negotiated as
6 part of an incentive clause shall accrue to the public body. If the
7 construction is completed for more than the maximum allowable
8 construction cost, the additional cost is the responsibility of the
9 general contractor/construction manager.

10 (4) If the public body and the general contractor/construction
11 manager agree, in writing, on a price for additional work, the public
12 body must issue a change order within thirty days of the written
13 agreement. If the public body does not issue a change order within the
14 thirty days, interest shall accrue on the dollar amount of the
15 additional work satisfactorily completed until a change order is
16 issued. The public body shall pay this interest at a rate of one
17 percent per month.

18 NEW SECTION. Sec. 303. CONTRACT AWARD. (1) Public bodies should
19 select general contractor/construction managers early in the life of
20 public works projects, and in most situations no later than the
21 completion of schematic design.

22 (2) Contracts for the services of a general contractor/
23 construction manager under this section shall be awarded through a
24 competitive process requiring the public solicitation of proposals for
25 general contractor/construction manager services. The public
26 solicitation of proposals shall include:

27 (a) A description of the project, including programmatic,
28 performance, and technical requirements and specifications when
29 available;

30 (b) The reasons for using the general contractor/construction
31 manager procedure;

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

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

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

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

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

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

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

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

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

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

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

14 (f) Recent, current, and projected work loads of the firm; and

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

16 (4) A public body shall establish a committee to evaluate the
17 proposals. After the committee has selected the most qualified
18 finalists, these finalists shall submit final proposals, including
19 sealed bids for the percent fee on the estimated maximum allowable
20 construction cost and the fixed amount for the general conditions work
21 specified in the request for proposal. The public body shall select
22 the firm submitting the highest scored final proposal using the
23 evaluation factors and the relative weight of factors published in the
24 public solicitation of proposals.

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

31 NEW SECTION. **Sec. 304.** MAXIMUM ALLOWABLE CONSTRUCTION COST. (1)
32 The maximum allowable construction cost shall be used to establish a
33 total contract cost for which the general contractor/construction
34 manager shall provide a performance and payment bond. The maximum
35 allowable construction cost shall be negotiated between the public body
36 and the selected firm when the construction documents and
37 specifications are at least ninety percent complete, unless both

1 parties agree to set it at a different time. A firm's willingness to
2 set the maximum allowable construction cost before the construction
3 documents and specifications are ninety percent complete shall not be
4 a factor in the selection process.

5 (2) Major bid packages may be bid in accordance with section 305 of
6 this act before agreement on the maximum allowable construction cost
7 between the public body and the selected general
8 contractor/construction manager. The general contractor/construction
9 manager may issue an intent to award to the responsible bidder
10 submitting the lowest responsive bid.

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

16 (4) The total contract cost includes the fixed amount for the
17 detailed specified general conditions work, the negotiated maximum
18 allowable construction cost, the negotiated support services, the
19 percent fee on the negotiated maximum allowable construction cost, and
20 sales tax. Negotiated support services may be included in the
21 specified general conditions at the discretion of the public body.

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 available
25 funds, negotiations with that firm shall be formally terminated and the
26 public body shall negotiate with the next highest scored firm and
27 continue until an agreement is reached or the process is terminated.

28 NEW SECTION. **Sec. 305.** SUBCONTRACT BIDDING PROCEDURE. (1) All
29 subcontract work and equipment and material purchases shall be
30 competitively bid with public bid openings. Subcontract bid packages
31 and equipment and materials purchases shall be awarded to the
32 responsible bidder submitting the lowest responsive bid.

33 (2) All subcontract bid packages in which bidder eligibility was
34 not determined in advance shall include the specific objective criteria
35 that will be used to evaluate bidder responsibility. If the lowest
36 bidder is determined not to be responsible, the general
37 contractor/construction manager must provide written documentation to

1 that bidder explaining the basis for the decision. Responsibility
2 shall be determined in accordance with criteria listed in the bid
3 documents.

4 (3) All subcontractors who bid work over three hundred thousand
5 dollars shall post a bid bond. All subcontractors who are awarded a
6 contract over three hundred thousand dollars shall provide a
7 performance and payment bond for the contract amount. All other
8 subcontractors shall provide a performance and payment bond if required
9 by the general contractor/construction manager.

10 (4) If the general contractor/construction manager receives a
11 written protest from a subcontractor bidder or an equipment or material
12 supplier, the general contractor/construction manager shall not execute
13 a contract for the subcontract bid package or equipment or material
14 purchase order with anyone other than the protesting bidder without
15 first providing at least two full business days' written notice of the
16 intent to execute a contract for the subcontract bid package:
17 PROVIDED, That the protesting bidder must submit written notice of its
18 protest no later than two full business days following the bid opening.
19 Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

23 (6) The general contractor/construction manager may negotiate with
24 the lowest responsible and responsive bidder in accordance with RCW
25 39.10.080 (as recodified by this act) and, if unsuccessful, must rebid
26 the subcontract work or equipment or material purchases.

