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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-4533.1/02

ATTY/TYPIST: KT:mos

BRIEF DESCRIPTION:

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 39.10.051 and 2001 c 328 s 2 are each amended to read  
8 as follows:

9 (1) Notwithstanding any other provision of law, and after complying  
10 with RCW 39.10.030, the following public bodies may utilize the design-  
11 build procedure of public works contracting for public works projects  
12 authorized under this section: The state department of general  
13 administration; the University of Washington; Washington State  
14 University; every city with a population greater than seventy thousand  
15 and any public authority chartered by such city under RCW 35.21.730  
16 through 35.21.755 and specifically authorized as provided in RCW  
17 39.10.120(4); every county with a population greater than four hundred  
18 fifty thousand; every public utility district with revenues from energy  
19 sales greater than twenty-three million dollars per year; and every  
20 port district with total revenues greater than fifteen million dollars  
21 per year. The authority granted to port districts in this section is  
22 in addition to and does not affect existing contracting authority under  
23 RCW 53.08.120 and 53.08.130. For the purposes of this section,  
24 "design-build procedure" means a contract between a public body and  
25 another party in which the party agrees to both design and build the  
26 facility, portion of the facility, or other item specified in the  
27 contract.

28 (2) Public bodies authorized under this section may utilize the  
29 design-build procedure for public works projects valued over (~~twelve~~)  
30 ten million dollars where:

31 (a) The construction activities or technologies to be used are  
32 highly specialized and a design-build approach is critical in  
33 developing the construction methodology or implementing the proposed  
34 technology; or

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

1 (c) Regular interaction with and feedback from facilities users and  
2 operators during design is not critical to an effective facility  
3 design.

4 (3) Public bodies authorized under this section may also use the  
5 design-build procedure for the following projects that meet the  
6 criteria in subsection (2)(b) and (c) of this section:

7 (a) The construction or erection of preengineered metal buildings  
8 or prefabricated modular buildings, regardless of cost; or

9 (b) The construction of new student housing projects valued over  
10 five million dollars.

11 (4) Contracts for design-build services shall be awarded through a  
12 competitive process utilizing public solicitation of proposals for  
13 design-build services. The public body shall publish at least once in  
14 a legal newspaper of general circulation published in or as near as  
15 possible to that part of the county in which the public work will be  
16 done, a notice of its request for proposals for design-build services  
17 and the availability and location of the request for proposal  
18 documents. The request for proposal documents shall include:

19 (a) A detailed description of the project including programmatic,  
20 performance, and technical requirements and specifications, functional  
21 and operational elements, minimum and maximum net and gross areas of  
22 any building, and, at the discretion of the public body, preliminary  
23 engineering and architectural drawings;

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

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

28 (d) A description of the process the public body will use to  
29 evaluate qualifications and proposals, including evaluation factors and  
30 the relative weight of factors. Evaluation factors shall include, but  
31 not be limited to: Proposal price; ability of professional personnel;  
32 past performance on similar projects; ability to meet time and budget  
33 requirements; ability to provide a performance and payment bond for the  
34 project; recent, current, and projected work loads of the firm;  
35 location; and the concept of the proposal;

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

37 (f) The amount to be paid to finalists submitting best and final  
38 proposals who are not awarded a design-build contract; and

39 (g) Other information relevant to the project.

1 (5) The public body shall establish a committee to evaluate the  
2 proposals based on the factors, weighting, and process identified in  
3 the request for proposals. Based on its evaluation, the public body  
4 shall select not fewer than three nor more than five finalists to  
5 submit best and final proposals. The public body may, in its sole  
6 discretion, reject all proposals. Design-build contracts shall be  
7 awarded using the procedures in (a) or (b) of this subsection.

8 (a) Best and final proposals shall be evaluated and scored based on  
9 the factors, weighting, and process identified in the initial request  
10 for proposals. The public body may score the proposals using a system  
11 that measures the quality and technical merits of the proposal on a  
12 unit price basis. Final proposals may not be considered if the  
13 proposal cost is greater than the maximum allowable construction cost  
14 identified in the initial request for proposals. The public body shall  
15 initiate negotiations with the firm submitting the highest scored best  
16 and final proposal. If the public body is unable to execute a contract  
17 with the firm submitting the highest scored best and final proposal,  
18 negotiations with that firm may be suspended or terminated and the  
19 public body may proceed to negotiate with the next highest scored firm.  
20 Public bodies shall continue in accordance with this procedure until a  
21 contract agreement is reached or the selection process is terminated.

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

26 (6) The firm awarded the contract shall provide a performance and  
27 payment bond for the contracted amount. The public body shall provide  
28 appropriate honorarium payments to finalists submitting best and final  
29 proposals who are not awarded a design-build contract. Honorarium  
30 payments shall be sufficient to generate meaningful competition among  
31 potential proposers on design-build projects.

