

20-06 FINAL REPORT: Alternative Public Works Contracting Procedures Sunset Review LEGISLATIVE AUDITOR'S CONCLUSION:

The Legislature should continue the alternative public works contracting statute. Alternative delivery methods are widely used, and CPARB has created a forum for stakeholders to continually improve project delivery.

December 2020

In 1991, the Legislature authorized the use of alternative public works contracting methods for the Department of Corrections. Since then, the Legislature has repeatedly expanded this authority to include more public bodies¹ and project sizes.

The 2013 Legislature reauthorized RCW 39.10 with a sunset provision. The authority to use alternative contracting methods is scheduled to terminate in June 2021 unless the Legislature reauthorizes it.

Using alternative contracting methods is an accepted practice nationally

The traditional method of contracting for public works projects is called Design-Bid-Build. Public bodies select construction contractors based on the lowest responsive bid² from a responsible bidder. RCW 39.04.350 specifies criteria for a responsible bidder, including having a certificate of registration and not being disqualified from bidding on public works projects.

RCW 39.10 authorizes three alternative contracting methods: Design-Build, General Contractor/Construction Manager (GC/CM), and Job Order Contracting (JOC). Alternative public works contracting allows public bodies to select contractors based on qualifications and price factors.

Along with Washington, the federal government and all other states allow public bodies to use some type of alternative contracting methods.

Stakeholders and experts report advantages to using alternative methods

JLARC staff conducted 40 interviews with stakeholders over the course of this review. Stakeholders reported a number of potential advantages to using alternative contracting methods, including participation of contractors during design, fewer conflicts, and stronger relationships and teamwork between owners, contractors, and architects.

Some individuals reported limitations to the alternative delivery methods, such as GC/CM's criteria for selecting subcontractors, that potentially could be addressed through statutory changes or by following best practices.

¹The public owner of a project, such as the state, a school district, or a municipality.

²A bid that meets the requirements of the bidding documents.

The Capital Projects Advisory Review Board has worked to improve public works contracting

Statute directs the Capital Projects Advisory Review Board (CPARB) to evaluate public works contracting and provide policy advice to the Legislature. CPARB has engaged stakeholders, conducted studies, recommended policy changes to the Legislature, developed best practices guidelines, and appointed experienced members to the Project Review Committee.

The Board's Project Review Committee maintains a thorough process for approving projects and certifying public bodies

CPARB's Project Review Committee (PRC) was established in statute and makes decisions on public bodies' applications to use certain alternative methods. The Committee has maintained a consistent application review process across the state.

There have been some gaps in data collection and record keeping

Statute directs the Department of Enterprise Services (DES) to provide staff support to CPARB and its committees. Some meeting minutes and agendas have not been consistently recorded or posted to a public website. CPARB, the PRC, and DES have stated they intend to address these issues.

Public bodies using JOC are required to report specific metrics to CPARB each year. There have been gaps in data collection and some of the statutory reporting requirements may not align with CPARB's primary duties or interests.

CPARB has acted on two of three previous JLARC recommendations

In [JLARC's 2013 sunset review of alternative methods](#), the Legislative Auditor recommended continuing the alternative delivery methods. The Legislature reauthorized RCW 39.10 and established a new sunset date of June 2021.

The Legislative Auditor also made three recommendations to CPARB regarding data collection. CPARB has implemented or is in the process of implementing two of the three:

- It has refocused its data collection efforts. Instead of attempting to compile a quantitative database, CPARB is collecting information that will help it make policy recommendations.
- It has begun collecting information on GC/CM subcontractor awards and payments.
- It has not revised JOC reporting to clearly identify separate contracts with the same contractor during the annual reporting period.

Legislative Auditor Recommendations

The Legislative Auditor makes two recommendations:

- The Legislature should continue the alternative contracting methods in RCW 39.10.
- CPARB should evaluate which JOC data it needs to perform its functions and propose appropriate modifications to the Legislature.

CPARB and DES concur with these recommendations. You can find additional information in Recommendations.

Committee Action to Distribute Report

On December 7, 2020 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with Legislative Auditor recommendations.

REPORT DETAILS

1. Alternative contracting is an accepted practice nationally

Using alternative contracting methods is an accepted practice nationally

The traditional method of contracting for public works projects³ is called Design-Bid-Build. RCW 39.10 authorizes three alternative contracting methods:

1. Design-Build.
2. General Contractor/Construction Manager (GC/CM).
3. Job Order Contracting (JOC).

Traditional public works contracting requires the selection of a contractor based on price

In traditional public works contracting, a public body⁴ hires an architecture or engineering firm to design a project. Once the design is complete, the public body solicits bids from general contractors to construct the project. This method is known as Design-Bid-Build (DBB). Public bodies select the designer based on qualifications and the construction contractor based on price—the lowest responsive bid⁵ from a responsible bidder⁶.

Alternative public works contracting allows public bodies to select contractors based on qualifications and price factors

Unlike traditional public works contracting, which separates design and construction into distinct phases, Design-Build and GC/CM integrate design and construction. This enables the designer to draw on the contractor's expertise, identify potential design problems, and propose solutions. Stakeholders report this is particularly valuable on large, complex projects with unknown risks. All public bodies must comply with prevailing wage laws and other public works requirements regardless of the contracting method they use.

³A construction, alteration, repair, or improvement project funded by a public body.

⁴The public owner of a project, such as the state, a school district, or a municipality.

⁵Meets the requirements of the bidding documents.

⁶RCW 39.04.350 specifies criteria for a responsible bidder, including having a certificate of registration and not being disqualified from bidding on public works projects.

Design-Build allows a public body to select one firm to design and construct a project

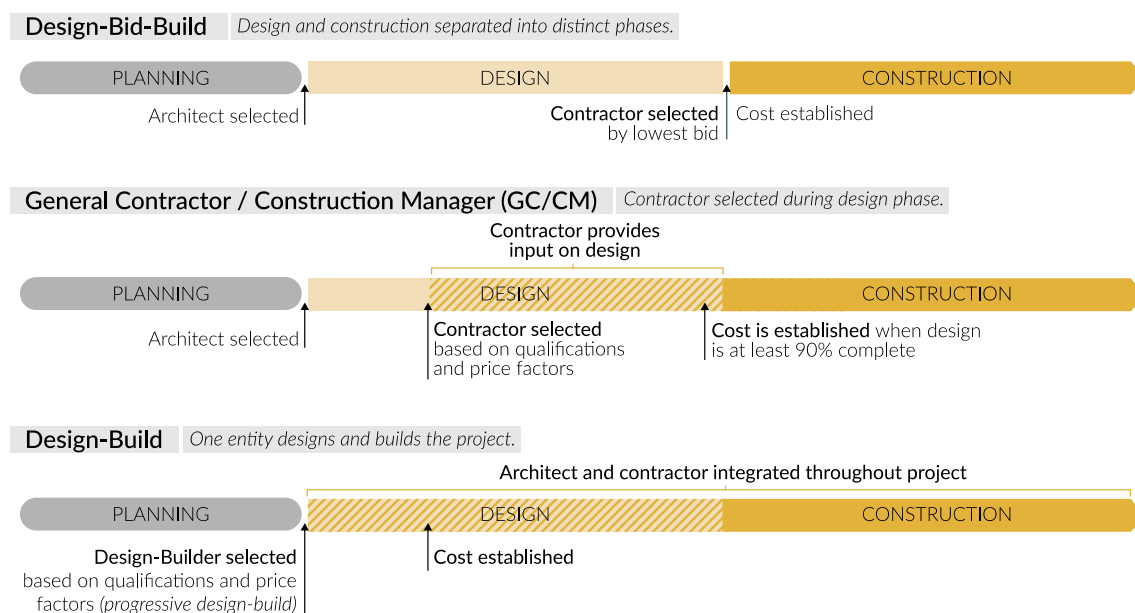
A public body selects a single entity, the design-builder, to perform the entire project from design through construction, based on qualifications and price-related factors. A design-builder is typically a team of a general contractor and a design firm, assembled for a specific project.

There are several varieties of design-build contracts. In one, public bodies may select a design-builder based on a design package and price proposal. In another, they may select a design-builder based on qualifications, technical approach, and price factors. This latter alternative is known as progressive design-build. It allows the public body to participate more fully in the project's design and is less costly for design-builders to prepare a proposal. The total contract amount is negotiated between the public body and design-builder.

General Contractor/Construction Manager (GC/CM) allows a public body to contract with a design firm and a general contractor

A public body contracts with an architecture or engineering firm as they would under traditional public works. Early in the project, the public body can select a general contractor based on qualifications and factors that will influence cost, such as contractor fees. The contractor then provides input on the design. When the design is at least 90% complete, the public body and the contractor negotiate the maximum allowable construction cost (MACC)⁷. The public body retains a separate contract with the design firm.