27 (7) The general contractor/construction manager must provide a
28 written explanation if all bids are rejected.

29 NEW SECTION. **Sec. 306.** GENERAL CONTRACTOR/CONSTRUCTION MANAGER
30 SELF PERFORMANCE OF SUBCONTRACT WORK. (1) Except as provided in this
31 section, bidding on subcontract work or for the supply of equipment or
32 materials by the general contractor/construction manager or its
33 subsidiaries is prohibited.

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

1 (a) The work within the subcontract bid package or equipment or
2 materials are customarily performed or supplied by the general
3 contractor/construction manager;

4 (b) The bid opening is managed by the public body and is in
5 compliance with section 305 of this act; and

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

9 (3) In no event may the general contractor/construction manager or
10 its subsidiaries purchase equipment or materials for assignment to
11 subcontract bid package bidders for installation or warranty. The
12 value of subcontract work performed and equipment and materials
13 supplied by the general contractor/construction manager may not exceed
14 thirty percent of the negotiated maximum allowable construction cost.
15 Negotiated support services performed by the general
16 contractor/construction manager shall not be considered subcontract
17 work for purposes of this subsection.

18 NEW SECTION. **Sec. 307.** PREBID DETERMINATION OF SUBCONTRACTOR
19 ELIGIBILITY. If determination of subcontractor eligibility prior to
20 seeking bids is in the best interest of the project and critical to the
21 successful completion of a subcontract bid package, the general
22 contractor/construction manager, with written approval by the public
23 body, may determine eligibility before issuing a subcontractor bid
24 package following the process in section 305 of this act. The general
25 contractor/construction manager must:

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

30 (2) Publish a notice of intent to evaluate and determine bidder
31 eligibility in a legal newspaper published in or as near as possible to
32 that part of the county where the public work will be constructed at
33 least fourteen calendar days before conducting a public hearing;

34 (3) Ensure the public hearing notice includes the date, time, and
35 location of the hearing, a statement justifying the basis and need for
36 performing eligibility analysis before bid opening, and specific

1 eligibility criteria and applicable weights given to each criteria and
2 subcriteria that will be used during evaluation;

3 (4) After the public hearing, consider written and verbal comments
4 received and determine, in conjunction with the public owner, if
5 determining bidder eligibility in advance of seeking bids is in the
6 best interests of the project;

7 (5) With the public owner, issue a written final determination to
8 all interested parties. All protests must be filed within seven
9 calendar days of the final determination. Any modifications to the
10 eligibility criteria and weights shall be based on comments received
11 during the public hearing process and shall be included in the final
12 determination; and

13 (6) Provide a bidder evaluation package to all interested bidders
14 and provide the results and scoring of the bidder eligibility
15 determination.

16 NEW SECTION. **Sec. 308.** SUBCONTRACT AGREEMENTS. Subcontract
17 agreements used by the general contractor/construction manager shall
18 not:

19 (1) Delegate or assign the general contractor/construction
20 manager's implied duty not to hinder or delay the subcontractor.
21 Nothing in this subsection (1) prohibits the general
22 contractor/construction manager from requiring subcontractors not to
23 hinder or delay the work of the general contractor/construction manager
24 or other subcontractors and to hold subcontractors responsible for such
25 damages;

26 (2) Delegate or assign the general contractor/construction
27 manager's authority to resolve subcontractor conflicts. The general
28 contractor/construction manager may delegate or assign coordination of
29 specific elements of the work, including: (a) The coordination of shop
30 drawings among subcontractors; (b) the coordination among
31 subcontractors in ceiling spaces and mechanical rooms; and (c) the
32 coordination of a subcontractor's lower tier subcontractors. Nothing
33 in this subsection prohibits the general contractor/construction
34 manager from imposing a duty on its subcontractors to cooperate with
35 the general contractor/construction manager and other subcontractors in
36 the coordination of the work;

1 (3) Restrict the subcontractor's right to damages for changes to
2 the construction schedule or work to the extent that the delay or
3 disruption is caused by the general contractor/construction manager or
4 entities acting for them. The general contractor/construction manager
5 may require the subcontractor to provide notice that rescheduling or
6 resequencing will result in delays or additional costs;

7 (4) Require the subcontractor to bear the cost of trade damage
8 repair except to the extent the subcontractor is responsible for the
9 damage. Nothing in this subsection (4) precludes the general
10 contractor/construction manager from requiring the subcontractor to
11 take reasonable steps to protect the subcontractor's work from trade
12 damage; or

13 (5) Require the subcontractor to execute progress payment
14 applications that waive bond or retainage rights as a condition of
15 receipt of progress payment, except to the extent the subcontractor has
16 or will receive payment. Nothing in this section precludes the general
17 contractor/construction manager from requiring the subcontractor to
18 execute a full and final release, including a waiver of bond and
19 retainage rights, as a condition of final payment.