32 **Sec. 2.** RCW 39.10.061 and 2001 c 328 s 3 are each amended to read  
33 as follows:

34 (1) Notwithstanding any other provision of law, and after complying  
35 with RCW 39.10.030, a public body may utilize the general  
36 contractor/construction manager procedure of public works contracting  
37 for public works projects authorized under subsection (2) of this  
38 section. For the purposes of this section, "general

1 contractor/construction manager" means a firm with which a public body  
2 has selected and negotiated a maximum allowable construction cost to be  
3 guaranteed by the firm, after competitive selection through formal  
4 advertisement and competitive bids, to provide services during the  
5 design phase that may include life-cycle cost design considerations,  
6 value engineering, scheduling, cost estimating, constructability,  
7 alternative construction options for cost savings, and sequencing of  
8 work, and to act as the construction manager and general contractor  
9 during the construction phase.

10 (2) Except those school districts proposing projects that are  
11 considered and approved by the school district project review board,  
12 public bodies authorized under this section may utilize the general  
13 contractor/construction manager procedure for public works projects  
14 valued over (~~twelve~~) ten million dollars where:

15 (a) Implementation of the project involves complex scheduling  
16 requirements; or

17 (b) The project involves construction at an existing facility which  
18 must continue to operate during construction; or

19 (c) The involvement of the general contractor/construction manager  
20 during the design stage is critical to the success of the project.

21 (3) Public bodies should select general contractor/construction  
22 managers early in the life of public works projects, and in most  
23 situations no later than the completion of schematic design.

24 (4) Contracts for the services of a general contractor/construction  
25 manager under this section shall be awarded through a competitive  
26 process requiring the public solicitation of proposals for general  
27 contractor/construction manager services. The public solicitation of  
28 proposals shall include: A description of the project, including  
29 programmatic, performance, and technical requirements and  
30 specifications when available; the reasons for using the general  
31 contractor/construction manager procedure; a description of the  
32 qualifications to be required of the proposer, including submission of  
33 the proposer's accident prevention program; a description of the  
34 process the public body will use to evaluate qualifications and  
35 proposals, including evaluation factors and the relative weight of  
36 factors; the form of the contract to be awarded; the estimated maximum  
37 allowable construction cost; and the bid instructions to be used by the  
38 general contractor/construction manager finalists. Evaluation factors  
39 shall include, but not be limited to: Ability of professional

1 personnel, past performance in negotiated and complex projects, and  
2 ability to meet time and budget requirements; the scope of work the  
3 general contractor/construction manager proposes to self-perform and  
4 its ability to perform it; location; recent, current, and projected  
5 work loads of the firm; and the concept of their proposal. A public  
6 body shall establish a committee to evaluate the proposals. After the  
7 committee has selected the most qualified finalists, these finalists  
8 shall submit final proposals, including sealed bids for the percent  
9 fee, which is the percentage amount to be earned by the general  
10 contractor/construction manager as overhead and profit, on the  
11 estimated maximum allowable construction cost and the fixed amount for  
12 the detailed specified general conditions work. The public body shall  
13 select the firm submitting the highest scored final proposal using the  
14 evaluation factors and the relative weight of factors published in the  
15 public solicitation of proposals.

16 (5) The maximum allowable construction cost may be negotiated  
17 between the public body and the selected firm after the scope of the  
18 project is adequately determined to establish a guaranteed contract  
19 cost for which the general contractor/construction manager will provide  
20 a performance and payment bond. The guaranteed contract cost includes  
21 the fixed amount for the detailed specified general conditions work,  
22 the negotiated maximum allowable construction cost, the percent fee on  
23 the negotiated maximum allowable construction cost, and sales tax. If  
24 the public body is unable to negotiate a satisfactory maximum allowable  
25 construction cost with the firm selected that the public body  
26 determines to be fair, reasonable, and within the available funds,  
27 negotiations with that firm shall be formally terminated and the public  
28 body shall negotiate with the next highest scored firm and continue  
29 until an agreement is reached or the process is terminated. If the  
30 maximum allowable construction cost varies more than fifteen percent  
31 from the bid estimated maximum allowable construction cost due to  
32 requested and approved changes in the scope by the public body, the  
33 percent fee shall be renegotiated.