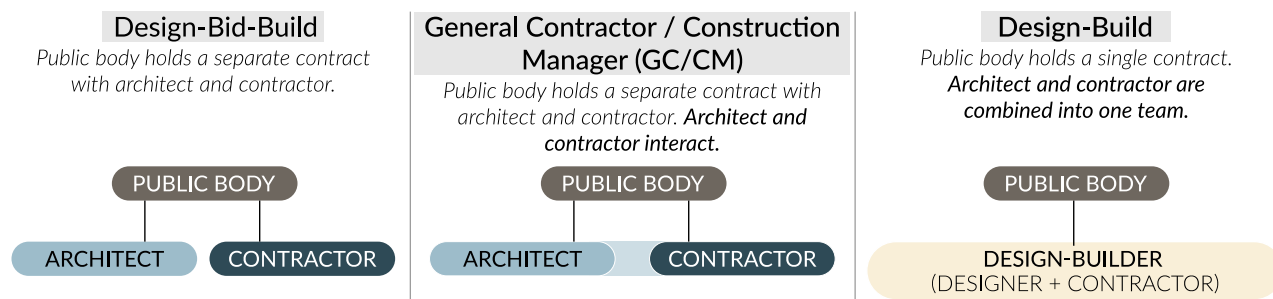
Exhibit 1.1: The timing of contractor selection varies by delivery method



Source: JLARC staff analysis of RCW 39.04 and RCW 39.10. Graphic shows progressive design-build. In other types of design-build, design-builders submit more extensive design proposals as part of the selection process.

⁷The maximum cost of the work to construct the project, including a percentage for risk contingency, approved change orders, and support services, such as surveying and cleanup.

Exhibit 1.2: Contractual relationships vary under different delivery methods



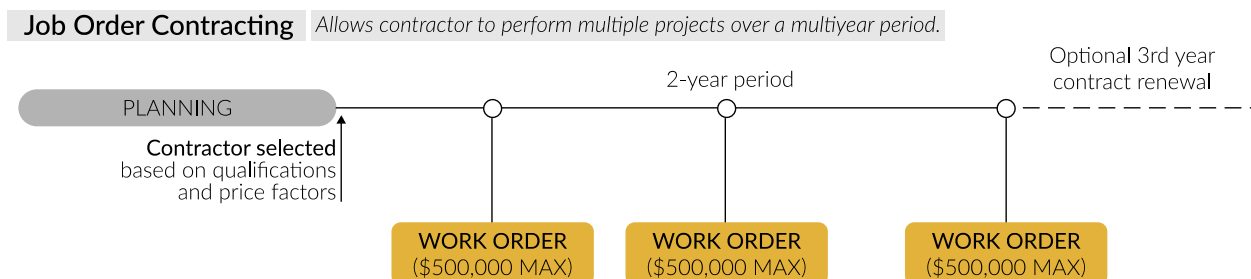
Source: JLARC staff analysis of RCW 39.04 and RCW 39.10.

Job Order Contracting (JOC) allows a public body to enter two-year contracts with a construction contractor for an undefined quantity of work at agreed upon pricing

Instead of soliciting bids for smaller projects, public bodies may use a competitive process known as JOC to select a contractor who will be on-call to perform multiple projects over a two-year period. Costs are based on standard published prices for labor and materials, plus an agreed-upon markup for overhead and services provided by the contractor. The contractor must subcontract at least 90% of the work.

JOC work orders are limited to projects under \$500,000. The contractor can complete any number of these projects up to \$4 million per year for most public bodies, or \$6 million per year for the Department of Enterprise Services (DES) and larger cities and counties. A public body may renew a contract for an additional third year without rebidding.

Exhibit 1.3: Job Order Contracting allows one contract for multiple projects



Source: JLARC staff analysis of RCW 39.10.

Using alternative contracting methods is a common and accepted practice nationally

As noted in [JLARC's 2013](#) sunset review, alternative contracting methods are common in Washington and nationally. The Legislature first authorized alternative methods in 1991 and has steadily expanded this authority since. More public bodies are eligible to use alternative methods

now than in the past, there are lower minimum thresholds for project costs, and limits on the allowable number of projects have increased or, in some cases, been removed.

Since 2013, hundreds of projects have been completed using alternative methods. It is not possible to provide an exact number of projects and users in Washington because not all approved projects move to construction and not all public bodies are required to report their use. In addition, some agencies have their own separate statutory authority for alternative contracting, such as the Washington State Department of Transportation.

Although it is not currently possible to establish a precise number, public bodies report using or planning to use alternative procedures on at least \$2 billion in public works construction each year. Meanwhile, public bodies report about \$6 billion in total public works construction each year, including both alternative and traditional public works.

The federal government and all 50 states allow some alternative contracting methods

While the authorized methods vary by state and at the federal level, alternative contracting methods are common and widespread. For example, federal agencies are widely permitted to use Design-Build. State agencies in 44 states and Washington, DC also are widely permitted to use Design-Build. In the six other states, state agencies have more limited or extremely limited authority to use it.

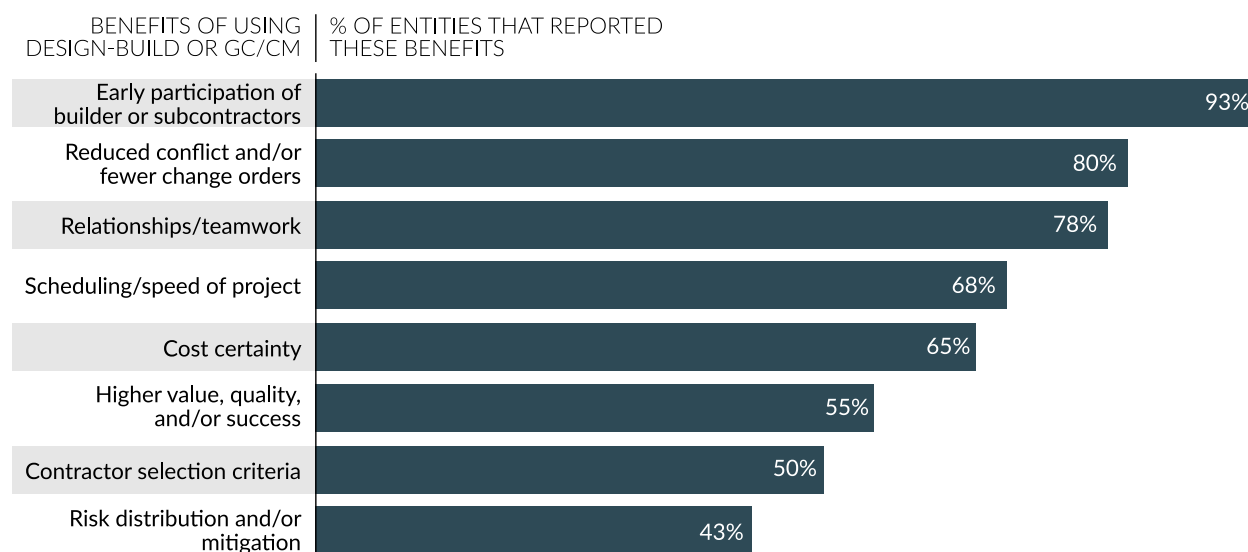
Stakeholders and experts report advantages to alternative contracting

JLARC staff conducted 40 interviews with stakeholders⁸ over the course of this review. Stakeholders reported a number of potential advantages to using alternative contracting methods as compared to traditional public works contracting. The most common reported advantages are that:

- The contractor selection method and timing are more flexible. For example:
 - Under Design-Build and GC/CM, contractors are brought onto the project earlier during the design phase, rather than after the design is complete.
 - Under Design-Build and GC/CM, contractors are selected based on qualifications rather than the lowest responsive bid from a responsible bidder.
 - Under Design-Build, subcontractors can be selected at any time in the project based on their qualifications or other criteria.
 - Under GC/CM, some subcontractors can be brought in during the design phase based on their qualifications.
- There are typically fewer conflicts and/or change orders.
- The public body, architect or engineer, and contractor have increased opportunities to form relationships and work as a team.

⁸Public bodies, contractors, architects, and experts.

Exhibit 1.4: Reported benefits of using alternative contracting methods



Source: Interviews with study participants.

Some stakeholders cited limitations to the alternative methods or related statutory requirements

Although overall feedback from stakeholders was positive, some individuals reported limitations that potentially could be addressed through statutory changes or by following best practices.

For GC/CM projects:

- **Construction subcontractors are selected based on price rather than qualifications.** Currently, electrical and mechanical subcontractors can be selected during the design phase based on the firm's qualifications. Some stakeholders recommended expanding this option to other subcontractor trades.
- **Subcontractor bonding requirements may prevent small subcontractors from participating.** Stakeholders report that this is an additional cost for public bodies, that it is inefficient, and that it may limit participation of disadvantaged business enterprises. Traditional public works and design-build projects do not require subcontractor bid and payment bonds and private industry often allows the use of other insurance products instead of bonds.

For design-build projects:

- **The design firm typically works for the construction contractor rather than the public body.** This requires the public body to manage the project without having the contracted design firm as the owner's representative.
- **In traditional design-build, the solicitation process can be expensive, and total contract price is set during the procurement phase when there are still a lot of uncertainties.** The public body may have limited involvement in the design. Progressive design-build

addresses some of these limitations, but it can be challenging for new firms to win alternative contracts.

For all alternative construction projects:

- Alternative methods emphasize teamwork and fast decision making, which **can be challenging for a public body with limited experience using alternative contracting methods.**

2. CPARB complies with statute

The Capital Projects Advisory Review Board (CPARB) has worked to improve public works contracting in Washington

Statute established the Capital Project Advisory Review Board (CPARB) to evaluate public works contracting and provide policy advice to the Legislature. CPARB has 19 voting members, 15 of whom are appointed by the governor and four of whom are appointed by other bodies. There are also four nonvoting members from each of the major legislative caucuses.

CPARB has developed and recommended policy changes to the Legislature

Statute directs CPARB to develop and recommend policies to enhance the quality, efficiency, and accountability of public works construction. This may include expanding, modifying, or eliminating alternative public works contracting methods.