20 **PART 4**

21 **JOB ORDER CONTRACTING**

22 **Sec. 401.** RCW 39.10.130 and 2003 c 301 s 1 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;

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

3 (h) Every school district; and

4 (i) The state ferry system.

5 (2) Public bodies may use a job order contract for public works
6 projects when((+)

7 ~~(a) A public body has made~~) a determination is made that the use
8 of job order contracts will benefit the public by providing an
9 effective means of reducing the total lead-time and cost for the
10 construction of public works projects ((~~or~~)) for repair and renovation
11 required at public facilities through the use of unit price books and
12 work orders by eliminating time-consuming, costly aspects of the
13 traditional public works process, which require separate contracting
14 actions for each small project((+)

15 ~~(b) The work order to be issued for a particular project does not~~
16 ~~exceed two hundred thousand dollars;~~

17 ~~(c) Less than twenty percent of the dollar value of the work order~~
18 ~~consists of items of work not contained in the unit price book; and~~

19 ~~(d) At least eighty percent of the job order contract must be~~
20 ~~subcontracted to entities other than the job order contractor.~~

21 ~~(2) Public bodies shall award job order contracts through a~~
22 ~~competitive process utilizing public requests for proposals. Public~~
23 ~~bodies shall make an effort to solicit proposals from a certified~~
24 ~~minority or certified woman owned contractor to the extent permitted by~~
25 ~~the Washington state civil rights act, RCW 49.60.400. The public body~~
26 ~~shall publish, at least once in a legal newspaper of general~~
27 ~~circulation published in or as near as possible to that part of the~~
28 ~~county in which the public works will be done, a request for proposals~~
29 ~~for job order contracts and the availability and location of the~~
30 ~~request for proposal documents. The public body shall ensure that the~~
31 ~~request for proposal documents at a minimum includes:~~

32 ~~(a) A detailed description of the scope of the job order contract~~
33 ~~including performance, technical requirements and specifications,~~
34 ~~functional and operational elements, minimum and maximum work order~~
35 ~~amounts, duration of the contract, and options to extend the job order~~
36 ~~contract;~~

37 ~~(b) The reasons for using job order contracts;~~

38 ~~(c) A description of the qualifications required of the proposer;~~

1 ~~(d) The identity of the specific unit price book to be used;~~
2 ~~(e) The minimum contracted amount committed to the selected job~~
3 ~~order contractor;~~
4 ~~(f) A description of the process the public body will use to~~
5 ~~evaluate qualifications and proposals, including evaluation factors and~~
6 ~~the relative weight of factors. The public body shall ensure that~~
7 ~~evaluation factors include, but are not limited to, proposal price and~~
8 ~~the ability of the proposer to perform the job order contract. In~~
9 ~~evaluating the ability of the proposer to perform the job order~~
10 ~~contract, the public body may consider: The ability of the~~
11 ~~professional personnel who will work on the job order contract; past~~
12 ~~performance on similar contracts; ability to meet time and budget~~
13 ~~requirements; ability to provide a performance and payment bond for the~~
14 ~~job order contract; recent, current, and projected work loads of the~~
15 ~~proposer; location; and the concept of the proposal;~~
16 ~~(g) The form of the contract to be awarded;~~
17 ~~(h) The method for pricing renewals of or extensions to the job~~
18 ~~order contract;~~
19 ~~(i) A notice that the proposals are subject to the provisions of~~
20 ~~RCW 39.10.100; and~~
21 ~~(j) Other information relevant to the project.~~
22 ~~(3) A public body shall establish a committee to evaluate the~~
23 ~~proposals. After the committee has selected the most qualified~~
24 ~~finalists, the finalists shall submit final proposals, including sealed~~
25 ~~bids based upon the identified unit price book. Such bids may be in~~
26 ~~the form of coefficient markups from listed price book costs. The~~
27 ~~public body shall award the contract to the firm submitting the highest~~
28 ~~scored final proposal using the evaluation factors and the relative~~
29 ~~weight of factors published in the public request for proposals.~~
30 ~~(4) The public body shall provide a protest period of at least ten~~
31 ~~business days following the day of the announcement of the apparent~~
32 ~~successful proposal to allow a protester to file a detailed statement~~
33 ~~of the grounds of the protest. The public body shall promptly make a~~
34 ~~determination on the merits of the protest and provide to all proposers~~
35 ~~a written decision of denial or acceptance of the protest. The public~~
36 ~~body shall not execute the contract until two business days following~~
37 ~~the public body's decision on the protest.~~

