
HOUSE BILL 1971

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Dammeier and Haigh

Read first time 02/15/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to the alternative subcontractor selection process;
2 and amending RCW 39.10.385.

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

4 **Sec. 1.** RCW 39.10.385 and 2010 c 163 s 1 are each amended to read
5 as follows:

6 As an alternative to the subcontractor selection process outlined
7 in RCW 39.10.380, a general contractor/construction manager may, with
8 the approval of the public body, select a mechanical subcontractor, an
9 electrical subcontractor, or both, using the process outlined in this
10 section. This alternative selection process may only be used when the
11 anticipated value of the subcontract will exceed three million dollars.
12 When using the alternative selection process, the general
13 contractor/construction manager should select the subcontractor early
14 in the life of the public works project.

15 (1) In order to use this alternative selection process, the general
16 contractor/construction manager and the public body must determine that
17 it is in the best interest of the public. In making this determination
18 the general contractor/construction manager and the public body must:

1 (a) Publish a notice of intent to use this alternative selection
2 process in a legal newspaper published in or as near as possible to
3 that part of the county where the public work will be constructed.
4 Notice must be published at least fourteen calendar days before
5 conducting a public hearing. The notice must include the date, time,
6 and location of the hearing; a statement justifying the basis and need
7 for the alternative selection process; and how interested parties may,
8 prior to the hearing, obtain the evaluation criteria and applicable
9 weight given to each criteria that will be used for evaluation;

10 (b) Conduct a hearing and provide an opportunity for any interested
11 party to submit written and verbal comments regarding the justification
12 for using this selection process, the evaluation criteria, and weights
13 for each criteria;

14 (c) After the public hearing, consider the written and verbal
15 comments received and determine if using this alternative selection
16 process is in the best interests of the public; and

17 (d) Issue a written final determination to all interested parties.
18 All protests of the decision to use the alternative selection process
19 must be in writing and submitted to the public body within seven
20 calendar days of the final determination. Any modifications to the
21 criteria and weights based on comments received during the public
22 hearing process must be included in the final determination.

23 (2) Contracts for the services of a subcontractor under this
24 section must be awarded through a competitive process requiring a
25 public solicitation of proposals. Notice of the public solicitation of
26 proposals must be provided to the office of minority and women's
27 business enterprises. The public solicitation of proposals must
28 include:

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

32 (b) The reasons for using the alternative selection process;

33 (c) A description of the minimum qualifications required of the
34 firm;

35 (d) A description of the process used to evaluate qualifications
36 and proposals, including evaluation factors and the relative weight of
37 factors;

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

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

4 (g) The bid instructions to be used by the finalists.

5 (3) Evaluation factors for selection of the subcontractor must
6 include, but not be limited to:

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

8 (b) The firm's past performance on similar projects;

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

10 (d) The scope of work the firm proposes to perform with its own
11 forces and its ability to perform that work;

12 (e) The firm's plan for outreach to minority and women-owned
13 businesses;

14 (f) The firm's proximity to the project location;

15 (g) The firm's capacity to successfully complete the project;

16 (h) The firm's approach to executing the project;

17 (i) The firm's approach to safety on the project;

18 (j) The firm's safety history; and

19 (k) If the firm is selected as one of the most qualified finalists,
20 the firm's fee and cost proposal.

21 (4) Any bidder wishing to protest the qualified finalist bidders
22 selection must submit written notice to the general
23 contractor/construction manager and public body of its protest no later
24 than two full business days following receipt of written notice of the
25 decision. If the general contractor/construction manager and the
26 public body receive a written protest, the general
27 contractor/construction manager cannot proceed to the next phase of the
28 selection process until the public body has reviewed the grounds for
29 the protest and issued a written final determination on the protest to
30 all interested parties.