Since 2013, CPARB has developed and recommended five bills. Two additional bills were introduced based on the work of CPARB or its committees. Five of these seven were enacted into law. The changes included:

- **Job Order Contracting (JOC) expansion.** In 2013, HB 1466 increased the annual limit of contracts to \$6 million for counties with populations greater than one million. In 2019, SHB 1295 expanded JOC authority to all public bodies in Washington and increased the contract and award limits.
- **Heavy Civil General Contractor/Construction Manager (GC/CM).** In 2014, HB 2208 authorized the use of GC/CM on heavy civil infrastructure projects, such as sewers, roads, bridges, and tunnels. GC/CM firms managing heavy civil projects were authorized to perform more of the work themselves.
- **Progressive Design-Build authority.** In 2019, SHB 1295 authorized Progressive Design-Build, which reduces the cost of submitting proposals for Design-Build projects and enables greater owner participation in the design.
- **Inclusion and apprenticeship requirements.** In 2019, SHB 1295 required that design-builders submit plans for inclusion of underutilized firms—such as firms owned by women, minorities, or veterans—as subcontractors or suppliers. It also required that job order contractors use apprenticeship programs on large work orders.

CPARB has studied and shared public works information with the Legislature and stakeholders

CPARB has begun or completed studies and submitted reports to the Legislature on public works issues. Topics include:

- Life cycle cost analysis and energy efficiency (submitted to the Legislature in 2013).
- Local government public works methods, including the small works roster procedures⁹ and the limited public works process¹⁰ (requested by ESSB 5418 in 2019 and still in progress).
- Subcontractor listing policies and practices (requested by ESB 5457 in 2020 and still in progress).
- Best practice guidelines for using Design-Build (published in 2018) and guidelines for using GC/CM and JOC (still in progress).

CPARB has appointed experienced members to its committees and engaged stakeholders in its work

Statute directs CPARB to appoint knowledgeable people to the Project Review Committee (PRC), which makes decisions on whether to approve applications from public bodies to use the Design-Build and GC/CM methods. CPARB's process to appoint PRC members includes an application, a public consideration, and a vote.

CPARB is also authorized by statute to form additional committees as needed. There are currently 10 CPARB committees in addition to the PRC. Committee members include representatives from 29 private businesses, 19 public bodies or public owner associations, four labor organizations, and three private associations.

CPARB has acted on two of three previous JLARC recommendations

In 2013, the Legislative Auditor made three recommendations to CPARB. The Board has implemented or is in the process of implementing two of these, and has not implemented one.

1. **CPARB has refocused its data collection efforts on project delivery methods.** In 2013, JLARC staff found that CPARB had attempted to assemble a database of project information, but the data was not comprehensive or reliable. The Legislative Auditor recommended that CPARB refocus its efforts to collect information that would more readily help it evaluate public works delivery methods. CPARB has done so.
2. **CPARB has begun to collect information on GC/CM subcontractor awards and payments.** Statute requires that general contractors perform no more than 30% of the maximum allowable construction cost¹¹ for GC/CM projects, with the exception of heavy civil projects. In its 2013 sunset review, JLARC staff found that the information needed

⁹Procedures that may be used on projects under \$350,000.

¹⁰An alternative process for projects under \$50,000.

¹¹The maximum cost of the work to construct the project, including a percentage for risk contingency, approved change orders, and support services, such as surveying and cleanup.

to document compliance with this requirement was dispersed and unorganized. The Legislative Auditor recommended that public bodies document this information and CPARB has begun collecting it through the PRC review process.

3. **CPARB has not revised JOC reporting to reduce the appearance of noncompliance.** The 2013 review noted that JOC reporting forms could give the appearance of noncompliance with statutory contract limits because of the way JOC data was aggregated. The Legislative Auditor recommended that CPARB revise JOC reporting to more accurately identify individual contracts in place during the reporting period.

3. Project Review Committee is thorough in its reviews

The Project Review Committee maintains a thorough process for approving projects and certifying public bodies

The Project Review Committee (PRC) uses a thorough and consistent process for making decisions on applications to use alternative methods

The PRC is a committee of the Capital Projects Advisory Review Board (CPARB). Members are appointed by CPARB and represent public bodies and industry stakeholders.

Statute directs the PRC to evaluate and make decisions on applications from public owners that want to use the Design-Build and General Contractor/Construction Manager (GC/CM) methods. Applicants may request approval for individual projects or they may seek certification to use the methods at their own discretion for a period of three years.

Public bodies may want to seek three-year certification if they expect to complete a large volume of alternative public works projects. Examples of public bodies that have received certification include the Department of Enterprise Services, University of Washington, and Sound Transit.

The PRC evaluates whether applicants meet statutory criteria

Applicants must submit a formal application to the PRC and make a public presentation. The public has an opportunity to comment on the application before there is a public deliberation and vote by the PRC members.

For all applications, the PRC evaluates whether applicants have the capacity and experience to use alternative contracting methods successfully and whether they have resolved any previous audit findings.

- **For project applicants,** the PRC evaluates whether the project meets statutory criteria for using an alternative method, such as a construction project at a hospital or school that will be occupied and operating during construction or a project that requires specialized work on a historical building. See Appendix B for a full list of the statutory criteria (RCW 39.10.280, RCW 39.10.300, and RCW 39.10.340). Applicants must also demonstrate that using Design-Build or GC/CM will provide a substantial fiscal benefit or that the traditional delivery method is not practical.

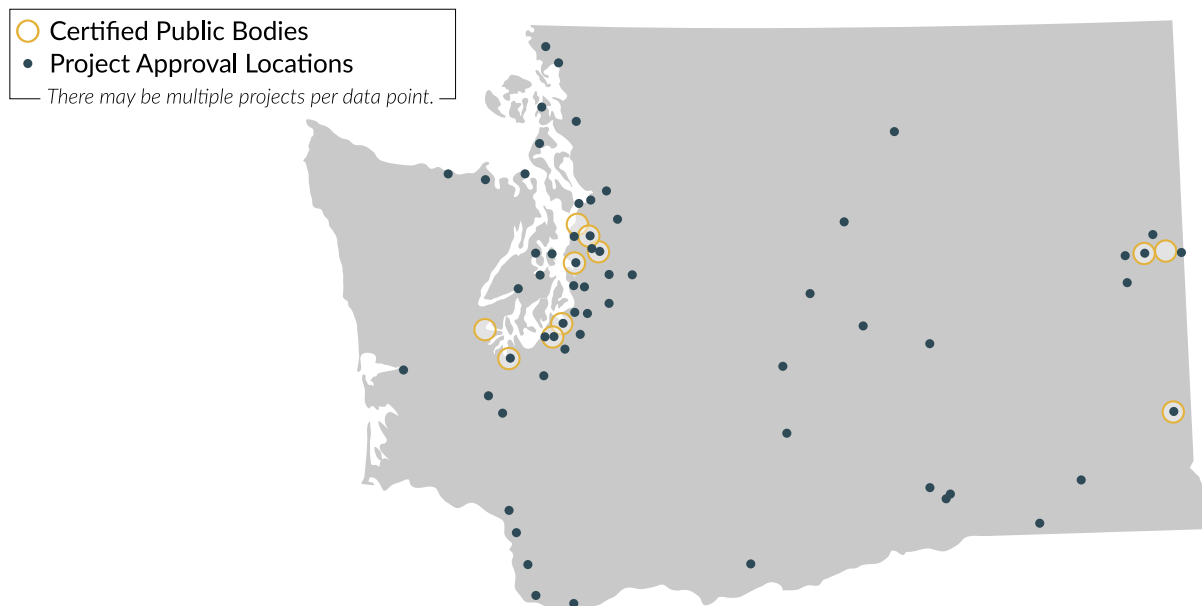
- **For certification**, a public body must demonstrate success in managing both traditional and alternative public works projects and the necessary experience to determine when it is appropriate to use alternative contracting methods.
- **For recertification**, a public body must document its success in managing alternative public works projects for three years before it can seek recertification for an additional three years. Applicants must summarize how their projects have met statutory criteria for using alternative delivery methods.

Since 2013, the PRC has approved 179 projects and 38 certifications or recertifications

Between 2013 and June 2020, the PRC approved 51 applications to use Design-Build and 128 applications to use GC/CM for specific projects.

During this same time period, the PRC approved 13 applications for certification and 25 applications for recertification. There are currently 13 public bodies¹² certified to use Design-Build, GC/CM, or both. See Appendix A for a list of certified public bodies and approved projects.

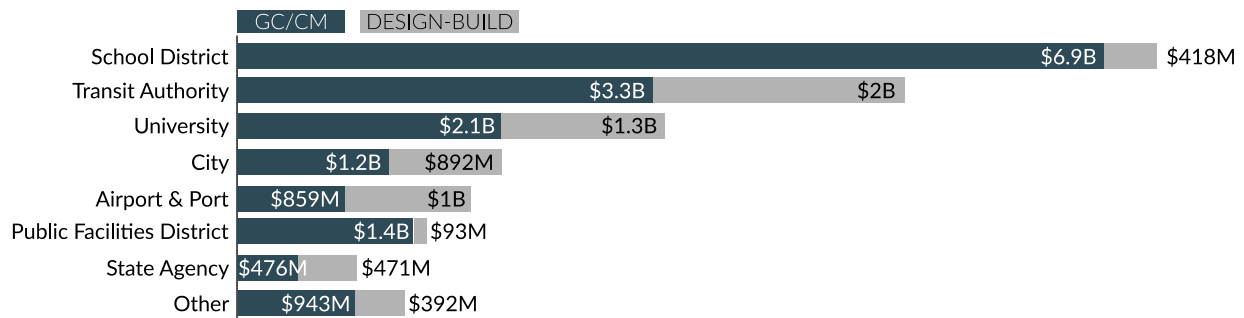
Exhibit 3.1: Map of Design-Build and GC/CM projects approved and public bodies certified since 2013



Source: JLARC staff analysis of PRC records.

