

Proposed Statutory Amendments for Developer Model Contracting Procedure

The following is a brief outline of the amendments that would be required to the Revised Code of Washington to permit the “developer model” contracting procedure.

1. Amend RCW 39.10.210 to expressly permit the developer model. This is the statute that currently authorizes design build, general contractor/construction manager (“GCCM”) and job order contracting as “alternative public works contracting procedures.” The developer model would be added as a fourth option.

2. Amend the project review committee statutes to authorize the developer model. Currently, the design build and GCCM methods can be used only when the public body using them has received the approval of the Project Review Committee, a committee established by the state’s Capital Projects Advisory Review Board. The Project Review Committee can grant approval either on a project by project basis, or can certify a public body to use one or both of the design build or GCCM procedures for a three-year period, without approving specific projects. These statutes should be amended to authorize the developer model. The applicable statutes are RCW 39.10.240, 250, 270 and 280.

3. Add new RCW provisions to address when the developer model can be used and how it will be implemented. Similar provisions currently exist for the design build, GCCM and job order contracting procedures. Here are proposed statutes:

RCW 39.10._____

Developer Model—Uses.

(1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the developer model for public works projects in which the total project cost is over **[CONFIRM MINIMUM AMOUNT] ten million dollars** and where:

- (a) The building or improvement may benefit from a contracting method that integrates services, including but not limited to a developer, designer, construction manager and contractor being on the same team and working collaboratively; or
- (b) Postponing the building or improvement or delaying it through the use of other contracting methods is likely to have a significant adverse effect on the operation, mission, or financial interests of the public body; or
- (c) Significant savings in project delivery time would be realized; or
- (d) [OTHER CRITERIA?]**

RCW 39.10._____

Developer Model—Project management and contracting requirements.

(1) A public body utilizing the developer model contracting procedure shall provide:

- (a) Reasonable budget contingencies totaling not less than **[CONFIRM] 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; and
- (e) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body utilizing the developer model 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.

RCW 39.10._____

Developer Model Award Process.

The process for awarding a developer model contract or contracts to a qualified entity or team must include at least the following elements:

- (1) RFQ/RFP. Contracts will be awarded through either a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process or a combination thereof. The RFQ/RFP will include a clear description of what the public body believes to be most important about the project as well as the weight of selection criteria.
- (2) Public notice. 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 project will be constructed, a notice of its RFQ/RFP, and information regarding the availability and location of the RFQ/RFP documents.
- (3) Selection criteria. Selection criteria shall include, but are not limited to, qualifications of the project team, technical excellence and competence, experience, capacity to accomplish the work, ability to deliver a quality project, past performance of the team or its constituent members, and price or fee, taking into consideration the estimated cost of construction as well as the long-term performance, operation and maintenance of the building or improvement.
- (4) Negotiations. The public body shall first attempt to negotiate a contract with the entity deemed to have submitted the best overall response. If such negotiations are not successful, the public body may proceed to negotiate with the entity deemed to have submitted the next best response.