

SSB 5760 - H COMM AMD

By Committee on Capital Budget

ADOPTED AS AMENDED 04/16/2009

1 On page 2, beginning on line 7, after "thereto," strike "does not  
2 include state-appropriated funds" and insert "is provided with federal  
3 funds through the American recovery and reinvestment act of 2009"

4 On page 2, beginning on line 16, after "project" strike "does not  
5 include state-appropriated funds" and insert "is federal funds through  
6 the American recovery and reinvestment act of 2009"

7 On page 3, beginning on line 5, strike all of subsections (3) and  
8 (4) and insert the following:

9 "(3) This section expires June 30, 2013. The University of  
10 Washington shall report on the status and performance of projects using  
11 federal funds through the American recovery and reinvestment act of  
12 2009 to fiscal committees of the legislature and the capital projects  
13 review board by December 1, 2010."

14 On page 3, after line 16, insert the following:

15 "**Sec. 2.** RCW 28B.20.140 and 1969 ex.s. c 223 s 28B.20.140 are each  
16 amended to read as follows:

17 (1) The board of regents shall enter into such contracts with one  
18 or more contractors for the erection and construction of university  
19 buildings or improvements thereto as in their judgment shall be deemed  
20 for the best interest of the university; subject to subsections (2) and  
21 (3) of this section, such contract or contracts shall be let after  
22 public notice and under such regulations as shall be established by  
23 said board or as otherwise provided by law to the person or persons  
24 able to perform the same on the most advantageous terms: PROVIDED,  
25 That in all cases said board shall require from contractors a good and  
26 sufficient bond for the faithful performance of the work, and the full  
27 protection of the state against mechanics' and other liens: AND

1 PROVIDED FURTHER, That the board shall not have the power to enter into  
2 any contract for the erection of any buildings or improvements which  
3 shall bind said board to pay out any sum of money in excess of the  
4 amount provided for said purpose.

5 (2) The board of regents must comply with the requirements of  
6 chapter 39.10 RCW when using any alternative contracting procedure  
7 authorized pursuant to chapter 39.10 RCW.

8 (3) Prior to adoption of any alternative public works contracting  
9 procedure not authorized in chapter 39.10 RCW, the board of regents  
10 must submit the proposed contracting procedure to the capital projects  
11 advisory review board established under chapter 39.10 RCW for  
12 evaluation and approval pursuant to RCW 39.10.230. Final adoption and  
13 use of any alternative public works contracting procedure is contingent  
14 on approval by the capital projects advisory review board.

15 **Sec. 3.** RCW 39.10.200 and 2007 c 494 s 1 are each amended to read  
16 as follows:

17 The legislature finds that the traditional process of awarding  
18 public works contracts in lump sum to the lowest responsible bidder is  
19 a fair and objective method of selecting a contractor. However, under  
20 certain circumstances, alternative public works contracting procedures  
21 may best serve the public interest if such procedures are implemented  
22 in an open and fair process based on objective and equitable criteria.  
23 The purpose of this chapter is to authorize the use of certain  
24 supplemental alternative public works contracting procedures, to  
25 prescribe appropriate requirements to ensure that such contracting  
26 procedures serve the public interest, and to establish a process for  
27 evaluation of such contracting procedures. It is the intent of the  
28 legislature to establish that, unless otherwise specifically provided  
29 for in law, public bodies may use only those alternative public works  
30 contracting procedures either specifically authorized in this chapter,  
31 subject to the requirements of this chapter, or those approved for use  
32 on a demonstration project by the capital projects advisory review  
33 board.

