



Senate Bill 6401
Alternative Selection Process for
Electrical and/or Mechanical Subcontractors on
GC/CM Projects

Effective June 10, 2010

SB 6401 extends the benefits of using a GC/CM down to the subcontracting level by establishing an alternative early selection process for mechanical and/or electrical subcontractors. The selection process is very similar to the manner in which public agencies select a GC/CM.

Four Options for Selection of Subcontractors: The following are the four options authorized by chapter 39.10 RCW for selection of subcontractors on GC/CM projects.

1. Subcontract Bidding After MACC Negotiations: Under this traditional method, the GC/CM, after execution of a GC/CM Construction Contract with the public body, advertises and competitively bids all subcontract work through individual trade-based subcontract bid packages, and awards to the lowest responsible bidder with a responsive bid. The GC/CM and the public body may go through a process to determine which subcontractors are eligible to bid such subcontract bid packages and/or establish bidder responsibility criteria in the bidding documents.
2. Subcontract Bidding of Major Bid Packages Prior to MACC Negotiations: Under the provisions of RCW 39.10.370 (2), the GC/CM may competitively bid major bid packages prior to the GC/CM and public body agreeing on the MACC. The purpose of this early subcontract bidding is to provide more certainty to the GC/CM and public body on the actual amount of major bid packages and to help the parties in agreeing on a MACC.
3. Early Subcontract Bidding, Award, and Construction: Under the provisions of RCW 39.10.370 (3), the public body may authorize the GC/CM to conduct subcontracting bidding, award, and actual construction prior to receipt of complete plans and specifications and negotiation of the MACC. One of the risks involved with this approach is that some work may begin but the parties may not be able to successfully negotiate a MACC. This option requires the public body to enter into a GC/CM Construction Contract with the GC/CM for only part of the work, prior to negotiation and execution of the full MACC.
4. Early Selection of Mechanical and/or Electrical Subcontractors: This option goes into effect on June 10, 2010, the result of Senate Bill 6401. The following is a more detailed explanation of its provisions.

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Early Selection of Mechanical and/or Electrical Subcontractors. The following are the key features of SB 6401, an alternative process that permits selection of Mechanical and Electrical subcontractors early, using evaluation criteria other than just price:

- Purpose: To enable early selection of the Electrical and/or Mechanical subcontractors to assist with preconstruction services and to create a team approach to solving problems on the project.
- Applicability:
 - Trades: Only for Mechanical and/or Electrical subcontractors
 - Cost: Only for subcontracts anticipated to exceed \$3 million
- Public Hearing Required: Prior to using this alternative subcontractor selection process, the GC/CM and public body must determine that it is in the best interest of the public to proceed with this method, and comply with the following:
 - Advertise Hearing: Notice of public hearing must be published and include, among other items, a statement justifying the basis and need for using this process, and how parties can obtain a copy of the proposed evaluation criteria and weights for each criterion.
 - Accept Comments: Accept both written and verbal comments about the reasons for using the process, the evaluation criteria, and the weights for each criterion.
 - Final Determination: Issue final determination regarding use of the early selection process including any modifications to the evaluation criteria and weights based on comments received.
 - Protests: Protests must be received by the public body within seven calendar days after the final determination notice.
- Solicitation Process:
 - Public Process: Competitive and public solicitation of proposals
 - OMWBE Notification: Notify OMWBE of solicitation of proposals

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- Content of Solicitation: Solicitation must include information about the project, minimum qualifications required, description of the evaluation process
- Evaluation Criteria: Evaluation criteria must include those listed in Section 1 (3) of SB 6401, which includes the prices submitted by the most qualified finalists, in addition to qualifications criteria.
- Evaluation Process:
 - Evaluation Committee required. Must include at least one representative from the public body.
 - Finalists Submit Prices: Finalists submit sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work.
 - Price and Non-Price Criteria as Basis for Selection: Select highest scoring firm based on evaluation criteria including qualifications and price
 - Disclosure of Non-Price scores: Non-price scores must be made available at the opening of the fee and cost proposals
- Protests:
 - Deadline for Filing Protest: Protest must be received by GC/CM no later than 2 full business days following bid opening
 - Delay in Contract Execution: If protest received, GC/CM may not execute a subcontract with any other party without providing at least 2 full business days written notice of intent to award subcontract.
- Preconstruction Services:
 - GC/CM may enter into preconstruction services contract with selected subcontractor, and to act as subcontractor during construction. Requires public body's approval.

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- Subcontract Negotiations for Maximum Allowable Subcontract Cost (MASC):
 - When Negotiated: GC/CM and selected subcontractor negotiate MASC when construction documents and specifications are at least 90% complete
 - Owner Approval Required: Final Maximum Allowable Subcontract Cost must be approved by public body
 - Failure to Negotiate GC/CM may negotiate with next highest ranked firm if unable to negotiate MASC

- Total Subcontract Cost Defined:
 - General Conditions: Fixed amount for detailed specified general conditions work
 - MASC: Negotiated Maximum Allowable Subcontract Cost
 - Fee: Percent fee on the negotiated maximum allowable subcontract cost

- Maximum Allowable Subcontract Cost (MASC) Defined:
 - The Work: Maximum cost to complete the work specified for the subcontract
 - Risk Contingency: Percentage for risk contingency
 - NSS: Negotiated Support Services
 - Change Orders: Approved change orders

- Reconciling Maximum Allowable Subcontract Costs:
 - Lower Costs: If work completed for less than the Maximum Allowable Subcontract Cost, savings becomes part of risk contingency included in the GC/CM's MASC.
 - Higher Costs: If work completed for more than the Maximum Allowable Subcontract Cost, the additional cost is the responsibility of the subcontractor.

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- Cost Audit: 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.

- Self-Perform Work by Subcontractor:
 - Self-Perform Work Permitted: Mechanical and/or Electrical subcontractor may perform work with its own forces.

 - Public Process for Selection of Lower-Tier Subcontractors: Any work subcontractor needs to subcontract, must be done consistent with the subcontract selection process outlined in RCW 39.10.380 requiring public advertisement.

This document does not represent legal advice and the reader is encouraged to consult with an attorney to obtain legal advice.