

Performance Based School Construction and Modernization Report

Comments of the Northwest Energy Efficiency Council

The Draft Report is not responsive to the legislative directive of ESHB 1497 Section 7010

Section 7010 states that the Department of General Administration (now Department of Enterprise Services) is to develop a performance-based school construction pilot program. Section 7010 explicitly states that “Performance-based contracting as allowed in chapter 39.35A RCW **shall** [emphasis added] be the means of project delivery...” The Draft Report, with virtually no discussion or justification, simply states that “...CPARB does not recommend this approach for performance based school construction or modernization projects.”

Section 7010 also directs that the pilot program use a contract “...that requires a guarantee of system performance by way of ongoing monitoring and verification of energy measures to be used in the building...” The Draft Report recommends that the “...Energy Star program be considered as a means of evaluating the performance of a potential performance based school pilot project.” While ENERGY STAR Portfolio Manager is a useful tool for general use of energy tracking and benchmarking, it is completely different from the energy performance guarantee that is the heart of the 39.35A procurement model in which actual metered post occupancy energy use is guaranteed by the contractor.

The report’s recommendation that the pilot use RCW 39.10 directly contradicts the statute’s clear language. While 39.10 may have its own individual merits, it is an existing and already tested process for new construction. We see little need to pilot a mechanism that has already been demonstrated.

NEEC recommends that the pilot program use RCW 30.35A as the means for selecting and contracting services for school construction and modernization.

The state should use 39.35A as the prime contracting method for the purposes of the pilot. Testing the concept of using 39.35A – already an accepted and proven mechanism for improving energy performance of existing facilities – is the main intent of Section 7010. Currently, there are 14 qualified firms on the state approved list and any contractor that is not currently pre-approved may become pre-approved for the purposes of this pilot by showing sufficient experience and capability to successfully deliver a project. We fully anticipate that any prime contractor chosen through the 39.35A process will assemble a qualified team of specialists including architects, engineers, consultants, subcontractors, and labor. If a contractor fails to present the client with a qualified team, they simply would not be chosen for the work.

School districts in this state are under extreme operating budget constraints. Many school districts have an appreciation for the value that an energy performance guarantee brings and would relish the opportunity to deploy a strategy successfully used for their existing buildings to new school construction and extensive modernization. Examples of this enthusiasm to use this approach from school districts are attached to these comments.

Section 7010 specifies that the pilot project include at minimum four (4) projects, two new construction and two modernization. We encourage that the pilot include as many projects as there are applications from school districts to the maximum that the Department of Enterprise Services can administratively manage. If the Department cannot manage as many projects as there are applications a set of criteria should be used to evaluate and rank projects for inclusion in the pilot. Those criteria could include things such as ratio of savings to total project cost; payback or return on investment of energy savings; persistence of savings; and other relevant criteria.

By using 39.35A, the energy savings performance guarantee becomes an active component of the pilot project. The contractual guarantee of post occupancy savings is well established and far superior to an aspirational categorization of an ENERGY STAR listing.

Finally, DES should convene a meeting of approved 39.35A contractors to discuss and develop the program details of the pilot.

ESHB 1497 Section 7010 is explicit in its language to develop a pilot program for school construction and modernization using RCW 39.35A. This procurement method is available, is of interest to school districts, and offers the state the opportunity to demonstrate how Washington State schools can be built economically and with low and guaranteed energy operating costs.