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SENATE BILL 6455

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State of Washington

63rd Legislature

2014 Regular Session

By Senator Keiser

1 AN ACT Relating to alternative contracting performance goals;  
2 amending RCW 39.10.330; and reenacting and amending RCW 43.131.408.

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

4 **Sec. 1.** RCW 39.10.330 and 2013 c 222 s 11 are each amended to read  
5 as follows:

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

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

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

18 (c) A description of the qualifications to be required of the

1 proposer including, but not limited to, submission of the proposer's  
2 accident prevention program;

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

7 (i) Evaluation factors for request for qualifications shall  
8 include, but not be limited to, technical qualifications, such as  
9 specialized experience and technical competence; capability to perform;  
10 past performance of the proposers' team, including the architect-  
11 engineer and construction members; and other appropriate factors.  
12 Evaluation factors may also include: (A) The proposer's past  
13 performance in utilization of small business entities; and (B)  
14 disadvantaged business enterprises. Cost or price-related factors are  
15 not permitted in the request for qualifications phase;

16 (ii) Evaluation factors for finalists' proposals shall include, but  
17 not be limited to, the factors listed in (d)(i) of this subsection, as  
18 well as technical approach design concept; ability of professional  
19 personnel; past performance on similar projects; ability to meet time  
20 and budget requirements; ability to provide a performance and payment  
21 bond for the project; recent, current, and projected workloads of the  
22 firm; location; and cost or price-related factors that may include  
23 operating costs. The public body may also consider a proposer's  
24 outreach plan to include small business entities and disadvantaged  
25 business enterprises as subcontractor and suppliers for the project.  
26 Alternatively, if the public body determines that all finalists will be  
27 capable of producing a design that adequately meets project  
28 requirements, the public body may award the contract to the firm that  
29 submits the responsive proposal with the lowest price;

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

34 (f) The form of the contract to be awarded;

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

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

38 (i) Other information relevant to the project.

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

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

20 (4) Upon selection of the finalists, the public body shall issue a  
21 request for proposals to the finalists, which shall provide the  
22 following information:

23 (a) A detailed description of the project including programmatic,  
24 performance, and technical requirements and specifications; functional  
25 and operational elements; building performance goals and validation  
26 requirements; minimum and maximum net and gross areas of any building;  
27 and, at the discretion of the public body, preliminary engineering and  
28 architectural drawings; and

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

30 (5) The public body shall establish an evaluation committee to  
31 evaluate the proposals submitted by the finalists. Design-build  
32 contracts shall be awarded using the procedures in (a) or (b) of this  
33 subsection. The public body must identify in the request for  
34 qualifications which procedure will be used.

35 (a) The finalists' proposals shall be evaluated and scored based  
36 solely on the factors, weighting, and process identified in the initial  
37 request for qualifications and in any addenda published by the public  
38 body. Public bodies may request best and final proposals from

1 finalists. The public body may initiate negotiations with the firm  
2 submitting the highest scored proposal. If the public body is unable  
3 to execute a contract with the firm submitting the highest scored  
4 proposal, negotiations with that firm may be suspended or terminated  
5 and the public body may proceed to negotiate with the next highest  
6 scored firm. Public bodies shall continue in accordance with this  
7 procedure until a contract agreement is reached or the selection  
8 process is terminated.

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

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

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

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

30 **Sec. 2.** RCW 43.131.408 and 2013 c 222 s 22 and 2013 c 186 s 2 are  
31 each reenacted and amended to read as follows:

32 The following acts or parts of acts, as now existing or hereafter  
33 amended, are each repealed, effective June 30, 2022:

34 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 § 2, 2007 c 494 § 1, &  
35 1994 c 132 § 1;

36 (2) RCW 39.10.210 and 2013 c 222 § 1, 2010 1st sp.s. c 36 § 6014,  
37 2007 c 494 § 101, & 2005 c 469 § 3;

1 (3) RCW 39.10.220 and 2013 c 222 § 2, 2007 c 494 § 102, & 2005 c  
2 377 § 1;

3 (4) RCW 39.10.230 and 2013 c 222 § 3, 2010 1st sp.s. c 21 § 3, 2009  
4 c 75 § 1, 2007 c 494 § 103, & 2005 c 377 § 2;

5 (5) RCW 39.10.240 and 2013 c 222 § 4 & 2007 c 494 § 104;

6 (6) RCW 39.10.250 and 2013 c 222 § 5, 2009 c 75 § 2, & 2007 c 494  
7 § 105;

8 (7) RCW 39.10.260 and 2013 c 222 § 6 & 2007 c 494 § 106;

9 (8) RCW 39.10.270 and 2013 c 222 § 7, 2009 c 75 § 3, & 2007 c 494  
10 § 107;

11 (9) RCW 39.10.280 and 2013 c 222 § 8 & 2007 c 494 § 108;

12 (10) RCW 39.10.290 and 2007 c 494 § 109;

13 (11) RCW 39.10.300 and 2013 c 222 § 9, 2009 c 75 § 4, & 2007 c 494  
14 § 201;

15 (12) RCW 39.10.320 and 2013 c 222 § 10, 2007 c 494 § 203, & 1994 c  
16 132 § 7;

17 (13) RCW 39.10.330 and 2014 c ... s 1 (section 1 of this act), 2013  
18 c 222 § 11, 2009 c 75 § 5, & 2007 c 494 § 204;

19 (14) RCW 39.10.340 and 2013 c 222 § 12 & 2007 c 494 § 301;

20 (15) RCW 39.10.350 and 2007 c 494 § 302;

21 (16) RCW 39.10.360 and 2013 c 222 § 13, 2009 c 75 § 6, & 2007 c 494  
22 § 303;

23 (17) RCW 39.10.370 and 2007 c 494 § 304;

24 (18) RCW 39.10.380 and 2013 c 222 § 14 & 2007 c 494 § 305;

25 (19) RCW 39.10.385 and 2013 c 222 § 15 & 2010 c 163 § 1;

26 (20) RCW 39.10.390 and 2013 c 222 § 16 & 2007 c 494 § 306;

27 (21) RCW 39.10.400 and 2013 c 222 § 17 & 2007 c 494 § 307;

28 (22) RCW 39.10.410 and 2007 c 494 § 308;

29 (23) RCW 39.10.420 and 2013 c 222 § 18, 2013 c 186 § 1, 2012 c 102  
30 § 1, 2009 c 75 § 7, 2007 c 494 § 401, & 2003 c 301 § 1;

31 (24) RCW 39.10.430 and 2007 c 494 § 402;

32 (25) RCW 39.10.440 and 2013 c 222 § 19 & 2007 c 494 § 403;

33 (26) RCW 39.10.450 and 2012 c 102 § 2 & 2007 c 494 § 404;

34 (27) RCW 39.10.460 and 2012 c 102 § 3 & 2007 c 494 § 405;

35 (28) RCW 39.10.470 and 2005 c 274 § 275 & 1994 c 132 § 10;

36 (29) RCW 39.10.480 and 1994 c 132 § 9;

37 (30) RCW 39.10.490 and 2013 c 222 § 20, 2007 c 494 § 501, & 2001 c  
38 328 § 5;

- 1 (31) RCW 39.10.900 and 1994 c 132 § 13;
- 2 (32) RCW 39.10.901 and 1994 c 132 § 14;
- 3 (33) RCW 39.10.903 and 2007 c 494 § 510;
- 4 (34) RCW 39.10.904 and 2007 c 494 § 512; and
- 5 (35) RCW 39.10.905 and 2007 c 494 § 513.

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