¹²Some public bodies have applied more than once during the review period, and some have applied for more than one method. Some public bodies have not sought recertification.

Exhibit 3.2: More than \$23 billion of projects have been approved by or reported to the PRC since 2013



Source: JLARC staff analysis of PRC records. Amounts include individual projects approved by the PRC as well as projects reported to the PRC by certified public bodies.

PRC has denied applications for projects, certifications, and recertifications

Since 2013, the PRC has denied 10 applications for project approval and 3 applications for agency certification or recertification. The most common reason for denial is that the public body's development team lacks experience with alternative public works contracting methods.

Public bodies are responsible for complying with statute

Similar to traditional public works projects, public bodies using alternative construction methods are responsible for complying with the statutory requirements related to the particular methods they use. The PRC does not monitor projects during construction and is not responsible for ensuring that public owners are in compliance with public works statutes.

All public bodies are accountable to their citizens and stakeholders, subject to audit by their local governments and the State Auditor's Office. They are open to litigation if they are out of compliance.

If deficiencies are brought to their attention, CPARB and the PRC can limit a public body's future use of Design-Build or GC/CM in one of two ways:

1. **Revoke certification.** The PRC may revoke a public body's certification if it finds that its use of Design-Build or GC/CM no longer serves the public interest. For individual projects, there is no power to revoke approval.
2. **Deny future project applications.** If a public body does not comply with statutory requirements on a public works project, the PRC may reject a future application by the body to use alternative methods.

Unlike Design-Build and GC/CM, Job Order Contracting (JOC) does not require PRC approval. The PRC cannot approve, deny, or revoke a public body's use of JOC.

JLARC's review of a sample of projects indicates general compliance with the GC/CM self-performance limit

JLARC staff reviewed a sample of projects for compliance with the statutory requirement that general contractors on GC/CM projects perform no more than 30% of the maximum allowable construction cost¹³. The remainder of the work must be performed by subcontractors.

To assess whether contractors were complying with the self-performance limits, JLARC staff examined subcontractor awards and payments for projects completed by 11 of the 12 public bodies¹⁴ certified to use GC/CM and a sample of non-certified public bodies. Of the 40 projects we reviewed, 38 complied with the self-performance limit, while 2 exceeded the self-performance limit by 0.03 and 0.67 percentage points.

4. There are some gaps in data collection and record keeping

The Department of Enterprise Services provides staff support to CPARB. Over the years, there have been some gaps in data collection and record keeping.

Statute directs the Department of Enterprise Services (DES) to provide staff support to the Capital Project Advisory Review Board (CPARB), the Project Review Committee (PRC), and other CPARB committees.

In fiscal year 2020, DES budgeted 0.85 FTE for staff support, including 0.75 for administrative support and 0.1 FTE for professional staff oversight. As part of its support role, DES performs administrative tasks for the board and its committees.

Board and committee activities are public and transparent, but some practices were not compliant with the Open Public Meetings Act

Washington's Open Public Meetings Act (RCW 42.30) requires that all public boards and committees deliberate and take actions in a public setting. Meeting minutes must be recorded and made available, schedules must be published in advance, and agendas must be posted online.

Although DES posts information about CPARB, the PRC, and other committees on CPARB's website, JLARC staff identified several lapses in record keeping:

- Since 2017, PRC meeting minutes have not been consistently recorded, approved, or made available. DES has made audio recordings of meetings and is having them transcribed.
- Some of CPARB's other committees have not consistently recorded meeting minutes or made schedules or agendas publicly available.

CPARB, the PRC, and DES are aware of these issues and have stated that they intend to address them.

¹³With the exception of heavy civil projects.

¹⁴The University of Washington could not supply the necessary records to facilitate our review.

There are gaps in JOC data collection and record keeping

Statute requires public bodies that use Job Order Contracting (JOC) to report the following metrics to CPARB each year:

- A list of work orders issued.
- The cost of each work order.
- A list of subcontractors hired under each work order.

CPARB is authorized to request copies of intents to pay prevailing wage and affidavits of wages paid. CPARB also requests that public bodies using JOC attest to their compliance with certain statutory provisions and submit information about the participation of minority-owned, women-owned, veteran-owned, and small businesses.

DES staff are responsible for collecting the data and summarizing it for CPARB's JOC Evaluation committee. Over the years, there have been gaps in data collection and record keeping:

- **Missing reports.** DES staff cannot locate the JOC reports submitted by public bodies for 2014, 2015, and 2016 and believe they were lost during staff turnover. In 2017, DES suspended collection of JOC reports due to budget cuts. In 2020, DES resumed collection of the reports from 2017, 2018, and 2019.
- **Incomplete or inaccurate reports.** Some reports included work orders that were issued and completed outside of the reporting period. Not all public bodies reported the same data elements.
- **Overlapping contract years.** JOC reports do not clearly identify the length of each contract or distinguish between multiple contracts with the same contractor during a reporting period. Without these distinctions, it is difficult to determine if a contract exceeds statutory limits.
- **Potential underreporting.** Some public bodies may not have submitted the required JOC reports. Prior to 2019, statute limited use of JOC to certain public bodies. Statutory changes in 2019 resulted in all public bodies having the authority to use this contracting method. Because public bodies do not need to apply for approval, CPARB and DES do not have a mechanism to track which entities are using JOC and how many entities should be submitting reports each year.

JOC's statutory reporting requirements may not align with CPARB's primary duties or interests

CPARB's JOC Evaluation Committee is charged with reviewing data collected in JOC reports, developing best practices for JOC usage, and developing policy recommendations. It has used some of the data collected from these reports to provide briefings to CPARB on JOC's overall usage trends. However, much of the information collected relates to statutory reporting requirements and CPARB has not used this data.

Statute does not direct CPARB to monitor public bodies for compliance with JOC requirements. So far, CPARB has indicated it has not had the staff capacity to do so, and the Board has not expressed an interest in this type of oversight.

As noted in Section 2, CPARB has engaged stakeholders to address issues of concern in public works contracting. The Board has used other tools and information to develop and recommend policies to the Legislature for improving the quality, efficiency, and accountability of public works projects.

5. Answers to Sunset questions

CPARB and the PRC have complied with legislative intent. In general, stakeholders report that termination would have a negative effect on public works contracting.

Sunset review answers four key questions

1. Has the use of RCW 39.10 complied with legislative intent?

Yes. Public bodies¹⁵ may use Design-Build, General Contractor/Construction Manager, and Job Order Contracting when they meet certain statutory requirements. The Capital Projects Advisory Review Board (CPARB) actively engages stakeholders to make improvements to contracting methods and recommends policy changes to the Legislature. The Project Review Committee (PRC) employs a consistent process to evaluate applications for certification and project approval to ensure that applicants meet statutory requirements.

2. Does the alternative process provide for efficient and economical public works construction, with adequate cost controls in place?

Yes. Stakeholders report that alternative contracting methods enable development teams to identify and assess risks earlier in the project and mitigate those risks more effectively. Inclusion of the contractor during the design phase can also allow for value engineering and more efficient scheduling, which can save on overall costs or provide greater value. Projects tend to have greater cost certainty, and overall cost includes a contingency to cover unanticipated adjustments during construction. Expenditures in the 2017-19 biennium were \$281,330 to support CPARB.

3. Has CPARB achieved expected performance measures?

Yes. CPARB has achieved the performance measures it established for itself. The measures address CPARB's statutory authority and the Sunset questions. For example, CPARB recommended policy changes and submitted requested reports to the Legislature.

4. What would be the effect of termination?

¹⁵The public owner of a project, such as the state, a school district, or a municipality.

Stakeholders we interviewed **oppose termination**. When asked about the impact of terminating the alternative public works statute, stakeholders reported that it would likely lead to more disputes, more lawsuits, more change orders, more design and construction uncertainty, greater risk exposure, slower construction, and more expensive or lower quality projects. Interviewed firms that specialize in alternative delivery methods said they would likely give up public work in favor of private sector projects if the alternative contracting methods were terminated.

Appendix A: Certified public bodies and approved projects

The Project Review Committee reviews applications from public bodies to use Design-Build or General Contractor/Construction Manager contracting methods

At the time of our review, there were 13 public bodies certified to use Design-Build and/or General Contractor/Construction Manager (GC/CM) contracting methods. Between 2013 and June 2020, the Project Review Committee (PRC) approved 179 projects.

Certified Public Bodies

Public bodies can apply for agency certification that allows them to choose between alternative and traditional contracting methods through their own decision making processes. Certification lasts for three years.

Exhibit A1: Certified Public Bodies as of August 2020

Certified Public Owners	Alternative Method
Central Valley School District	GC/CM
City of Seattle	Design-Build and GC/CM
City of Tacoma	Design-Build
Clover Park School District	GC/CM
Dept. Enterprise Services	Design-Build and GC/CM
Edmonds School District	GC/CM
Lake Washington School District	GC/CM
Mason General Hospital	GC/CM
Port of Seattle	Design-Build and GC/CM
Sound Transit	Design-Build and GC/CM
Spokane Public Schools	GC/CM
University of Washington	Design-Build and GC/CM

Certified Public Owners	Alternative Method
Washington State University	Design-Build and GC/CM

Source: PRC list of active certifications.

