

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 for public works projects in which the total project cost is over ten 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](#), pre-engineered 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](#), public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) 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.

[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; 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 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.

[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 general description of the project that provides sufficient information for proposers to submit qualifications;
- (b) The reasons for using the design-build procedure;
- (c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;
- (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 request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

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

(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 form of the contract to be awarded;

(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, which shall provide the following information:

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

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

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The

public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications 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 firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

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

(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) 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 consider the level of effort required to meet the selection criteria.

[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](#).