1 ~~(5) The public body shall issue no work orders until it has~~
2 ~~approved, in consultation with the office of minority and women's~~
3 ~~business enterprises or the equivalent local agency, a plan prepared by~~
4 ~~the job order contractor that equitably spreads certified women and~~
5 ~~minority business enterprise subcontracting opportunities, to the~~
6 ~~extent permitted by the Washington state civil rights act, RCW~~
7 ~~49.60.400, among the various subcontract disciplines.~~

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

14 ~~(7) The maximum total dollar amount that may be awarded under a job~~
15 ~~order contract shall not exceed three million dollars in the first year~~
16 ~~of the job order contract, five million dollars over the first two~~
17 ~~years of the job order contract, and, if extended or renewed, eight~~
18 ~~million dollars over the three years of the job order contract.~~

19 ~~(8) For each job order contract, public bodies shall not issue more~~
20 ~~than two work orders equal to or greater than one hundred fifty~~
21 ~~thousand dollars in a twelve month contract performance period.~~

22 ~~(9) All work orders issued for the same project shall be treated as~~
23 ~~a single work order for purposes of the one hundred fifty thousand~~
24 ~~dollar limit on work orders in subsection (8) of this section and the~~
25 ~~two hundred thousand dollar limit on work orders in subsection (1)(b)~~
26 ~~of this section.~~

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

29 ~~(11) Each public body may have no more than two job order contracts~~
30 ~~in effect at any one time.~~

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

36 ~~(13) The requirements of RCW 39.30.060 do not apply to requests for~~
37 ~~proposals for job order contracts.~~

1 ~~(14) Job order contractors shall pay prevailing wages for all work~~
2 ~~that would otherwise be subject to the requirements of chapter 39.12~~
3 ~~RCW. Prevailing wages for all work performed pursuant to each work~~
4 ~~order must be the rates in effect at the time the individual work order~~
5 ~~is issued.~~

6 ~~(15) If, in the initial contract term, the public body, at no fault~~
7 ~~of the job order contractor, fails to issue the minimum amount of work~~
8 ~~orders stated in the public request for proposals, the public body~~
9 ~~shall pay the contractor an amount equal to the difference between the~~
10 ~~minimum work order amount and the actual total of the work orders~~
11 ~~issued multiplied by an appropriate percentage for overhead and profit~~
12 ~~contained in the general conditions for Washington state facility~~
13 ~~construction. This will be the contractor's sole remedy.~~

14 ~~(16) All job order contracts awarded under this section must be~~
15 ~~executed before July 1, 2007, however the job order contract may be~~
16 ~~extended or renewed as provided for in this section.~~

17 ~~(17) For purposes of this section, "public body" includes any~~
18 ~~school district)).~~

19 NEW SECTION. **Sec. 402.** CONTRACT AWARD. (1) Job order contracts
20 shall be awarded through a competitive process using public requests
21 for proposals.

22 (2) The public body shall make an effort to solicit proposals from
23 a certified minority or certified woman-owned contractor to the extent
24 permitted by the Washington state civil rights act, RCW 49.60.400.

25 (3) The public body shall publish, at least once in a statewide
26 publication and legal newspaper of general circulation published in
27 every county in which the public works project is anticipated, a
28 request for proposals for job order contracts and the availability and
29 location of the request for proposal documents. The public body shall
30 ensure that the request for proposal documents at a minimum includes:

31 (a) A detailed description of the scope of the job order contract
32 including performance, technical requirements and specifications,
33 functional and operational elements, minimum and maximum work order
34 amounts, duration of the contract, and options to extend the job order
35 contract;

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

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

1 (d) The identity of the specific unit price book to be used;

2 (e) The minimum contracted amount committed to the selected job
3 order contractor;

4 (f) A description of the process the public body will use to
5 evaluate qualifications and proposals, including evaluation factors and
6 the relative weight of factors. The public body shall ensure that
7 evaluation factors include, but are not limited to, proposal price and
8 the ability of the proposer to perform the job order contract. In
9 evaluating the ability of the proposer to perform the job order
10 contract, the public body may consider: The ability of the
11 professional personnel who will work on the job order contract; past
12 performance on similar contracts; ability to meet time and budget
13 requirements; ability to provide a performance and payment bond for the
14 job order contract; recent, current, and projected work loads of the
15 proposer; location; and the concept of the proposal;

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

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

19 (i) A notice that the proposals are subject to the provisions of
20 sections 305 and 306 of this act; and

21 (j) Other information relevant to the project.