Certification and recertification applications include limited information about projects completed, underway, or planned to enable PRC members to assess the public body's expertise with alternative contracting methods. JLARC staff extracted 163 projects that had both date and cost information to demonstrate use of the contracting methods (see Exhibit A2). Projects without sufficient information were not included.

Project approvals

Between 2013 and June of 2020, the PRC approved 179 design-build or GC/CM project applications submitted by 96 public bodies. 43 of the public bodies were school districts (accounted for 92 of the projects), 16 were cities (29 projects), and 9 were hospital districts (10 projects). The list of projects is available in Exhibit A2.

Design-Build and GC/CM projects approved by or reported to the PRC between 2013 and June 2020

Exhibit A2: Design-build and GC/CM projects approved or reported between 2013 and June 2020

View PowerBI interactive data [here](#).

Source: Applications to the PRC for certification, recertification, or project approval. Data includes projects approved, begun, or completed between 2013 and June 2020. For projects reported by certified public bodies, date information includes actual or planned completion dates.

Appendix B: Applicable statutes

RCW 39.10

Alternative Public Works Contracting Procedures

RCW 39.10

Sections

39.10.200 Finding—Purpose—Intent.

39.10.210 Definitions.

39.10.220 Board—Membership—Vacancies.

39.10.230 Board—Powers and duties.

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39.10.904 Effective dates—2007 c 494. 39.10.905 Severability—2007 c 494.

NOTES: Reviser's note—Sunset Act application: The alternative public works contracting procedures are subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.407. RCW 39.10.200 through 39.10.905 are scheduled for future repeal under RCW 43.131.408.

RCW 39.10.200

Finding—Purpose—Intent.

The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. It is the intent of the legislature to establish that, unless otherwise specifically provided for in law, public bodies may use only those alternative public works contracting procedures specifically authorized in this chapter, subject to the requirements of this chapter. [2010 1st sp.s. c 21 § 2; 2007 c 494 § 1; 1994 c 132 § 1. Formerly RCW 39.10.010.]

NOTES: Sunset Act application: See note following chapter digest. Intent—2010 1st sp.s. c 21: "The establishment of alternative public works contracting procedures authorized for use by public bodies has been a complex, controversial, and challenging undertaking, but it has been successful. The key to the successful adoption and consideration of these procedures has depended, in great part, on the review and oversight mechanisms put in place by the legislature in chapter 39.10 RCW, as well as the countless hours of dedicated work by numerous stakeholders over many years. It is the intent of the legislature to clarify that, unless otherwise specifically provided for in law, public bodies that want to use an alternative public works contracting procedure may use only those procedures specifically authorized in chapter 39.10 RCW." [2010 1st sp.s. c 21 § 1.]

RCW 39.10.210

Definitions.

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

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

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

- (3) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.
- (4) "Committee," unless otherwise noted, means the project review committee.
- (5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.
- (6) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.
- (7) "General contractor/construction manager" means a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.
- (8) "Heavy civil construction project" means a civil engineering project, the predominant features of which are infrastructure improvements.
- (9) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.
- (10) "Job order contractor" means a registered or licensed contractor awarded a job order contract.
- (11) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.
- (12) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.
- (13) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.
- (14) "Price-related factor" means an evaluation factor that impacts costs which may include, but is not limited to overhead and profit, lump sum or guaranteed maximum price for the entire or a portion of the project, operating costs, or other similar factors that may apply to the project.
- (15) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts.
- (16) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.
- (17) "Small business entity" means a small business as defined in RCW 39.26.010.

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

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

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

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

[2019 c 212 § 1. Prior: 2014 c 42 § 1; 2013 c 222 § 1; prior: 2010 1st sp.s. c 36 § 6014; 2007 c 494 § 101; 2005 c 469 § 3; prior: 2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2. Formerly RCW 39.10.020.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: "Sections 1 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2013." [2013 c 222 § 26.]

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Effective date—2001 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 328 § 8.]

Effective date—1997 c 376: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 376 § 10.]

RCW 39.10.220

Board—Membership—Vacancies.

(1) The board is created in the department of enterprise services to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2) Members of the board are appointed as follows:

(a) Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and

women's business enterprises; one representative from a higher education institution; one representative from the department of enterprise services; one individual representing Washington cities; two representatives from private industry; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state, each appointed by the governor. All appointed members must be knowledgeable about public works contracting procedures. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term;

(b) One member representing counties, selected by the Washington state association of counties;

(c) One member representing public ports, selected by the Washington public ports association;

(d) One member representing public hospital districts, selected by the association of Washington public hospital districts;

(e) One member representing school districts, selected by the Washington state school directors' association; and

(f) Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the board, project review committee members, and committee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) Vacancies are filled in the same manner as appointed. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of enterprise services shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish committees as it desires and may invite nonmembers of the board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the board.

[2013 c 222 § 2; 2007 c 494 § 102; 2005 c 377 § 1. Formerly RCW 39.10.800.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.230

Board—Powers and duties.

The board has the following powers and duties:

- (1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;
- (2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;
- (3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;
- (4) Appoint members of committees; and
- (5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

The capital projects advisory review board is directed to review current statutes regarding life-cycle cost analysis and energy efficiency as related to the design-build procurement method performed under chapter 39.10 RCW. Capital projects advisory review board shall report to the appropriate committees of the legislature by December 31, 2013, with recommendations for statutory changes that promote energy efficiency and reduce the total cost to construct, operate and maintain public buildings. Recommendation must include provisions for postoccupancy validation of estimated energy efficiency measures, and operating and maintenance cost estimates. Life-cycle estimates of energy use must include estimates of energy consumptions for materials used in construction.

[2013 c 222 § 3; 2010 1st sp.s. c 21 § 3; 2009 c 75 § 1; 2007 c 494 § 103; 2005 c 377 § 2. Formerly RCW 39.10.810.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Intent—2010 1st sp.s. c 21: See note following RCW 39.10.200.

RCW 39.10.240

Project review committee—Creation—Members.

- (1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.
- (2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220.
- (a) Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one, two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.
- (b) The committee shall, by a majority vote, elect a chair and vice chair for the committee.
- (c) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.
- (3) The chair of the committee, in consultation with the vice chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee.
- (4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.
- (5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.
- (6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner.

[2013 c 222 § 4; 2007 c 494 § 104.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.250

Project review committee—Duties.

The committee shall:

- (1) Certify, or renew certification for, public bodies to use design-build or general contractor/construction manager contracting procedures, or both;
 - (2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;
 - (3) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years.
- [2019 c 212 § 2; 2013 c 222 § 5; 2009 c 75 § 2; 2007 c 494 § 105.]

NOTES: Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.260

Project review committee—Meetings—Open and public.

- (1) The committee shall hold regular public meetings to carry out its duties as described in RCW 39.10.250. Committee meetings are subject to chapter 42.30 RCW.
- (2) The committee shall publish notice of its public meetings at least twenty days before the meeting in a legal newspaper circulated in the area where the public body seeking certification is located, or where each of the proposed projects under consideration will be constructed. All meeting notices must be posted on the committee's web site.
- (3) The meeting notice must identify the public body that is seeking certification or project approval, and where applicable, a description of projects to be considered at the meeting. The notice must indicate when, where, and how the public may present comments regarding the committee's certification of a public body or approval of a project. Information submitted by a public body to be reviewed at the meeting shall be available on the committee's web site at the time the notice is published.
- (4) The committee must allow for public comment on the appropriateness of certification of a public body or on the appropriateness of the use of the proposed contracting procedure and the qualifications of a public body to use the contracting procedure. The committee shall receive and record both written and oral comments at the public meeting.

[2013 c 222 § 6; 2007 c 494 § 106.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.270

Project review committee—Certification of public bodies.

(1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects without seeking committee approval for a period of three years. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

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

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

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

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

(i) Project delivery knowledge and experience;

(ii) personnel with appropriate construction experience;

(iii) a management plan and rationale for its alternative public works projects;

(iv) demonstrated success in managing public works projects;

(v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and

(vi) the ability to meet requirements of this chapter; and

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

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

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

(6) The committee may renew the certification of a public body for additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The committee may accept late applications, if administratively

feasible, to avoid expiration of certification on a case-by-case basis. The application shall include updated information on the public body's experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350.

[2019 c 212 § 3; 2017 c 211 § 1; 2013 c 222 § 7; 2009 c 75 § 3; 2007 c 494 § 107.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.280

Project review committee—Project approval process.

(1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, the public body's intended use of alternative contracting procedures, and, if applicable, a declaration that the public body has elected to procure the project as a heavy civil construction project.

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

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

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

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

(d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

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

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made. (4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved. (5) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application.

[2014 c 42 § 2; 2013 c 222 § 8; 2007 c 494 § 108.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.290

Appeal process.

Final determinations by the committee may be appealed to the board within seven days by the public body or by an interested party. A written notice of an appeal must be provided to the committee and, as applicable, to the public body. The board shall resolve an appeal within forty-five days of receipt of the appeal and shall send a written determination of its decision to the party making the appeal and to the appropriate public body, as applicable. The public body shall comply with the determination of the board.

[2007 c 494 § 109.]

