

RCW 39.10.385

Field Cod

§ 39.10.385. General contractor/construction manager procedure -- Alternative subcontractor selection process

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 a mechanical subcontractor, an electrical subcontractor, 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.

(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; and 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;

(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, and weights for each criteria;

(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 and weights 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. 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;

(b) The reasons for using the alternative selection process;

- (c) A description of the minimum qualifications required of the firm;
 - (d) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;
 - (e) The form of the contract, including any contract for preconstruction services, to be awarded;
 - (f) The estimated maximum allowable subcontract cost; and
 - (g) The bid instructions to be used by the finalists.
- (3) Evaluation factors for selection of the subcontractor must include, but not be limited to:
- (a) Ability of the firm's professional personnel;
 - (b) The firm's past performance on similar projects;
 - (c) The firm's ability to meet time and budget requirements;
 - (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;
 - (h) The firm's approach to executing the project;
 - (i) The firm's approach to safety on the project;
 - (j) The firm's safety history; and
 - (k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(4) Any bidder wishing to protest the qualified finalist bidders selection must submit written notice to the general contractor/construction manager and public body of its protest no later than two full business days following receipt of written notice of the decision. If the general contractor/construction manager and public body receive a written protest, the public body will afford the protesting bidder a hearing for the opportunity to establish finalist bidder eligibility and then issue a written final determination of the most qualified finalist bidders and provide it to all interested parties.

(54) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final

proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal, will be requested from the most qualified firms. 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. The scoring of the nonprice factors must be made available at the opening of the fee and cost proposals. The general contractor/construction manager may not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(65) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.

(76) If the general contractor/construction manager and public body receives a written protest from a finalist bidder, the general contractor/construction manager may not execute a contract for the subject work with anyone other than the protesting bidder, without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice to the general contractor/construction manager and the public body of its protest no later than two full business days following the bid opening. If the general contractor/construction manager and public body receive a written protest, the public body will afford the protesting bidder a hearing and then issue a written final determination of the most qualified finalist bidders and provide it to all interested parties.

(87) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work; and to act as the mechanical or electrical subcontractor during the construction phase.

(98) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(109) If the work of the mechanical contractor or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an

incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the mechanical contractor or the electrical contractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted upon completion of the contract to confirm the proper accrual of costs as outlined in the contract.

| ~~(1140)~~ A mechanical or electrical contractor selected under this section may perform work with its own forces. In the event it elects to subcontract some of its work, it must select a subcontractor utilizing the procedure outlined in RCW 39.10.380.