

MCAWW Proposal #1 – Public Hearing

Reference: RCW 39.10.385(1)(a) and (2)

Proposal:

(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 **which shall be published in the same legal newspaper as the public solicitation of proposals required by Section 2.** ~~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. **The evaluation criteria, weights assigned to each criteria and justification for using this selection process must be available upon request at least fourteen calendar days before the public hearing.**

(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

Rationale:

As an unintended consequence of the current statute, public hearing notices are being published in a local newspaper that MCAWW, NECA and our contractors are unlikely to see, e.g., *Federal Way Mirror, Lake Chelan Mirror, and The Daily News* (in Longview). The call for proposals is then published in the *DJC*. Also, though draft RFQs are requested when hearing notices are published, often they aren't made available until a day or two before the hearing. This is too late for meaningful review.

MCAWW Proposal #2 – Interviews

Reference: RCW 39.10.385

Proposal:

Insert New Section (6) after current Section 5: Interviews may not be used as part of the selection process.

Renumber sections beginning with current Section 6.

Rationale:

Interviews are not part of the statute, but are commonly used. There is little to no objectivity and transparency in how they are scored and used. CPARB adopted principles recommended by the E/M CCM committee which provided some guidelines for interviews. These are rarely, if ever, incorporated into the selection process. Interviews are being used to eliminate firms. The Legislature intended for alternative contracting to be fair and transparent and based on objective criteria. With interviews lacking these elements, they should be barred.

MCAWW Proposal #2a – Interviews

Reference: RCW 39.10.385(3)

Proposal:

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

New Section (k) If interviews are part of the selection process, the general contractor/construction manager or public body shall, as part of its evaluation criteria: identify the names or occupations of all interview panelists, provide a list of core questions to be asked, and describe how the interviews will be scored.

(i) Written evaluation of the interviews shall be kept by the general contractor/construction manager or public body and provided to any interested party upon request.

(ii) The interview shall be evaluated and scored as part of the written proposals.

(l) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

Rationale:

Interviews are not part of the statute, but are commonly used. There is little to no objectivity and transparency in how they are scored and used. CPARB adopted principles recommended by the E/M CCM committee which provided some guidelines for interviews. These are rarely, if ever, incorporated into the selection process. Interviews are being used to eliminate firms. The Legislature intended for alternative contracting to be fair and transparent and based on objective criteria. This would incorporate the CPARB principles into statute. Also, the evaluation and scoring of the interviews would be part of the “qualifications” phase so there are not two sets of finalists.

MCAWW Proposal #3 – SGCs and Fee

Reference: RCW 39.10.385(1)

Proposal:

(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, **including clear definitions of what should be considered specified general conditions work and what should be considered the fee**; 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 . .

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Rationale:

It is often unclear what items should be included in the SGCs and which should be included in the fee. These are part of the scoring and selection and are thus weights and criteria that the public should be allowed to comment on at the public hearing. Yet, these are not made available until the RFFP stage when it is too late for the public to comment. This language would require clear definitions of the SGC and fee components at the time of public hearing so that everyone is on the same page at the beginning of the procurement process.

MCAWW Proposal #4 – Written Final Determination

Reference: RCW 39.10.385(1)

Proposal:

(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:

...

(d) Issue a written final determination to all interested parties. **The final determination shall separately identify each of the comments received during the public hearing process and, for comments not adopted, state why such comment was not adopted.** 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. **No material changes may be made to the criteria and weights after issuance of the final determination.**

Rationale:

Often when the public takes the time to provide constructive comments, the GC/CM or public body does not address them in the final written determination, does not issue a final written determination at all, or only addresses and dismisses the comments summarily. This language would require that the comments are itemized and responded to. Also, the language would clarify that once the final written determination is issued, no *material* changes may be made to the RFP's weights and criteria.

MCAWW Proposal #5 – Bid Bond

Reference: RCW 39.10.385(3)

Proposal:

New Section (3)(l) The general contractor/construction manager or public body may not require a bid bond.

Rationale:

A bid bond makes no sense in M/E CCM procurement where the proposal is based on an anticipated subcontract value as estimated by the GC/CM or public body. Bid bond on what?

MCAWW Proposal #6 – Cumulative Scoring

Reference: RCW 39.10.385(6)

Proposal:

(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. **Scoring of the nonprice factors shall be added to the scoring of the fee and cost proposals to determine the highest scored final proposal.** 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.

Rationale:

The statute requires the cumulative scoring of the written qualifications, interview (if used), and the final proposal. Sometimes, the “slate” is wiped clean after the written qualifications. Other times, not all those interviewed are allowed to submit a final proposal. This would confirm/clarify that all 3 components (if interviews are allowed; if not, then written qualifications and the final proposal) are added together to select the M/E CCM.