NOTES: Sunset Act application: See note following chapter digest.

RCW 39.10.300

Design-build procedure—Uses.

(1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure, including progressive design-build, for public works projects in which the total project cost is over two million dollars and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

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

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

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

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

[2019 c 212 § 4; 2013 c 222 § 9; 2009 c 75 § 4; 2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Effective date—2002 c 46: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 46 § 5.]

Effective date—2001 c 328: See note following RCW 39.10.210.

RCW 39.10.320

Design-build procedure—Project management and contracting requirements.

(1) A public body utilizing the design-build contracting procedure shall provide:

(a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(b) Staff or consultants with expertise and prior experience in the management of comparable projects;

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

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

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

(f) Contract documents that require the design builder to submit plans for inclusion of underutilized firms as subcontractors and suppliers including, but not limited to, the office of minority and women's business enterprises certified businesses, veteran certified businesses, and small businesses as allowed by law.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals.

[2019 c 212 § 5; 2013 c 222 § 10; 2007 c 494 § 203; 1994 c 132 § 7. Formerly RCW 39.10.070.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.330

Design-build contract award process.

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

(a) A description of the project including the estimated design-build contract value and the intended use of the project;

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

(c) A description of the qualifications to be required of the proposer;

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

(i) Evaluation factors for qualifications shall include technical qualifications, such as specialized experience and technical competence of the firms and the key design and construction personnel; capacity to perform; the proposer's past performance in utilization of the office of minority and women's business enterprises certified businesses, to the extent permitted by law; ability to provide a performance and payment bond for the project; and other appropriate factors. Evaluation factors may also include, but are not limited to, the proposer's past performance in utilization of small business entities. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include the management plan to meet time and budget requirements and one or more price-related factors. Evaluation factors may also include,

but not be limited to, the technical approach, design concept, and the outreach plan to include small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The proposed contract;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists. The request for proposal documents shall include:

(a) Any specific forms to be used by the finalists; and

(b) Submission of a summary of the finalist's accident prevention program and an overview of its implementation.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the request for qualifications, the request for proposals, and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the finalist submitting the highest scored proposal. If the public body is unable to execute a contract with the finalist submitting the highest scored proposal, negotiations with that finalist may be suspended or terminated and the public body may proceed to negotiate with the next highest scored finalist. Public bodies shall

continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) Any contract must require the firm awarded the contract to track and report to the public body its utilization of the office of minority and women's business enterprises certified businesses and veteran certified businesses.

(9) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall recognize the level of effort required to meet the selection criteria.

[2019 c 212 § 6; 2014 c 19 § 1; 2013 c 222 § 11; 2009 c 75 § 5; 2007 c 494 § 204.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.340

General contractor/construction manager procedure—Uses.

Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

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

(5) The project requires specialized work on a building that has historic significance; or

(6) The project is, and the public body elects to procure the project as, a heavy civil construction project. However, no provision of this chapter pertaining to a heavy civil construction project

applies unless the public body expressly elects to procure the project as a heavy civil construction project.

[2014 c 42 § 3; 2013 c 222 § 12; 2007 c 494 § 301. Prior: 2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3. Formerly RCW 39.10.061.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Effective date—2002 c 46: See note following RCW 39.10.300.

Effective date—2001 c 328: See note following RCW 39.10.210.

RCW 39.10.350

General contractor/construction manager procedure—Project management and contracting requirements.

(1) A public body using the general contractor/construction manager contracting procedure shall provide for:

- (a) The preparation of appropriate, complete, and coordinated design documents;
- (b) Confirmation that a constructability analysis of the design documents has been performed prior to solicitation of a subcontract bid package;
- (c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;
- (d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;
- (e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects, critical path method schedule review and analysis, and the administration, pricing, and negotiation of change orders;
- (f) Contract documents that include alternative dispute resolution procedures to be attempted before the initiation of litigation;
- (g) Contract documents that:
 - (i) Obligate the public owner to accept or reject a request for equitable adjustment, change order, or claim within a specified time period but no later than sixty calendar days after the receipt by the public body of related documentation; and
 - (ii) provide that if the public owner does not respond in writing to a request for equitable adjustment, change order, or claim within the specified time period, the request is deemed denied;
- (h) Submission of project information, as required by the board; and

- (i) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.
- (2) A public body using the general contractor/construction manager contracting procedure may include an incentive clause for early completion, cost savings, or other performance goals if such incentives are identified in the request for proposals. No incentives granted may exceed five percent of the maximum allowable construction cost. No incentives may be paid from any contingency fund established for coordination of the construction documents or coordination of the work.
- (3) If the construction is completed for less than the maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the construction is completed for more than the maximum allowable construction cost, the additional cost is the responsibility of the general contractor/construction manager.
- (4) If the public body and the general contractor/construction manager agree, in writing, on a price for additional work, the public body must issue a change order within thirty days of the written agreement. If the public body does not issue a change order within the thirty days, interest shall accrue on the dollar amount of the additional work satisfactorily completed until a change order is issued. The public body shall pay this interest at a rate of one percent per month.
- (5) For a project procured as a heavy civil construction project, an independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.

[2014 c 42 § 4; 2007 c 494 § 302.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.360

General contractor/construction manager procedure—Contract award process.

- (1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.
- (2) Contracts for the services of a general contractor/ construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:
 - (a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;
 - (b) The reasons for using the general contractor/construction manager procedure including, if applicable, a clear statement that the public body is electing to procure the project as a heavy civil construction project, in which case the solicitation must additionally:

- (i) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;
- (ii) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and
- (iii) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project;
- (c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;
- (d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;
- (e) The form of the contract, including any contract for preconstruction services, to be awarded;
- (f) The estimated maximum allowable construction cost; and
- (g) The bid instructions to be used by the general contractor/construction manager finalists.
- (3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:
 - (i) Ability of the firm's professional personnel;
 - (ii) The firm's past performance in negotiated and complex projects;
 - (iii) The firm's ability to meet time and budget requirements;
 - (iv) The scope of work the firm proposes to self-perform and its ability to perform that work;
 - (v) The firm's proximity to the project location;
 - (vi) Recent, current, and projected workloads of the firm; and
 - (vii) The firm's approach to executing the project.
- (b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.
- (4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all

previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

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

[2014 c 42 § 5; 2013 c 222 § 13; 2009 c 75 § 6; 2007 c 494 § 303.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.370

General contractor/construction manager procedure—Maximum allowable construction cost.

(1) The maximum allowable construction cost shall be used to establish a total contract cost for which the general contractor/construction manager shall provide a performance and payment bond. The maximum allowable construction cost shall be negotiated between the public body and the selected firm when the construction documents and specifications are at least ninety percent complete.

(2) Major bid packages may be bid in accordance with RCW 39.10.380 before agreement on the maximum allowable construction cost between the public body and the selected general contractor/construction manager. The general contractor/construction manager may issue an intent to award to the responsible bidder submitting the lowest responsive bid.

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

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

(5) If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

(6) If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(7) As part of the negotiation of the maximum allowable construction cost under subsection (1) of this section, on a project that the public body has elected to procure as a heavy civil construction project:

(a) The general contractor/construction manager shall submit a proposed construction management and contracting plan, which must include, at a minimum:

(i) The scope of work and cost estimates for each bid package;

(ii) A proposed price and scope of work for the negotiated self-perform portion of the project;

(iii) The bases used by the general contractor/construction manager to develop all cost estimates, including the negotiated self-perform portion of the project; and

(iv) The general contractor/construction manager's updated outreach plan to include small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the public body may designate in the public solicitation of proposals, as subcontractors and suppliers for the project;

(b) The public body and general contractor/construction manager may negotiate the scopes of work to be procured by bid and the price and scope of work for the negotiated self-perform portion of the project, if any;

(c) The negotiated self-perform portion of the project must not exceed fifty percent of the cost of the work to construct the project;

(d) Subject to the limitation of RCW 39.10.390(4), the public body may additionally negotiate with the general contractor/construction manager to determine on which scopes of work the general contractor/construction manager will be permitted to bid, if any;

(e) The public body and general contractor/construction manager shall negotiate, to the public body's satisfaction, a fair and reasonable outreach plan;

(f) If the public body is unable to negotiate to its reasonable satisfaction a component of this subsection (7), negotiations with the firm must be terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated.

[2014 c 42 § 6; 2007 c 494 § 304.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.380

General contractor/construction manager procedure—Subcontract bidding procedure.

(1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

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

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

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

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the available funds;

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

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

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

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

[2013 c 222 § 14; 2007 c 494 § 305.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.385

General contractor/construction manager procedure—Alternative subcontractor selection process.

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

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

(a) Publish a notice of intent to use this alternative selection process in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; how interested parties may, prior to the hearing, obtain the evaluation criteria and applicable weight given to each criteria that will be used for evaluation; and protest procedures including time limits for filing a protest, which may in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

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

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

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

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

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

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

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

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

(e) Protest procedures;

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

(g) The estimated maximum allowable subcontract cost; and

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

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

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

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

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

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

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

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

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

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

- (i) The firm's approach to safety on the project;
 - (j) The firm's safety history; and
 - (k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.
- (4) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal, will be requested from the most qualified firms.
- (5) The general contractor/construction manager must notify all proposers of the most qualified firms that will move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer, the general contractor/construction manager must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the most qualified finalists must file the protest with the public body in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision issued by the public body is transmitted to the protestor.
- (6) The general contractor/construction manager and the public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors identified in the solicitation of proposals. The scoring of the nonprice factors must be made available at the opening of the fee and cost proposals. The general contractor/construction manager shall notify all proposers of the selection decision and make a selection summary of the final proposals, which shall be available to all proposers within two business days of such notification. The general contractor/construction manager may not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.
- (7) If the public body receives a timely written protest from a "most qualified firm," the general contractor/construction manager may not execute a contract for the protested subcontract work until two business days after the final protest decision issued by the public body is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.
- (8) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.
- (9) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide preconstruction services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating,

constructability, alternative construction options for cost savings, and sequencing of work; and to act as the mechanical or electrical subcontractor during the construction phase.