22 (4) A public body shall establish a committee to evaluate the
23 proposals. After the committee has selected the most qualified
24 finalists, the finalists shall submit final proposals, including sealed
25 bids based upon the identified unit price book. Such bids may be in
26 the form of coefficient markups from listed price book costs. The
27 public body shall award the contract to the firm submitting the highest
28 scored final proposal using the evaluation factors and the relative
29 weight of factors published in the public request for proposals and
30 will notify the board of the award of the contract.

31 (5) The public body shall provide a protest period of at least ten
32 business days following the day of the announcement of the apparent
33 successful proposal to allow a protester to file a detailed statement
34 of the grounds of the protest. The public body shall promptly make a
35 determination on the merits of the protest and provide to all proposers
36 a written decision of denial or acceptance of the protest. The public
37 body shall not execute the contract until two business days following
38 the public body's decision on the protest.

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

3 NEW SECTION. **Sec. 403.** JOB ORDER CONTRACT REQUIREMENTS. (1) The
4 maximum total dollar amount that may be awarded under a job order
5 contract shall not exceed four million dollars per year for a maximum
6 of three years.

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

13 (3) A public body may have no more than two job order contracts in
14 effect at any one time, with the exception of the department of general
15 administration, which may have four job order contracts in effect at
16 any one time.

17 (4) At least eighty percent of work contained in a job order
18 contract must be subcontracted to entities other than the job order
19 contractor. The job order contractor must distribute contracts as
20 equitably as possible among qualified and available subcontractors
21 including minority and woman-owned subcontractors to the extent
22 permitted by law.

23 (5) The job order contractor shall publish notification of intent
24 to perform public works projects at the beginning of each contract year
25 in a statewide publication and in a legal newspaper of general
26 circulation in every county in which the public works projects are
27 anticipated.

28 (6) Job order contractors shall pay prevailing wages for all work
29 that would otherwise be subject to the requirements of chapter 39.12
30 RCW. Prevailing wages for all work performed pursuant to each work
31 order must be the rates in effect at the time the individual work order
32 is issued.

33 (7) If, in the initial contract term, the public body, at no fault
34 of the job order contractor, fails to issue the minimum amount of work
35 orders stated in the public request for proposals, the public body
36 shall pay the contractor an amount equal to the difference between the
37 minimum work order amount and the actual total of the work orders

1 issued multiplied by an appropriate percentage for overhead and profit
2 contained in the contract award coefficient for services as specified
3 in the request for proposals. This is the contractor's sole remedy.

4 (8) All job order contracts awarded under this section must be
5 signed before July 1, 2013, however the job order contract may be
6 extended or renewed as provided for in this section.

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

9 NEW SECTION. **Sec. 404.** WORK ORDERS. (1) The maximum dollar
10 amount for a work order shall not exceed three hundred thousand
11 dollars, except that two work orders of three hundred fifty thousand
12 dollars each are allowed.

13 (2) No more than five work orders equal to or greater than three
14 hundred thousand dollars may be issued by a public body in a twelve-
15 month contract performance period for each job order contract.

16 (3) All work orders issued for the same project shall be treated as
17 a single work order for purposes of the dollar limit on work orders.

18 (4) No more than twenty percent of the dollar value of a work order
19 may consist of items of work not contained in the unit price book.

20 (5) Any new permanent, enclosed building space constructed under a
21 work order shall not exceed two thousand gross square feet.

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

29 (7) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
30 each work order issued shall be treated as a separate contract. The
31 alternate filing provisions of RCW 39.12.040(2) apply to each work
32 order that otherwise meets the eligibility requirements of RCW
33 39.12.040(2).

34 (8) The job order contract shall not be for the procurement of
35 architectural or engineering services not associated with specific work
36 orders. Procurement of architectural and engineering services shall be
37 in accordance with RCW 39.80.040.

1 ~~contracting procedures under this chapter, the city chartering any such~~
2 ~~public authority shall itself comply with RCW 39.10.030 on behalf of~~
3 ~~the public authority.))~~

4 NEW SECTION. **Sec. 502.** Projects approved by the school district
5 project review board established under RCW 39.10.115, and the hospital
6 district project review board established under RCW 39.10.117 before
7 July 1, 2007, may proceed without the approval of the committee
8 established in section 104 of this act.

9 **Sec. 503.** RCW 60.28.011 and 2003 c 301 s 7 are each amended to
10 read as follows:

11 (1) Public improvement contracts shall provide, and public bodies
12 shall reserve, a contract retainage not to exceed five percent of the
13 moneys earned by the contractor as a trust fund for the protection and
14 payment of: (a) The claims of any person arising under the contract;
15 and (b) the state with respect to taxes imposed pursuant to Title 82
16 RCW which may be due from such contractor.

