

Alternative Subcontractor Selection Process – RCW 39.10.385

I. Uses

A. Appropriateness vs. other subcontracting options (e.g., low bid)

- i. Does the scope qualify for alternative subcontractor selection?
 1. Value must be greater than three million dollar threshold (RCW 39.10.385)
 2. Non-certified public bodies need PRC approval to utilize this alternative subcontracting process. This is handled via initial PRC project application for GC/CM approval.
 3. If “YES” to the above two conditions, Are you “early” in the life of the project? This is generally one of the first evaluation and decisions to make with the GC/CM immediately after procurement. To maximize benefit to the design and preconstruction process, the earlier the better. That said, the administrative differences between alternative subcontracting and lump sum subcontracting may still warrant consideration depending on the scope specific execution requirements of the project.

Commented [SM1]: I think a “snapshot” graphic or table would be helpful here with pros/cons of alternative vs. low bid. Short and sweet.

- ii. Comparing subcontracting options. 100% of GCCM work shall be “publicallypublicly bid”. This can be done in two ways for all scopes of work defined in the GCCM subcontracting plan. Lump sum or Alternative Selection.

Commented [an2]: Worth noting that this is typical GCCM only? Heavy Civil has different rules regarding the ability to self-perform work without publicly bidding.

1. Lump Sum: This process effectively emulates the traditional “design bid build” approach to public contracting but allows the subcontracting community to submit pricing directly through a transparent and public process.
 - a. Award of bid package shall be made to the “lowest responsive bidder”
 - b. There is little to no transparency on costs within the subcontract amount during the execution of the work.
 - c. Changes are managed in a traditional contracting format during execution.
 - d. The ~~owner~~ public body and GCCM risk position is related to all the normal construction risk factors associated with LS contracting. Quality of construction documents, unforeseen conditions, jurisdictional requirements, etc.

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2. Alternative Subcontracting: There are similarities with GCCM procurement and execution but performed directly with the engagement of a subcontractor to manage a specific scope of work within the GCCM project as a whole.

- a. Award is made through a public process ~~but is generally “best value” based~~ based on qualifications and a fee component.

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Commented [SM5R4]: We could refer to the section below where we talk about evaluations and scoring for more details.

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b. The subcontract value, will be “negotiated” with the subcontractor.

i. ~~The MASC or Subcontract value, is negotiated between the Alternative Subcontractor and the GCCM. For work the alternative subcontractor performs with their own forces, the total cost is proposed and negotiated.~~ Self-performed scope is not subject to public bidding. RCW 39.10.385 (12)

ii. ~~For any tier subs, within the Alternative scope/MASC, the Alternative sub is required to publicly bid and award those scopes as outlined in RCW 39.10.380.~~

b-c. Greater levels of cost transparency are provided through this process. An “independent audit” is performed to “confirm the proper accrual of costs”. RCW 39.10.385 (11)

e-d. Execution risk and mitigation is biased to a greater degree onto the subcontractor who is “at risk” to perform the work for their negotiated subcontract value.

3. Goals/constraints/tie in with Preconstruction Services

a. Concepts to consider

i. Design team integration: The alternative subcontractor will need to effectively integrate with the ~~owner~~public body, GCCM, Arch and Design consultants. The additional voice in the process is intended to support identifying options, evaluating them, and supporting the ~~owner's~~public body's decision-making process.

1. Constructability input
2. Phasing or scheduling considerations
3. Cost analysis and Value Engineering options

b. Scope complexity and risk. If the scope of work involves uncertainty or difficult to quantify effort, alternative subcontracting may be preferred over lump sum.

i. *Example 1:* Phased work on an occupied site. Perhaps an electrical sub would benefit developing and managing temporary work in order to keep occupied portions of a building functional while others are being renovated.

ii. *Example 2:* Unknown geotechnical conditions below a building that prevents exploration. Perhaps a civil contractor will help develop an approach to soil management during execution rather than the design team relying on a series of assumptions to define a LS bid scope in the contract documents where the

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- iii. *Example 3:* A delegated design building envelope system is the desired approach and the complexity and relation to adjacent building systems requires that early involvement in the design development round of preconstruction would benefit from an expert contributing to the design workflow.

H. Process Overview

A. Managing subcontract work – RCW 39.10.380 (lump sum)

- i. Procurement Details (the matrix) will relate to execution expectations with respect to staffing, reporting, and scope.
- ii. Billing/Payment Processing
 - 1. Alternative Subcontracting includes an “audit” at the end of the project to confirm the proper accrual of costs. Based on this, it’s proactive to drill down on costs and progress through the pay application and approval process on the monthly basis.
 - 2. Review reporting to ensure that costs shown are represented in the correct category within the MASC. Refer to the pricing matrix which the subcontract was based on.
- iii. Negotiating MACC & review in relation to project budget
- iv. Incentives – how and when
 - 1. How is risk being managed through project
 - 2. Less risk to public body owner/GCCM

Commented [N7]: Add general overview of process... include graph to visually explain.

Commented [SM8]: Second tier subs?

Commented [ke9R8]: I think this is First tier sub, meaning the “alternative sub” under subcontract with GCCM.