(10) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(11) If the work of the mechanical contractor or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the mechanical contractor or the electrical contractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.

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

[2013 c 222 § 15; 2010 c 163 § 1.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.390

General contractor/construction manager procedure—Subcontract work.

(1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

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

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

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

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

(3) In no event may the general contractor/construction manager or its subsidiaries assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost, unless procured as a heavy civil construction project under this chapter. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection. (4) Notwithstanding any contrary provision of this chapter, for a project that a public body has elected to procure as a heavy civil construction project under this chapter, at least thirty percent of the cost of the work to construct the project included in the negotiated maximum allowable construction cost must be procured through competitive sealed bidding in which bidding by the general contractor/construction manager or its subsidiaries is prohibited.

[2014 c 42 § 7; 2013 c 222 § 16; 2007 c 494 § 306.]

NOTES: Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.400

General contractor/construction manager procedure—Prebid determination of subcontractor eligibility.

(1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general contractor/construction manager and the public body must:

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

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

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and how interested parties may, at least five days before the hearing, obtain the specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for each criteria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded one opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section.

[2013 c 222 § 17; 2007 c 494 § 307.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.410

General contractor/construction manager procedure—Subcontract agreements.

Subcontract agreements used by the general contractor/construction manager shall not:

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

(2) Delegate, restrict, or assign the general contractor/construction manager's authority to resolve subcontractor conflicts. The general contractor/construction manager may delegate or assign coordination of specific elements of the work, including: (a) The coordination of shop drawings among subcontractors; (b) the coordination among subcontractors in ceiling spaces and mechanical rooms; and (c) the coordination of a subcontractor's lower tier subcontractors.

Nothing in this subsection prohibits the general contractor/construction manager from imposing a duty on its subcontractors to cooperate with the general contractor/construction manager and other subcontractors in the coordination of the work;

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

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

(5) Require the subcontractor to execute progress payment applications that waive claims for additional time or compensation or bond or retainage rights as a condition of receipt of progress payment, except to the extent the subcontractor has received or will receive payment. Nothing in this section precludes the general contractor/construction manager from requiring the subcontractor to provide notice of claims for additional time or compensation as a condition precedent to right of recovery or to execute a full and final release, including a waiver of bond and retainage rights, as a condition of final payment.

[2007 c 494 § 308.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.420

Job order procedure—Public bodies may authorize and use.

(1) All public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects and public hospital districts.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

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

[2019 c 212 § 7; 2017 c 136 § 1; 2016 c 52 § 1. Prior: 2013 c 222 § 18; 2013 c 186 § 1; 2012 c 102 § 1; 2009 c 75 § 7; 2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.430

Job order procedure—Contract award process.

(1) Job order contracts shall be awarded through a competitive process using public requests for proposals.

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

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

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

(b) The reasons for using job order contracts;

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

(d) The identity of the specific unit price book to be used; (e) The minimum contracted amount committed to the selected job order contractor;

(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; past performance on approved subcontractor inclusion plans; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;

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

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

(i) A notice that the proposals are subject to RCW 39.10.470; and

(j) Other information relevant to the project.

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

(5) The public body shall provide a protest period of at least ten business days following the day of the announcement of the apparent successful proposal to allow a protester to file a detailed statement of the grounds of the protest. The public body shall promptly make a determination on the merits of the protest and provide to all proposers a written decision of denial or acceptance of the protest. The public body shall not execute the contract until two business days following the public body's decision on the protest. (6) The requirements of RCW 39.30.060 do not apply to requests for proposals for job order contracts.

[2019 c 212 § 8; 2007 c 494 § 402.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.440

Job order procedure—Contract requirements.

(1) The maximum total dollar amount that may be awarded under a job order contract is four million dollars per year for a maximum of three years. Any unused capacity from the previous year may be carried over for one year and added to the immediate following year's limit. The maximum annual volume including unused capacity shall not exceed the limit of two years. The maximum total dollar amount that may be awarded under a job order contract for the department of enterprise services, counties with a population of more than one million, and cities with a population of more than four hundred thousand is six million dollars per year for a maximum of three years. The maximum total dollar amounts are exclusive of Washington state sales and use tax.

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

(3) A public body may have no more than three job order contracts in effect at any one time, with the exception of the department of enterprise services, which may have six job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including certified minority and woman-owned subcontractors to the extent permitted by law as demonstrated on the subcontractor and supplier project submission, and shall limit subcontractor bonding requirements to the greatest extent possible.

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

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

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, 2021; however the job order contract may be extended or renewed as provided for in this section.

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

[2019 c 212 § 9; 2015 c 173 § 1; 2013 c 222 § 19; 2007 c 494 § 403.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

RCW 39.10.450

Job order procedure—Work orders.

(1) The maximum dollar amount for a work order is five hundred thousand dollars, excluding Washington state sales and use tax.

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

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

(4) Any new stand-alone permanent structure constructed under a work order shall not exceed three thousand gross square feet.

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

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

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW 39.80.040.

(8) Any work order over three hundred fifty thousand dollars, excluding Washington state sales and use tax, and including over six hundred single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW 39.04.320. Awarding entities may adjust this requirement for a specific work order for the following reasons:

- (a) The demonstrated lack of availability of apprentices in specific geographic areas;
- (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310; or
- (d) Other criteria the awarding entity deems appropriate.

[2019 c 212 § 10; 2012 c 102 § 2; 2007 c 494 § 404.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.460

Job order procedure—Required information to board.

Each year, a public body shall provide to the board the following information for each job order contract for the period July 1st through June 30th:

- (1) A list of work orders issued;
- (2) The cost of each work order;
- (3) A list of subcontractors hired under each work order;
- (4) If requested by the board, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract; and
- (5) Any other information requested by the board.

[2012 c 102 § 3; 2007 c 494 § 405.]

NOTES: Sunset Act application: See note following chapter digest.

RCW 39.10.470

Public inspection of certain records—Protection of trade secrets—Protection of documents submitted.

- (1) Except as provided in subsections (2) and (3) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this

chapter shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.56 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected.

(3) All documents related to a procurement under RCW 39.10.330 are exempt from disclosure until the notification of the highest scoring finalist is made in accordance with RCW 39.10.330(6) or the selection process is terminated, except as expressly required under RCW 39.10.330(3).

[2019 c 212 § 11; 2014 c 19 § 2; 2005 c 274 § 275; 1994 c 132 § 10. Formerly RCW 39.10.100.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.480

Construction of chapter—Waiver of other limits and requirements.

This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project.

[1994 c 132 § 9. Formerly RCW 39.10.090.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.490

Application of chapter.

The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2021. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, 2021.

[2013 c 222 § 20; 2007 c 494 § 501; 2001 c 328 § 5. Prior: 1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12. Formerly RCW 39.10.120.]

NOTES:

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Effective date—2001 c 328: See note following RCW 39.10.210.

Effective date—1997 c 376: See note following RCW 39.10.210.

Referendum—Other legislation limited—Legislators' personal intent not indicated—

Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

RCW 39.10.900

Captions not law—1994 c 132.

Captions as used in this act do not constitute any part of law.

[1994 c 132 § 13.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.901

Severability—1994 c 132.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1994 c 132 § 14.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.903

Part headings and captions not law—2007 c 494.

Part headings and captions used in chapter 494, Laws of 2007 are not any part of the law.

[2007 c 494 § 510.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.904

Effective dates—2007 c 494.

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007,

except for section 104 of this act, which takes effect immediately [May 15, 2007], and section 508 of this act, which takes effect June 30, 2007.

[2007 c 494 § 512.]

NOTES:

Sunset Act application: See note following chapter digest.

RCW 39.10.905

Severability—2007 c 494.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2007 c 494 § 513.]

NOTES:

Sunset Act application: See note following chapter digest.

RECOMMENDATIONS & RESPONSES

Legislative Auditor Recommendation

The Legislative Auditor recommends continuing authorization of alternative public works contracting methods

Without legislative action, RCW 39.10 will terminate on June 30, 2021.

Recommendation #1: The Legislature should continue the alternative contracting methods in RCW 39.10

If the Legislature continues the alternative contracting statutes, it should consider whether to extend them permanently or extend the sunset to a future date.

Legislation Required:	Yes. Without legislative action RCW 39.10 will expire on June 30, 2021.
Fiscal Impact:	No additional impact beyond what is currently funded through DES. In the 2017-19 biennium, expenditures to support CPARB were \$281,330.
Implementation Date:	2021 Legislative Session
Agency Response:	CPARB and DES concur with these recommendations.

Recommendation #2: CPARB should evaluate which JOC data it needs to perform its functions and propose appropriate modifications to the Legislature

CPARB has engaged stakeholders to address issues of concern in public works contracting and obtained information to develop and recommend policies to the Legislature to enhance the quality, efficiency, and accountability of public works projects. Given this role and challenges in collecting complete and accurate JOC data, CPARB should evaluate what JOC data it needs to perform its functions and propose appropriate modifications to the Legislature.