17 (2) Every person performing labor or furnishing supplies toward the
18 completion of a public improvement contract shall have a lien upon
19 moneys reserved by a public body under the provisions of a public
20 improvement contract. However, the notice of the lien of the claimant
21 shall be given within forty-five days of completion of the contract
22 work, and in the manner provided in RCW 39.08.030.

23 (3) The contractor at any time may request the contract retainage
24 be reduced to one hundred percent of the value of the work remaining on
25 the project.

26 (a) After completion of all contract work other than landscaping,
27 the contractor may request that the public body release and pay in full
28 the amounts retained during the performance of the contract, and sixty
29 days thereafter the public body must release and pay in full the
30 amounts retained (other than continuing retention of five percent of
31 the moneys earned for landscaping) subject to the provisions of
32 chapters 39.12 and 60.28 RCW.

33 (b) Sixty days after completion of all contract work the public
34 body must release and pay in full the amounts retained during the
35 performance of the contract subject to the provisions of chapters 39.12
36 and 60.28 RCW.

1 (4) The moneys reserved by a public body under the provisions of a
2 public improvement contract, at the option of the contractor, shall be:

3 (a) Retained in a fund by the public body;

4 (b) Deposited by the public body in an interest bearing account in
5 a bank, mutual savings bank, or savings and loan association. Interest
6 on moneys reserved by a public body under the provision of a public
7 improvement contract shall be paid to the contractor;

8 (c) Placed in escrow with a bank or trust company by the public
9 body. When the moneys reserved are placed in escrow, the public body
10 shall issue a check representing the sum of the moneys reserved payable
11 to the bank or trust company and the contractor jointly. This check
12 shall be converted into bonds and securities chosen by the contractor
13 and approved by the public body and the bonds and securities shall be
14 held in escrow. Interest on the bonds and securities shall be paid to
15 the contractor as the interest accrues.

16 (5) The contractor or subcontractor may withhold payment of not
17 more than five percent from the moneys earned by any subcontractor or
18 sub-subcontractor or supplier contracted with by the contractor to
19 provide labor, materials, or equipment to the public project. Whenever
20 the contractor or subcontractor reserves funds earned by a
21 subcontractor or sub-subcontractor or supplier, the contractor or
22 subcontractor shall pay interest to the subcontractor or sub-
23 subcontractor or supplier at a rate equal to that received by the
24 contractor or subcontractor from reserved funds.

25 (6) A contractor may submit a bond for all or any portion of the
26 contract retainage in a form acceptable to the public body and from a
27 bonding company meeting standards established by the public body. The
28 public body shall accept a bond meeting these requirements unless the
29 public body can demonstrate good cause for refusing to accept it. This
30 bond and any proceeds therefrom are subject to all claims and liens and
31 in the same manner and priority as set forth for retained percentages
32 in this chapter. The public body shall release the bonded portion of
33 the retained funds to the contractor within thirty days of accepting
34 the bond from the contractor. Whenever a public body accepts a bond in
35 lieu of retained funds from a contractor, the contractor shall accept
36 like bonds from any subcontractors or suppliers from which the
37 contractor has retained funds. The contractor shall then release the

1 funds retained from the subcontractor or supplier to the subcontractor
2 or supplier within thirty days of accepting the bond from the
3 subcontractor or supplier.

4 (7) If the public body administering a contract, after a
5 substantial portion of the work has been completed, finds that an
6 unreasonable delay will occur in the completion of the remaining
7 portion of the contract for any reason not the result of a breach
8 thereof, it may, if the contractor agrees, delete from the contract the
9 remaining work and accept as final the improvement at the stage of
10 completion then attained and make payment in proportion to the amount
11 of the work accomplished and in this case any amounts retained and
12 accumulated under this section shall be held for a period of sixty days
13 following the completion. In the event that the work is terminated
14 before final completion as provided in this section, the public body
15 may thereafter enter into a new contract with the same contractor to
16 perform the remaining work or improvement for an amount equal to or
17 less than the cost of the remaining work as was provided for in the
18 original contract without advertisement or bid. The provisions of this
19 chapter are exclusive and shall supersede all provisions and
20 regulations in conflict herewith.