34 **Sec. 4.** RCW 39.10.230 and 2007 c 494 s 103 are each amended to  
35 read as follows:

36 The board has the following powers and duties:

1 (1) Develop and recommend to the legislature policies to further  
2 enhance the quality, efficiency, and accountability of capital  
3 construction projects through the use of traditional and alternative  
4 delivery methods in Washington, and make recommendations regarding  
5 expansion, continuation, elimination, or modification of the  
6 alternative public works contracting methods;

7 (2) Evaluate the use of existing contracting procedures (~~and~~  
8 ~~potential future use of~~);

9 (3) Evaluate other alternative contracting procedures including  
10 competitive negotiation contracts, for: (a) Potential future use; and  
11 (b) approval to use as a demonstration project;

12 (4) Submit a report to the appropriate committees of the  
13 legislature evaluating any alternative contracting procedure that is  
14 not authorized under this chapter and has been submitted to the board  
15 for its review or approval. The report must:

16 (a) Include a recommendation regarding use of the alternative  
17 contracting procedure by other public bodies; and

18 (b) Be submitted by December of the next regular legislative  
19 session following completion of the evaluation;

20 ~~((+3))~~ (5) Appoint members of the committee; and

21 ~~((+4))~~ (6) Develop and administer questionnaires designed to  
22 provide quantitative and qualitative data on alternative public works  
23 contracting procedures on which evaluations are based.

24 **Sec. 5.** RCW 39.10.210 and 2007 c 494 s 101 are each amended to  
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Alternative public works contracting procedure" means the  
29 design-build, general contractor/construction manager, and job order  
30 contracting procedures authorized in RCW 39.10.300, 39.10.340, and  
31 39.10.420, respectively. It also means other contracting procedures  
32 submitted to the board under RCW 39.10.230 for approval to use as a  
33 demonstration project.

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

35 (3) "Committee" means the project review committee.

36 (4) "Design-build procedure" means a contract between a public body

1 and another party in which the party agrees to both design and build  
2 the facility, portion of the facility, or other item specified in the  
3 contract.

4 (5) "Total contract cost" means the fixed amount for the detailed  
5 specified general conditions work, the negotiated maximum allowable  
6 construction cost, and the percent fee on the negotiated maximum  
7 allowable construction cost.

8 (6) "General contractor/construction manager" means a firm with  
9 which a public body has selected and negotiated a maximum allowable  
10 construction cost to provide services during the design phase and to  
11 act as construction manager and general contractor during the  
12 construction phase.

13 (7) "Job order contract" means a contract in which the contractor  
14 agrees to a fixed period, indefinite quantity delivery order contract  
15 which provides for the use of negotiated, definitive work orders for  
16 public works as defined in RCW 39.04.010.

17 (8) "Job order contractor" means a registered or licensed  
18 contractor awarded a job order contract.

19 (9) "Maximum allowable construction cost" means the maximum cost of  
20 the work to construct the project including a percentage for risk  
21 contingency, negotiated support services, and approved change orders.

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

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

28 (12) "Public body" means any general or special purpose government,  
29 including but not limited to state agencies, institutions of higher  
30 education, counties, cities, towns, ports, school districts, and  
31 special purpose districts.

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

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

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

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

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

10 **Sec. 6.** RCW 43.131.408 and 2007 c 494 s 507 are each amended to  
11 read as follows:

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

14 (1) RCW 39.10.200 and section 3 of this act, 2007 c 494 s 1, & 1994  
15 c 132 s 1;

16 (2) RCW 39.10.210 and section 5 of this act, 2007 c 494 s 101, &  
17 2005 c 469 s 3;

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

19 (4) RCW 39.10.230 and section 4 of this act, 2007 c 494 s 103, &  
20 2005 c 377 s 2;

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

22 (6) RCW 39.10.250 and 2007 c 494 s 105;

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

24 (8) RCW 39.10.270 and 2007 c 494 s 107;

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

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

27 (11) RCW 39.10.300 and 2007 c 494 s 201, 2003 c 352 s 2, 2003 c 300  
28 s 4, 2002 c 46 s 1, & 2001 c 328 s 2;

29 (12) RCW 39.10.310 and 2007 c 494 s 202 & 1994 c 132 s 8;

30 (13) RCW 39.10.320 and 2007 c 494 s 203 & 1994 c 132 s 7;

31 (14) RCW 39.10.330 and 2007 c 494 s 204;

32 (15) RCW 39.10.340 and 2007 c 494 s 301, 2003 c 352 s 3, 2003 c 300  
33 s 5, 2002 c 46 s 2, & 2001 c 328 s 3;