Legislation
Required: No

Fiscal Impact: JLARC staff assume this can be accomplished within existing resources.

Implementation
Date: September 2021

Agency
Response: CPARB and DES concur with these recommendations.

CPARB Response



STATE OF WASHINGTON Capital Projects Advisory Review Board

November 6, 2020

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
Post Office Box 40910
Olympia, WA 98504-0910

Re: JLARC Preliminary Report on Alternative Public Works Sunset Review

Dear Mr. Konopaski:

The members of the Capital Projects Advisory Review Board (CPARB) want to thank the Joint Legislative Audit and Review Committee (JLARC) for all the hard work expressed in JLARC's Preliminary Report, "Alternative Public Works Procedures Sunset Review." We appreciate your thoughtful review and conclusion: "The Legislature should continue the alternative public works contracting statute. Alternative delivery methods are widely used, and CPARB has created a forum for stakeholders to continually improve project delivery." We also appreciate the time and effort of your team and the excellent working relationship established with the Board and DES Staff.

The following represents CPARB's position on the JLARC Recommendations:

RECOMMENDATION	CPARB POSITION	COMMENTS
The Legislature should continue the alternative contracting methods in RCW 39.10.	Concur	RCW Chapter 39.10 provides public owners and the construction industry with important tools to execute public works projects. The Board strongly supports the continuation of the Capital Projects Advisory Review Board and Project Review Committee to provide oversight and successful implementation of alternative public works procurements in the State of Washington. CPARB is also committed to continuing to engage stakeholders for improving these valuable methods for public works processes.

Keenan Konopaski
November 6, 2020
Page 2

CPARB should evaluate which JOC data it needs to perform its functions and propose appropriate modifications to the Legislature.	Concur	JOC has been demonstrated to be an effective delivery method for public works projects. CPARB has worked with stakeholders regarding the need for CPARB to collect the information currently set out for JOC data under RCW 39.10.460. CPARB has determined that this information is more related to compliance, which is not within CPARB's role as an advisory board. However, the information is important for public owners to track. As a result, CPARB will be submitting proposed changes to RCW 39.10.460 with the reauthorization bill to the Legislature. The changes will shift responsibility to the public owners to track the information and make it available upon request.
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We also would like to note that CPARB's report to JLARC is located on the [CPARB website: Sunset Review Performance Summary to JLARC](#). This report contains additional information about CPARB performance that may be useful in understanding the collaborative efforts that support the alternative public works procurement process.

Thank you for the opportunity to comment. If you have any questions, please contact Lead Staff for CPARB, Nancy Deakins at nancy.deakins@des.wa.gov or (360) 280-6236 or me at rebecca.keith@seattle.gov or (206) 684-8239.

Sincerely,



Rebecca Keith
Chair

cc: CPARB Members
Chris Liu, Director, Department of Enterprise Services
Ann Larson, Government Relations, Department of Enterprise Services
Annette Meyer, Deputy Director, Department of Enterprise Services
Bill Frare, Assistant Director FPS, Department of Enterprise Services
Janet Jansen, E&AS Program Manager, Department of Enterprise Services
Nancy Deakins, Department of Enterprise Services



STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

1500 Jefferson Street SE, Olympia, WA 98501

November 6, 2020

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
PO Box 40910
Olympia, WA 98504-0910

Re: JLARC Preliminary Report on Alternative Public Works Sunset Review

Dear Mr. Konopaski:

Thank you for the opportunity to comment on the Joint Legislative Audit and Review Committee's (JLARC) Preliminary Report "Alternative Public Works Procedures Sunset Review: Legislature Should Continue Authority to Use Alternative Procedures."

The following represents the Agency's position on the JLARC recommendations:

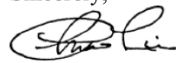
RECOMMENDATION	AGENCY POSITION	COMMENTS
The Legislature should continue the alternative contracting methods in RCW 39.10.	Concur	DES agrees Chapter 39.10 provides valuable tools in the delivery of public works projects. Both GC/CM and Design Build have proven to be very effective in accelerating work as well as mitigating risk on complex projects. Job Order Contracting (JOC) provides public owners with the ability to advance competition and selection to the beginning of a series of projects and place in practice, a proven means of ensuring value to the owner. DES is also committed to continuing the refinement of use and practices with all alternative public works processes.

Keenan Konopaski
November 6, 2020
Page 2

CPARB should evaluate which JOC data it needs to perform its functions and propose appropriate modifications to the Legislature.	Concur	JOC has been proven as an effective delivery method for public works projects. DES will support CPARB in its efforts to work with stakeholder groups to determine appropriate and relevant information to facilitate effective decision making and recommend improvements to the Legislature.
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Again, thank you for the opportunity to participate in this review process and comment on the report. Please do not hesitate to contact Nancy Deakins at Nancy.Deakins@des.wa.gov or (360) 280-6236 with any questions.

Sincerely,



Chris Liu
Director

cc: Rebecca Keith, CPARB Chair
Andrew Thompson, CPARB Vice-Chair
Annette Meyer, Deputy Director
Bill Frare, DES Assistant Director, FPS
Janet Jansen, E&AS Program Manager
Nancy Deakins, E&AS Assistant Program Manager and Staff to CPARB
CPARB File

OFM Response

The Office of Financial Management (OFM) was given an opportunity to comment on this report. OFM responded that it does not have any comments.

Current Recommendation Status

JLARC staff follow up with agencies on Legislative Auditor recommendations for 4 years. Responses from agencies on the latest status of implementing recommendations for this report will be available in 2022.

MORE ABOUT THIS REVIEW

Audit Authority

The Joint Legislative Audit and Review Committee (JLARC) works to make state government operations more efficient and effective. The Committee is comprised of an equal number of House members and Senators, Democrats and Republicans.

JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in [Chapter 44.28 RCW](#), requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

Committee Action to Distribute Report

On December 7, 2020 this report was approved for distribution by the Joint Legislative Audit and Review Committee. Action to distribute this report does not imply the Committee agrees or disagrees with Legislative Auditor recommendations.

Study Questions



PROPOSED STUDY QUESTIONS Alternative Public Works Contracting Procedures

State of Washington Joint Legislative Audit and Review Committee

April 2020

Legislature authorized alternative public works contracting procedures and established governing bodies

Chapter 39.10 RCW allows public entities, such as state agencies or local governments, to use alternative procedures for awarding public works contracts. The same law establishes two oversight groups and their responsibilities:

- ☒ The Capital Projects Advisory Review Board (CPARB) provides guidance and standards for alternative contracting procedures.
- ☒ The Project Review Committee (PRC, a subgroup of CPARB) reviews and approves requests from public entities to use the procedures.



Alternative procedures allow public entities to award construction contracts based on experience and qualifications rather than price

In a traditional contracting process, public entities design a project and then award a construction contract to the lowest responsible bidder. Alternative public works contracting procedures allow public entities to select contractors in other ways. For example, entities may select contractors during the design phase in order to improve quality or expedite construction. Entities also may award a single contract for multiple construction services based on negotiated unit prices.

Chapter 39.10 RCW is scheduled to sunset in 2021

The entire chapter is subject to the Sunset Act (RCW 43.131). All provisions—including the alternative public works contracting options, CPARB, and the Project Review Committee—will automatically terminate in 2021 unless the Legislature reauthorizes them. The Sunset Act directs JLARC to complete a review in the year before the termination date. This is the second sunset review of the alternative public works statutes. JLARC completed the [previous review](#) in 2013.

This sunset review will address the following questions:

1. How have CPARB and the PRC implemented statutory provisions and the recommendations from JLARC's 2013 report?
2. When approving public entities for alternative public works contracting procedures, what does PRC evaluate to ensure projects are efficient and economical with adequate cost controls in place? How does PRC ensure that public entities implement and administer the procedures consistently?
3. To what extent do alternative public works contracting procedures help public entities meet their goals and targets?
4. How common are alternative public works contracting procedures?
5. How would the possible termination of CPARB, PRC, or the alternative procedures affect public works contracting?

Study Timeframe

Preliminary Report: September 2020

Proposed Final Report: December 2020

Study Team

Team Lead	Aaron Cavin	(360) 786-5194	Aaron.Cavin@leg.wa.gov
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Legislative Auditor	Keenan Konopaski	(360) 786-5187	Keenan.Konopaski@leg.wa.gov

JOINT LEGISLATIVE AUDIT & REVIEW COMMITTEE

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JLARC Study Process



Methodology

The methodology JLARC staff use when conducting analyses is tailored to the scope of each study, but generally includes the following:

- **Interviews** with stakeholders, agency representatives, and other relevant organizations or individuals.
- **Site visits** to entities that are under review.
- **Document reviews**, including applicable laws and regulations, agency policies and procedures pertaining to study objectives, and published reports, audits or studies on relevant topics.
- **Data analysis**, which may include data collected by agencies and/or data compiled by JLARC staff. Data collection sometimes involves surveys or focus groups.
- **Consultation with experts** when warranted. JLARC staff consult with technical experts when necessary to plan our work, to obtain specialized analysis from experts in the field, and to verify results.

The methods used in this study were conducted in accordance with Generally Accepted Government Auditing Standards.

More details about specific methods related to individual study objectives are described in the body of the report under the report details tab or in technical appendices.

CONTACT JLARC Authors

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