MCAWW Proposal #7 – Authority to Use MCCM & ECCM

Reference: RCW 39.10.385

Proposal:

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 **public bodies certified under RCW 39.10.270 to use general construction/construction manager procedures and** 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, **which must occur before the design development phase of the project.**

Rationale:

There have been many issues with GC/CM *project-approved* public owners who may lack the experience or motivation to follow the letter and spirit of RCW 39.10.385. This would limit the use of M/E CCM to *GC/CM-certified* public owners. Also, in some cases, a contractor is selected late in DD or after DD. This prevents the M/E CCM from having maximum impact. The language would require the M/E CCM to be brought on board before the DD phase.

MCAWW Proposal # 7a – Authority to Use MCCM & ECCM

Reference: RCW 39.10.385 and RCW 39.10.250(2)

Proposal:

RCW 39.10.385

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 **public bodies certified under RCW 39.10.270 to use general construction/construction manager procedures** 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, **which must occur before the design development phase of the project. A public body, approved under RCW 39.10.280 on a project basis to use general construction/construction manager procedures, may use this selection process only with approval by the project review committee.**

RCW 39.10.250

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, general contractor/construction manager contracting, **or the mechanical and electrical contractor/construction manager 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 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
- (4) 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.

Rationale:

There have been many issues with GC/CM *project-approved* public owners who may lack the experience or motivation to follow the letter and spirit of RCW 39.10.385. This would limit the use of M/E CCM to *GC/CM-certified* public bodies unless approved by PRC. Also, this would give PRC authority to approved the use of M/E CCM for project-approved public owners. Finally, in some cases, a contractor is selected late in DD or after DD. This prevents the M/E CCM from having maximum impact. The language would require the M/E CCM to be brought on board before the DD phase.

MCAWW Proposal #7b – Authority to Use MCCM & ECCM

Reference: RCW 39.10.385

Proposal:

RCW 39.10.385

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, **which must occur before the design development phase of the project. School districts may use this alternative selection process only with approval by the project review committee.**

RCW 39.10.250

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 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
- (4) 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.
- (5) **Review and approve school districts to use the mechanical and electrical contractor/construction manager procedures under RCW 39.10.385.**

Rationale:

With limited exceptions, K-12 school districts have not shown that they can properly use the M/E CCM procurement process. This would exclude K-12 unless approved by PRC. Authority add to PRC to allow that body to approve K-12 for M/E CCM procurement.

MCAWW Proposal #8 – Protests

Reference: RCW 39.10.385(1)

Proposal:

(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:

...

(d) Issue a written final determination to all interested parties. **The final determination shall separately identify each of the comments received during the public hearing process and, for comments not adopted, state why such comment was not adopted.** 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. **No material changes may be made to the criteria and weights after issuance of the final determination.** 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. **The public body shall respond in writing and respond to each of the points made in the protest.**

Rationale:

Often when the public takes the time to provide constructive comments, the GC/CM or public body does not address them in the final written determination, does not issue a final written determination at all, or only addresses and dismisses the comments summarily. This language would require that the comments are itemized and responded to. Also, the language would clarify that once the final written determination is issued, no *material* changes may be made to the RFP's weights and criteria. Similar brevity occurs with responses to protests.

MCAWW Proposal #9 – Best Interest of the Public

Reference: RCW 39.10.385(1)

Proposal:

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, **which must occur before the design development phase of the 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.

In evaluating whether this selection process is in the best interest of the public, the public body shall address the following factors: budget management, critical scheduling, specialized skill

requirements specific to the project, scope management, importance of team relations to the project, site contracts and benefits of preconstruction services.

Rationale:

This would require public bodies to engage in a more thorough analysis about whether the project is best-suited for M/E CCM.

MCAWW Proposal #10 – Evaluation Factors

Reference: RCW 39.10.385(3)

Proposal:

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

- (a) Ability of the firm's professional personnel to deliver projects similar in size, scope and/or complexity;
- (b) The firm's past performance on similar projects similar in size, scope and/or complexity;
- (c) The firm's ability to meet time and budget requirements on projects similar in size, scope and/or complexity;
- (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;~~
- (g) The firm's approach to executing the project based on its delivery of other projects similar in size, scope and/or complexity;
- (h) The firm's approach to safety on the project;
- (i) The firm's safety history; and
- (j) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

Rationale:

This language would narrow the focus of the evaluation criteria to information about previous projects similar in size, scope and complexity. We think current (g) is duplicative of (b) and (c) and so we propose deleting it. Often, RFPs are too broad, requesting all or irrelevant aspects of the proposing firm. The GC/CM and/or public owner should be requesting details that all the proposer to demonstrate competence, success, or value-added based on past experience or project approach.

MCAWW Proposal #11 – Project Descriptions

Reference: RCW 39.10.385(2)

Proposal:

(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, **along with a detailed description of the project's unique aspects, complexities and challenges making it suitable to use this alternative delivery method;**

Rationale:

RFQs rarely provide proposers with enough information about the unique aspects challenges, and complexities which can prevent proposers from assembling the appropriate project team and providing the information necessary for a GC/CM and public owner to select the best fit.