34 (6) All subcontract work shall be competitively bid with public bid  
35 openings. When critical to the successful completion of a  
36 subcontractor bid package and after publication of notice of intent to  
37 determine bidder eligibility in a legal newspaper of general  
38 circulation published in or as near as possible to that part of the  
39 county in which the public work will be done at least twenty days

1 before requesting qualifications from interested subcontract bidders,  
2 the owner and general contractor/construction manager may determine  
3 subcontractor bidding eligibility using the following evaluation  
4 criteria:

5 (a) Adequate financial resources or the ability to secure such  
6 resources;

7 (b) History of successful completion of a contract of similar type  
8 and scope;

9 (c) Project management and project supervision personnel with  
10 experience on similar projects and the availability of such personnel  
11 for the project;

12 (d) Current and projected workload and the impact the project will  
13 have on the subcontractor's current and projected workload;

14 (e) Ability to accurately estimate the subcontract bid package  
15 scope of work;

16 (f) Ability to meet subcontract bid package shop drawing and other  
17 coordination procedures;

18 (g) Eligibility to receive an award under applicable laws and  
19 regulations; and

20 (h) Ability to meet subcontract bid package scheduling  
21 requirements.

22 The owner and general contractor/construction manager shall weigh  
23 the evaluation criteria and determine a minimum acceptable score to be  
24 considered an eligible subcontract bidder.

25 After publication of notice of intent to determine bidder  
26 eligibility, subcontractors requesting eligibility shall be provided  
27 the evaluation criteria and weighting to be used by the owner and  
28 general contractor/construction manager to determine eligible  
29 subcontract bidders. After the owner and general  
30 contractor/construction manager determine eligible subcontract bidders,  
31 subcontractors requesting eligibility shall be provided the results and  
32 scoring of the subcontract bidder eligibility determination.

33 Subcontract bid packages shall be awarded to the responsible bidder  
34 submitting the low responsive bid. The requirements of RCW 39.30.060  
35 apply to each subcontract bid package. All subcontractors who bid work  
36 over three hundred thousand dollars shall post a bid bond and all  
37 subcontractors who are awarded a contract over three hundred thousand  
38 dollars shall provide a performance and payment bond for their contract  
39 amount. All other subcontractors shall provide a performance and

1 payment bond if required by the general contractor/construction  
2 manager. A low bidder who claims error and fails to enter into a  
3 contract is prohibited from bidding on the same project if a second or  
4 subsequent call for bids is made for the project. Except as provided  
5 for under subsection (7) of this section, bidding on subcontract work  
6 by the general contractor/construction manager or its subsidiaries is  
7 prohibited. The general contractor/construction manager may negotiate  
8 with the low-responsive bidder in accordance with RCW 39.10.080 or, if  
9 unsuccessful in such 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 **Sec. 3.** RCW 39.10.067 and 2000 c 209 s 3 are each amended to read  
33 as follows:

34 In addition to the projects authorized in RCW (~~39.10.060~~)  
35 39.10.061, public bodies may also use the general  
36 contractor/construction manager contracting procedure for the  
37 construction of school district capital demonstration projects, subject  
38 to the following conditions:

1 (1) The project must receive approval from the school district  
2 project review board established under RCW 39.10.115.

3 (2) The school district project review board may not authorize more  
4 than ~~((two))~~ ten demonstration projects valued over ~~((ten))~~ five  
5 million dollars ~~((and))~~, of which at least two demonstration projects  
6 must be valued between five and ten million dollars.

7 ~~((3) The school district project review board may not approve more  
8 than one demonstration project under this section for each school  
9 district.))~~

10 **Sec. 4.** RCW 39.10.902 and 2001 c 328 s 6 are each amended to read  
11 as follows:

12 The following acts or parts of acts, as now existing or hereafter  
13 amended, are each repealed, effective July 1, 2007:

14 (1) RCW 39.10.010 and 1994 c 132 s 1;

15 (2) RCW 39.10.020 and 2001 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s  
16 1, & 1994 c 132 s 2;

17 (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

18 (4) RCW 39.10.040 and 1994 c 132 s 4;

19 (5) RCW 39.10.051 and 2001 c 328 s 2 and section 1 of this act;

20 (6) RCW 39.10.061 and 2001 c 328 s 3 and section 2 of this act;

21 (7) RCW 39.10.065 and 1997 c 376 s 5;

22 (8) RCW 39.10.067 and 2000 c 209 s 3 and section 3 of this act;

23 (9) RCW 39.10.070 and 1994 c 132 s 7;

24 (10) RCW 39.10.080 and 1994 c 132 s 8;

25 (11) RCW 39.10.090 and 1994 c 132 s 9;

26 (12) RCW 39.10.100 and 1994 c 132 s 10;

27 (13) RCW 39.10.115 and 2001 c 328 s 4 & 2000 c 209 s 4;

28 (14) RCW 39.10.900 and 1994 c 132 s 13; and

29 (15) RCW 39.10.901 and 1994 c 132 s 14.

30 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 immediately."

1 **HB 2551** - S COMM AMD  
2 By Committee on State & Local Government

3  
4 On page 1, line 1 of the title, after "procedures;" strike the  
5 remainder of the title and insert "amending RCW 39.10.051, 39.10.061,  
6 39.10.067, and 39.10.902; and declaring an emergency."

--- END ---