31 (5) The general contractor/construction manager shall establish a
32 committee to evaluate the proposals. At least one representative from
33 the public body shall serve on the committee. Final proposals,
34 including sealed bids for the percent fee on the estimated maximum
35 allowable subcontract cost, and the fixed amount for the subcontract
36 general conditions work specified in the request for proposal, will be
37 requested from the most qualified firms. The general
38 contractor/construction manager and the public body shall select the

1 firm submitting the highest scored final proposal using the evaluation
2 factors and the relative weight of factors identified in the
3 solicitation of proposals. The scoring of the nonprice factors must be
4 made available at the opening of the fee and cost proposals. The
5 general contractor/construction manager may not evaluate or disqualify
6 a proposal based on the terms of a collective bargaining agreement.

7 ((+5)) (6) If the general contractor/construction manager is
8 unable to negotiate a satisfactory maximum allowable subcontract cost
9 with the firm selected deemed by public body and the general
10 contractor/construction manager to be fair, reasonable, and within the
11 available funds, negotiations with that firm must be formally
12 terminated and the general contractor/construction manager may
13 negotiate with the next highest scored firm until an agreement is
14 reached or the process is terminated.

15 ((+6)) (7) If the general contractor/construction manager and the
16 public body receive((s)) a written protest from a finalist bidder,
17 ((it)) the general contractor/construction manager may not execute a
18 contract for the subject work with anyone other than the protesting
19 bidder, without first providing at least two full business days'
20 written notice to all bidders of the intent to execute a contract for
21 the subcontract bid package. The protesting bidder must submit written
22 notice to the general contractor/construction manager and the public
23 body of its protest no later than two full business days following the
24 bid opening. If the general contractor/construction manager and the
25 public body receive a written protest, the general
26 contractor/construction manager cannot execute a contract for the
27 subcontractor bid package until the public body has reviewed the
28 grounds for the protest and issued a written final determination on the
29 protest to all interested parties.

30 ((+7)) (8) With the approval of the public body, the general
31 contractor/construction manager may contract with the selected firm to
32 provide services during the design phase that may include life-cycle
33 cost design considerations, value engineering, scheduling, cost
34 estimating, constructability, alternative construction options for cost
35 savings, and sequencing of work; and to act as the mechanical or
36 electrical subcontractor during the construction phase.

37 ((+8)) (9) The maximum allowable subcontract cost must be used to
38 establish a total subcontract cost for purposes of a performance and

1 payment bond. Total subcontract cost means the fixed amount for the
2 detailed specified general conditions work, the negotiated maximum
3 allowable subcontract cost, and the percent fee on the negotiated
4 maximum allowable subcontract cost. Maximum allowable subcontract cost
5 means the maximum cost to complete the work specified for the
6 subcontract, including the estimated cost of work to be performed by
7 the subcontractor's own forces, a percentage for risk contingency,
8 negotiated support services, and approved change orders. The maximum
9 allowable subcontract cost must be negotiated between the general
10 contractor/construction manager and the selected firm when the
11 construction documents and specifications are at least ninety percent
12 complete. Final agreement on the maximum allowable subcontract cost is
13 subject to the approval of the public body.

14 ~~((+9))~~ (10) If the work of the mechanical contractor or electrical
15 contractor is completed for less than the maximum allowable subcontract
16 cost, any savings not otherwise negotiated as part of an incentive
17 clause becomes part of the risk contingency included in the general
18 contractor/construction manager's maximum allowable construction cost.
19 If the work of the mechanical contractor or the electrical contractor
20 is completed for more than the maximum allowable subcontract cost, the
21 additional cost is the responsibility of that subcontractor. An
22 independent audit, paid for by the public body, must be conducted upon
23 completion of the contract to confirm the proper accrual of costs as
24 outlined in the contract.

25 ~~((+10))~~ (11) A mechanical or electrical contractor selected under
26 this section may perform work with its own forces. In the event it
27 elects to subcontract some of its work, it must select a subcontractor
28 utilizing the procedure outlined in RCW 39.10.380.

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