21 (8) Whenever the department of transportation has contracted for
22 the construction of two or more ferry vessels, sixty days after
23 completion of all contract work on each ferry vessel, the department
24 must release and pay in full the amounts retained in connection with
25 the construction of the vessel subject to the provisions of RCW
26 60.28.020 and chapter 39.12 RCW. However, the department of
27 transportation may at its discretion condition the release of funds
28 retained in connection with the completed ferry upon the contractor
29 delivering a good and sufficient bond with two or more sureties, or
30 with a surety company, in the amount of the retained funds to be
31 released to the contractor, conditioned that no taxes shall be
32 certified or claims filed for work on the ferry after a period of sixty
33 days following completion of the ferry; and if taxes are certified or
34 claims filed, recovery may be had on the bond by the department of
35 revenue and the materialmen and laborers filing claims.

36 (9) Except as provided in subsection (1) of this section,
37 reservation by a public body for any purpose from the moneys earned by

1 a contractor by fulfilling its responsibilities under public
2 improvement contracts is prohibited.

3 (10) Contracts on projects funded in whole or in part by farmers
4 home administration and subject to farmers home administration
5 regulations are not subject to subsections (1) through (9) of this
6 section.

7 (11) This subsection applies only to a public body that has
8 contracted for the construction of a facility using the general
9 contractor/construction manager procedure, as defined under RCW
10 (~~(39.10.061)~~) 39.10.020 (as recodified by this act). If the work
11 performed by a subcontractor on the project has been completed within
12 the first half of the time provided in the general
13 contractor/construction manager contract for completing the work, the
14 public body may accept the completion of the subcontract. The public
15 body must give public notice of this acceptance. After a forty-five
16 day period for giving notice of liens, and compliance with the
17 retainage release procedures in RCW 60.28.021, the public body may
18 release that portion of the retained funds associated with the
19 subcontract. Claims against the retained funds after the forty-five
20 day period are not valid.

21 (12) Unless the context clearly requires otherwise, the definitions
22 in this subsection apply throughout this section.

23 (a) "Contract retainage" means an amount reserved by a public body
24 from the moneys earned by a person under a public improvement contract.

25 (b) "Person" means a person or persons, mechanic, subcontractor, or
26 materialperson who performs labor or provides materials for a public
27 improvement contract, and any other person who supplies the person with
28 provisions or supplies for the carrying on of a public improvement
29 contract.

30 (c) "Public body" means the state, or a county, city, town,
31 district, board, or other public body.

32 (d) "Public improvement contract" means a contract for public
33 improvements or work, other than for professional services, or a work
34 order as defined in RCW 39.10.020 (as recodified by this act).

35 **Sec. 504.** RCW 70.150.070 and 2005 c 469 s 2 are each amended to
36 read as follows:

37 RCW 70.150.030 through 70.150.060 shall be deemed to provide an

1 additional method for the provision of services from and in connection
2 with facilities and shall be regarded as supplemental and additional to
3 powers conferred by other state laws and by federal laws. (~~A public
4 body that is also eligible to enter into agreements with service
5 providers under the alternative public works contracting procedures in
6 chapter 39.10 RCW may elect to use either RCW 39.10.051 and 39.10.061
7 or this chapter as its method of procurement for such services.~~)

8 NEW SECTION. Sec. 505. A new section is added to chapter 43.131
9 RCW to read as follows:

10 The alternative works contracting procedures under chapter 39.10
11 RCW shall be terminated June 30, 2013, as provided in section 506 of
12 this act.

13 NEW SECTION. Sec. 506. A new section is added to chapter 43.131
14 RCW to read as follows:

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

17 (1) RCW 39.10.010 (as recodified by this act) and section 1 of this
18 act & 1994 c 132 s 1;

19 (2) RCW 39.10.020 (as recodified by this act) and section 101 of
20 this act & 2005 c 469 s 3;

21 (3) RCW 39.10.800 (as recodified by this act) and section 102 of
22 this act & 2005 c 377 s 1;

23 (4) RCW 39.10.810 (as recodified by this act) and section 103 of
24 this act & 2005 c 377 s 2;

25 (5) RCW 39.10.--- and section 104 of this act;

26 (6) RCW 39.10.--- and section 105 of this act;

27 (7) RCW 39.10.--- and section 106 of this act;

28 (8) RCW 39.10.--- and section 107 of this act;

29 (9) RCW 39.10.--- and section 108 of this act;

30 (10) RCW 39.10.--- and section 109 of this act;

31 (11) RCW 39.10.051 (as recodified by this act) and section 201 of
32 this act, 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328
33 s 2;

34 (12) RCW 39.10.080 (as recodified by this act) and section 202 of
35 this act & 1994 c 132 s 8;

