

## Capital Projects Advisory Review Board (CPARB)

Summary of proposed changes to chapter 39.10 RCW as introduced in 2013 as [HB 1466/SB 5349](#). Find more info on the CPARB website: [www.des.wa.gov/about/Committees/CPARB](http://www.des.wa.gov/about/Committees/CPARB)

**Executive Summary:** Initiated by the Capital Projects Advisory Review Board with unanimous approval, this bill modifies Ch. 39.10 RCW (and chapter 43.131 RCW) and addresses alternative public works procedures, known as design-build (DB), general contractor/construction manager (GC/CM), and job order contracting (JOC). The bill reauthorizes Ch. 39.10 RCW another eight years through 2021, revises DB use criteria and selection, addresses protests during GC/CM and alternative subcontractor selections, and increases annual limit of JOCs to \$6M for counties with populations more than one million.

### Definitions

**Sec. 1** (RCW 39.10.210) Clarifies definitions for (the project review) committee, GC/CM, negotiated support services, and public body.

### CPARB Membership

**Sec. 2** (RCW 39.10.220) Changes how one member representing cities is appointed to CPARB – The composition of the CPARB membership remains the same, but this section identifies the governor as appointing the member representing cities instead of the Association of Washington Cities appointing the member. This section also changes the term subcommittees to committees that may be appointed by CPARB.

### CPARB Duties & Project Review Committee

**Sec. 3, 4, 6, and 10** (RCW 39.10.230, .240, .260, & .280) Make minor edits

**Sec. 5** (RCW 39.10.250)

- Moves the three-year period for public body certification to RCW 39.10.270,
- Removes the PRC's duty of reviewing and approving use of GCCM by certified public bodies for projects under \$10 million,
- Changes the number of DB projects between \$2 million and \$10 million that the PRC may approve from 10 to 15 projects, and requires the PRC to report annually to CPARB on these projects and recommendations for further use.

**Sec. 7** (RCW 39.10.270)

(1) Allows certified public bodies to use the GCCM procedures on any size project without going to the PRC for approval, and the DB procedure on no more than five projects between \$2 million and \$10 million during the certification period.

(6) Allows the PRC to renew certification of public bodies for an unlimited number of additional three-year periods, changes what kind of information is required by public bodies' applications for recertification.

**Sec. 8** (RCW 39.10.280)

(2) For DB projects, revises the experience or qualified team requirements from "construction personnel independent of the design build team" to "public body personnel or consultants"... are knowledgeable in the DB process...

(5) Deletes the requirement for certified public bodies to submit GC/CM projects less than \$10 million to the PRC for approval.

### Design Build (DB) Procedures

**Sec. 9** (RCW 39.10.300)

(1) Includes minor edits to refer to RCW 39.10.250 instead of having multiple locations addressing the dollar limit of projects. Also, revises DB use criteria to create uniformity in Washington and consistency with DB best practices at the national level. Replaces description of appropriate DB project uses in RCW 39.10.300 with the description in RCW 47.20.785 (WSDOT design-build).  
(3) Refines allowable building types for using the DB procedure that are not required to be approved by the PRC; specifically: what kind of portable, pre-engineered metal, and pre-fabricated modular buildings. Pre-fabricated modular buildings are limited to ten per installation site.

**Sec. 10** (RCW 39.10.320) Minor edits.

**Sec. 11** (RCW 39.10.330)

(1) (d) (ii) For DB, allows public bodies to consider cost factors other than up front, lump sum pricing.

(1) (f) Clarifies “honorarium” language to be paid to DB responsive finalists proposers.

(2) & (4) (a) Increases transparency to participants in a DB selection process and requires evaluation factors, weights, and process used by the selection committee to be included in the request for qualifications as well as in the request for proposals from finalists (4) (a). Also, changes requirement from the public body “shall” to “may” initiate negotiations with the firm submitting the highest scored proposal.

(6) Creates a new paragraph to separate the requirement to provide a bond from the requirement to pay an honorarium. Both requirements had previously been in paragraph (5).

### **General Contractor/Construction Manager (GC/CM) Procedures**

**Sec. 12** (RCW 39.10.340)

Clarifies that at least one of the listed requirements must be met for a public body to use the GC/CM procedure.

**Sec. 13** (RCW 39.10.380)

(6) (a) Makes conditions when a GC/CM may negotiate with a bidder the same as the conditions that public bodies are held to in [RCW 39.40.015](#).

**Sec. 14** (RCW 39.10.385) GC/CM’s alternative subcontractor selection process.

Requires protest procedures to be included in the public notice as well as an opportunity for comment on the protest procedures during the public hearing.

(5) (6) & (7) Increases transparency to participants in this alternative selection process by the GC/CM. Requires certain information to be provided to proposing subcontractor firms including a selection summary of final proposals, timing in process to allow for protests before moving forward, filing protests with the public body, and the public body making the final protest decisions.

(9) Clarifies that GC/CM may contract with these subcontractors for preconstruction services during the design phase.

(11) Removes the “completion of contract” timing for independent audits of these subcontracts.

**Sec. 15** (RCW 39.10.390)

(3) Clarifies that the GC/CM cannot assign warranty, terms of its contract, or purchase orders for equipment or materials to subcontract bidders or subcontractors, but installation may be assigned. (Note: the bill states “...equipment of materials ...”, but should be “...equipment or materials...”)

**Sec. 16** (RCW 39.10.400) GC/CM prebid determination of subcontractor eligibility

(1)(c) Clarifies that the public notice tells how to obtain the eligibility criteria and the criteria does not have to be published in the notice.

(2) Allows potential bidder determined not to meet eligibility criteria one opportunity to establish its eligibility and not an unlimited number of opportunities.

### **Job Order Contracting (JOC) Procedures**

#### **Sec. 17 (RCW 39.10.420)**

(1) Clarifies the definition of public bodies “in the state of Washington” eligible to award and use JOC procedures.

#### **Sec. 18 (RCW 39.10.440)**

(1) Increases the JOC contract annual maximum to \$6 million only for counties with a population of more than one million. Currently, this would only apply to King County.

### **Application of Chapter (and Expiration Extension)**

#### **Sec. 19 (RCW 39.10.490)**

Extends authorization eight years to use alternative public works contracting procedures for contracts signed before July 1, 2021, and the methods would remain in full force and effect through the completion of those contracts.

### **Sunset Act Review Provisions**

#### **Sec. 20 & 21 (RCW 43.131.407 & .408)**

Extends the termination of the alternative public works contracting methods to June 30, 2021, and the repeal of the statutes in 2022.

#### **Sec. 22 (Repeals RCW 39.10.500 & .510)**

Repeals outdated exemptions to the statute related to projects approved by the school district project review board and the public hospital district project review board prior to 2007 and related to DB or GC/CM projects advertised prior to 2007.

#### **Sec. 23 & 24 (Ch. 43.131 RCW) New section**

Adds provisions for program and fiscal review by the Joint Legislative and Audit Review Committee (JLARC) if the sunset review process in RCW 43.131.010 though .150 expires before June 30, 2021, when Ch. 39.10 RCW expires.