34 (16) RCW 39.10.350 and 2007 c 494 s 302;

35 (17) RCW 39.10.360 and 2007 c 494 s 303;

36 (18) RCW 39.10.370 and 2007 c 494 s 304;

37 (19) RCW 39.10.380 and 2007 c 494 s 305;

- 1 (20) RCW 39.10.390 and 2007 c 494 s 306;  
2 (21) RCW 39.10.400 and 2007 c 494 s 307;  
3 (22) RCW 39.10.410 and 2007 c 494 s 308;  
4 (23) RCW 39.10.420 and 2007 c 494 s 401 & 2003 c 301 s 1;  
5 (24) RCW 39.10.430 and 2007 c 494 s 402;  
6 (25) RCW 39.10.440 and 2007 c 494 s 403;  
7 (26) RCW 39.10.450 and 2007 c 494 s 404;  
8 (27) RCW 39.10.460 and 2007 c 494 s 405;  
9 (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;  
10 (29) RCW 39.10.480 and 1994 c 132 s 9;  
11 (30) RCW 39.10.490 and 2007 c 494 s 501 & 2001 c 328 s 5;  
12 (31) RCW 39.10.500 and 2007 c 494 s 502;  
13 (32) RCW 39.10.510 and 2007 c 494 s 503;  
14 (33) RCW 39.10.900 and 1994 c 132 s 13;  
15 (34) RCW 39.10.901 and 1994 c 132 s 14; and  
16 (35) RCW 39.10.903 and 2007 c 494 s 510."

17 Renumber the remaining section consecutively.

18 On page 4, beginning on line 1, after "thereto," strike "does not  
19 include state-appropriated funds" and insert "is provided with federal  
20 funds through the American recovery and reinvestment act of 2009"

21 On page 4, beginning on line 10, after "project" strike "does not  
22 include state-appropriated funds" and insert "is federal funds through  
23 the American recovery and reinvestment act of 2009"

24 Beginning on page 4, line 37, strike all of subsections (3) and (4)  
25 and insert the following:

26 "(3) This section expires June 30, 2013. Washington State  
27 University shall report on the status and performance of projects using  
28 federal funds through the American recovery and reinvestment act of  
29 2009 to fiscal committees of the legislature and the capital projects  
30 review board by December 1, 2010."

31 On page 5, after line 10, insert the following:

1 "Sec. 3. RCW 28B.30.700 and 1985 c 390 s 41 are each amended to  
2 read as follows:

3 (1) The board of regents of Washington State University is  
4 empowered, in accordance with the provisions of RCW 28B.30.700 through  
5 28B.30.780, to provide for the construction, completion,  
6 reconstruction, remodeling, rehabilitation and improvement of buildings  
7 and facilities authorized by the legislature, subject to subsections  
8 (2) and (3) of this section, for the use of the university and to  
9 finance the payment thereof by bonds payable out of a special fund from  
10 revenues hereafter derived from the payment of building fees, gifts,  
11 bequests or grants, and such additional funds as the legislature may  
12 provide.

13 (2) The board of regents must comply with the requirements of  
14 chapter 39.10 RCW when using any alternative contracting procedure  
15 authorized pursuant to chapter 39.10 RCW.

16 (3) Prior to adoption of any alternative public works contracting  
17 procedure not authorized in chapter 39.10 RCW, the board of regents  
18 must submit the proposed contracting procedure to the capital projects  
19 advisory review board established under chapter 39.10 RCW for  
20 evaluation and approval pursuant to RCW 39.10.230. Final adoption and  
21 use of any alternative public works contracting procedure is contingent  
22 on approval by the capital projects advisory review board."

23 Correct the title.

EFFECT: Changes the fund source from nonstate-appropriated to federal stimulus funds, removes the ability to limit the number of contractors, and requires a report on the use of funds for the University of Washington and Washington State University, and requires the University of Washington and Washington State University to go through Capital Projects Authority Review Board for alternative contracting methods. Adds expiration date of June 30, 2013.

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