



**STATE OF WASHINGTON**  
**Capital Projects Advisory Review Board**

**SUMMARY OF CHANGES: DESIGN-BUILD PROCUREMENT**

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Substitute House Bill 1295  
 Chapter 212, Laws of 2019  
 Public Works Contracting – Various Provisions  
 Effective Date: July 28, 2019

Notes:

- Underlined words are new language, ~~interlined~~ words are deleted language
- This summary is for general reference only, refer to RCW 39.10 for statutory requirements.

Section	Revision	Comment
RCW 39.10.210 (14)	"Price-related factor" means an evaluation factor <u>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.</u>	Provides a definition for price-related factors identified in RCW 39.10.330.
RCW 39.10.250 (3)	<del>Review and approve not more than fifteen projects using the design-build contracting procedure by noncertified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. At least annually, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and</del>	Removes constraints on the number of project approvals for design-build projects with total project costs between two million and ten million dollars.
RCW 39.10.270 (1)	<del>Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period.</del>	Removes constraints on the number of design-build projects with total project costs between two and ten million dollars that can be implemented by certified public bodies.
RCW 39.10.270 (4)	The committee shall, <del>if practicable</del> , 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.	Requires the Project Review Committee to make its determinations at the public meeting during which an application for certification is reviewed.
RCW 39.10.300 (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, <u>including progressive design-build</u> , for public works projects in which the total project cost is over <del>ten</del> <u>two million dollars and where:</u>	Includes progressive design-build as a type of design-build procurement and decreases the total allowable project cost from ten to two million dollars.
39.10.300 (5)	<del>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</del>	Related to removing constraints on the number of design-build projects with total project costs between two and ten million dollars that can be approved by

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	million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.	the Project Review Committee or implemented by certified public bodies. The new threshold is two million dollars.
RCW 39.10.320 (1) (f)	<u>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.</u>	Provides requirements for the design-builder to submit inclusion plans, as allowed by law.
39.10.330 (1) (a)	A <del>general</del> description of the project <del>that provides sufficient information for proposers to submit qualifications including the estimated design-build contract value and the intended use of the project;</del>	Revises RFQ project description requirements to include the estimated contract value and use of the project.
39.10.330 (1) (c)	A description of the qualifications to be required of the proposer <del>including, but not limited to, submission of the proposer's accident prevention program;</del>	Eliminates the accident prevention program as an RFQ requirement.
39.10.330 (1) (d) (i)	Evaluation factors for <del>request for</del> qualifications shall include <del>but not be limited to</del> technical qualifications, such as specialized experience and technical competence <u>of the firms and the key design and construction personnel;</u> <del>capability</del> capacity to perform; the proposer's past performance <del>of the proposers' team, including the architect engineer and construction members in utilization of the office of minority and women's business enterprises certified businesses, to the extent permitted by law;</del> <u>ability to provide a performance and payment bond for the project;</u> and other appropriate factors. Evaluation factors may also include <del>(A), but are not limited to,</del> the proposer's past performance in utilization of small business entities; <del>and (B) disadvantaged business enterprises.</del>	Revises requirements for RFO evaluation factors including broadening the definition of technical competence to include key design and construction personnel; changing from performance capability to capacity; adding past performance in the utilization of certified minority and women's business enterprises, to the extent permitted by law, and ability to provide a performance and payment bond.
39.10.330 (1) (d) (ii)	Evaluation factors for finalists' proposals shall include <u>the management plan to meet time and budget requirements and one or more price-related factors.</u> Evaluation factors <u>may also include,</u> but not be limited to, <del>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.</del> <u>The public body may also consider a proposer's 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. 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;</u>	Revises requirements for RFP evaluation factors to align with the nature of progressive and other design-build procurements. Eliminates a provision that would allow public bodies to determine that all proposals would adequately meet project requirements and award the contract based on lowest price.

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39.10.330 (1) (f)	The <del>((form of the))</del> <u>proposed contract to be awarded;</u>	Requires the public body to provide the proposed contract during the RFQ phase.
39.10.330 (4)	Upon selection of the finalists, the public body shall issue a request for proposals to the finalists <del>, which shall provide the following information.</del> <u>The request for proposal documents shall include:</u>	Clarifies language related to RFP documents.
39.10.330 (4) (a)	<del>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 The target budget for the design-build portion of the project</del> <u>Any specific forms to be used by the finalists; and</u>	Simplifies RFP document requirements to align with information provided in the RFQ phase and the differing nature of progressive and other design-build procurements.
39.10.330 (4) (b)	<del>(b) Submission of a summary of the finalist's accident prevention program and an overview of its implementation.</del>	Makes the accident prevention program a RFP submittal requirement.
39.10.330 (5)	The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. <del>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.</del>	Coordinates contract award requirements to align with changes made to the last sentence of 39.10.330 (1) (d) (ii), above.
39.10.330 (5) <del>(a)</del>	The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the <del>initial</del> <u>request for proposals</u> , 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 <del>firm</del> <u>finalist</u> submitting the highest scored proposal. If the public body is unable to execute a contract with the <del>firm</del> <u>finalist</u> submitting the highest scored proposal, negotiations with that <del>firm</del> <u>finalist</u> may be suspended or terminated and the public body may proceed to negotiate with the next highest scored <del>firm</del> <u>finalist</u> . Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.	Provides consistency with RFQ and RFP evaluation factors and the use of the term "finalist."
39.10.330 (5) (b)	<del>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.</del>	Coordinates with revisions to 39.10.330 (1) (d) (ii), above, that eliminate a provision that would allow public bodies to determine that all proposals would adequately meet project requirements and award the contract based on lowest price.
39.10.330 (8)	<u>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.</u>	Requires the firm awarded the contract to track and report utilization of certified minority, women's and veteran businesses.

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39.10.330 (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 <del>consider</del> <u>recognize</u> the level of effort required to meet the selection criteria.	Requires public bodies recognize the level of effort required to meet the selection criteria in determining the amount of honorarium payments for finalists that are not awarded the contract.