- 1 (13) RCW 39.10.070 (as recodified by this act) and section 203 of
2 this act & 1994 c 132 s 7;
3 (14) RCW 39.10.--- and section 204 of this act;
4 (15) RCW 39.10.061 (as recodified by this act) and section 301 of
5 this act, 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328
6 s 3;
7 (16) RCW 39.10.--- and section 302 of this act;
8 (17) RCW 39.10.--- and section 303 of this act;
9 (18) RCW 39.10.--- and section 304 of this act;
10 (19) RCW 39.10.--- and section 305 of this act;
11 (20) RCW 39.10.--- and section 306 of this act;
12 (21) RCW 39.10.--- and section 307 of this act;
13 (22) RCW 39.10.--- and section 308 of this act;
14 (23) RCW 39.10.130 (as recodified by this act) and section 401 of
15 this act & 2003 c 301 s 1;
16 (24) RCW 39.10.--- and section 402 of this act;
17 (25) RCW 39.10.--- and section 403 of this act;
18 (26) RCW 39.10.--- and section 404 of this act;
19 (27) RCW 39.10.--- and section 405 of this act;
20 (28) RCW 39.10.100 (as recodified by this act) and 2005 c 274 s 275
21 & 1994 c 132 s 10;
22 (29) RCW 39.10.090 (as recodified by this act) and 1994 c 132 s 9;
23 (30) RCW 39.10.120 (as recodified by this act) and section 501 of
24 this act & 2001 c 328 s 5;
25 (31) RCW 39.10.--- and section 502 of this act;
26 (32) RCW 39.10.900 (as recodified by this act) and 1994 c 132 s 13;
27 (33) RCW 39.10.901 (as recodified by this act) and 1994 c 132 s 14;
28 and
29 (34) RCW 39.10.--- and section 509 of this act.

30 NEW SECTION. **Sec. 507.** RCW 39.10.902 (Repealer) and 2006 c 261 s
31 3 & 2005 c 469 s 5 are each repealed.

32 NEW SECTION. **Sec. 508.** The following acts or parts of acts are
33 each repealed:

- 34 (1) RCW 39.10.030 (Public notification and review process) and 1997
35 c 376 s 2 & 1994 c 132 s 3;

- 1 (2) RCW 39.10.040 (Baseball stadium project--Alternative procedure
- 2 may be used) and 1994 c 132 s 4;
- 3 (3) RCW 39.10.063 (City demonstration projects--Conditions--
- 4 Contract deadline) and 2005 c 377 s 3;
- 5 (4) RCW 39.10.065 (Demonstration projects--Contract deadline--
- 6 Transfer of authority to other public body) and 1997 c 376 s 5;
- 7 (5) RCW 39.10.067 (School district capital demonstration projects--
- 8 Conditions) and 2006 c 261 s 1, 2003 c 301 s 3, 2002 c 46 s 3, & 2000
- 9 c 209 s 3;
- 10 (6) RCW 39.10.068 (Public hospital district capital demonstration
- 11 projects--Conditions) and 2003 c 300 s 6;
- 12 (7) RCW 39.10.115 (School district project review board--
- 13 Established--Procedures) and 2006 c 261 s 2, 2001 c 328 s 4, & 2000 c
- 14 209 s 4; and
- 15 (8) RCW 39.10.117 (Public hospital district project review board--
- 16 Established--Procedures) and 2003 c 300 s 7.

17 NEW SECTION. **Sec. 509.** PART HEADINGS AND CAPTIONS NOT LAW. Part

18 headings and captions used in this act are not any part of the law.

19 NEW SECTION. **Sec. 510.** The following sections are codified or

20 recodified in chapter 39.10 RCW in the following order:

- 21 RCW 39.10.010
- 22 RCW 39.10.020
- 23 RCW 39.10.800
- 24 RCW 39.10.810
- 25 Section 104 of this act
- 26 Section 105 of this act
- 27 Section 106 of this act
- 28 Section 107 of this act
- 29 Section 108 of this act
- 30 Section 109 of this act
- 31 RCW 39.10.051
- 32 RCW 39.10.080
- 33 RCW 39.10.070
- 34 Section 204 of this act
- 35 RCW 39.10.061
- 36 Section 302 of this act

1 Section 303 of this act
2 Section 304 of this act
3 Section 305 of this act
4 Section 306 of this act
5 Section 307 of this act
6 Section 308 of this act
7 RCW 39.10.130
8 Section 402 of this act
9 Section 403 of this act
10 Section 404 of this act
11 Section 405 of this act
12 RCW 39.10.100
13 RCW 39.10.090
14 RCW 39.10.120
15 Section 502 of this act
16 RCW 39.10.900
17 RCW 39.10.901
18 Section 509 of this act

19 NEW SECTION. **Sec. 511.** This act is necessary for the immediate
20 preservation of the public peace, health, or safety, or support of the
21 state government and its existing public institutions, and takes effect
22 July 1, 2007, except for section 104 of this act, which takes effect
23 immediately, and section 507 of this act, which takes effect June 30,
24 2007.

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