Commented [an10]: Audits may be done at any point in the project.

III. Initiating the Alternative Subcontractor Selection Process

- A. **Approval.** A GCCM may use the alternative subcontractor selection process only if approved by the public body. Public bodies who are not certified to use GCCM under RCW 39.10.270 must obtain approval to use alternative subcontractor selection from the Project Review Committee. **See [redacted] for more information about PRC.** A public body may seek approval by PRC either at the GCCM project approval level or when the decision is made to employ this process. It may be more efficient to seek this approval at the GCCM project approval phase, as PRC approval does not require that this process be implemented by the public body. Rather, it merely allows the public body to engage in this process if it chooses to and the factors justifying its use are met.

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Commented [ke12]: Thinking this entire part II can be eliminated? With the above narrative and below on “how to” this piece feels redundant.

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B. Timing

- i. RCW 39.10.385 provides that the GCCM should select the subcontractor “early in the life of the public works project.” One of the key benefits of engaging in this process over design-bid-build is to gain the input and expertise of the subcontractor during the preconstruction phase. Ideally, this input minimizes the risk of future constructability issues and related

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costs. It also shifts risk away from the public body and onto the subcontractor. To maximize this preconstruction benefit, it is best to select the subcontractor no later than during design development. This helps prevent backtracking in the design process. It is difficult for an alternative subcontractor to really influence the project approach during the construction documentation phase of design. In some cases, it may still make sense to bring the alternative subcontractor on board after design development, such as for means and methods or sequencing purposes.

ii. Other Considerations

1. The procurement process for an alternative subcontractor takes substantial time and resources for the ~~owner~~ public body and GCCM. For this reason, evaluating the use and decision to alternative subcontract should be performed as a priority with the GCCM immediately after they join the project team.
2. Consider the three main rounds of design. Schematic, Design Development, and Construction documentation. Ideally, the alternative subcontractor can join prior to finalizing the Schematic design for maximum preconstruction value. The timing benefits to preconstruction process will by scope.
3. Later in the preconstruction process but prior to execution starting may still be viable to utilize alternative subcontracting but there is less integration with the design process and capturing the input and recommendations of the alternative subcontractor which reduces overall value in this option.

C. Best Interest of the Public. To justify using this process, the public body and GCCM must make a threshold determination that it is in the best interest of the public. In making this determination, the public body and GCCM should consider the following factors, as applicable: budget management, critical scheduling specialized skill requirements specific to the project, scope management, importance of team relations to the project, and benefits of preconstruction services. These factors, as applicable, are usually described in the request for proposal.

D. Notice of Intent

- i. Publication. Notice of intent to use the alternative subcontractor selection process must be published in a legal newspaper at least 14 calendar days prior to the hearing. This notice must be published in the same legal newspaper as solicitation for proposals. The public body and GCCM are encouraged to provide further notice, such as posting on websites of trade associations and other locations and mediums that will further publicize the intent to use this process. This will help promote maximize competition and equity and diverse business inclusion. Examples include [request input from OMWBE, others]:

Commented [SM16]: Shelly Henderson's question is should we include these factors.

- ii. Notice Components. The notice must set forth a statement justifying the need to use the alternative subcontractor selection process and how, prior to the public hearing, interested parties may receive the evaluation criteria and weights assigned to the criteria, including definitions of what should be considered specified general conditions work and what should be considered the fee. It is helpful for the GCCM and public body to provide a matrix setting forth the components of the SGCs and fee that will be used for evaluation purposes.
 - iii. Publication of Weights and Criteria. The evaluation criteria, weights assigned to the criteria and justification for using the alternative process must be made available, upon request, at least seven calendar days prior to the public hearing so that interested parties have an opportunity to provide substantive comments. A simple way to provide this information is to provide a copy of the draft request for proposal at or prior to the hearing. To further promote transparency, GCCMs or public bodies should include information about the procurement schedule and process, the interview, and the request for final proposals. Notably, if interviews will be included in the evaluation process, the RFP must describe how they will be scored.
 - iv. Special Advertising Considerations – K-12 schools (Traci/Shelly?)
- E. Public Hearing. A public hearing must be held prior to the advertisement of the RFP. At or prior to the public hearing, interested parties must be permitted to submit verbal and written testimony regarding public interest, evaluation criteria and weights assigned to the criteria. Interested parties are encouraged to submit written comments ahead of the hearing date. If there are controversial comments, an interested party should submit written comments and testify at the hearing. The GCCM and public body is encouraged to clearly respond to questions and share all questions and responses during this process.
- F. Post-Hearing. The GCCM and public body must consider the comments received and make a determination about whether it is in the best interest of the public to use alternative subcontractor selection.
- G. Written Final Determination
- i. After the hearing, a GCCM and public must issue a written final determination that determines that alternative subcontractor selection is in the best interest of the public. The determination must reasonably address each of the comments received. Any modifications to the evaluation criteria, weights assigned to the criteria and protest procedures based on comments received must be included in the written final determination. While addenda may be issued to address non-material changes to evaluation criteria and weights assigned to the criteria, material changes are not permitted after the written final determination is issued.
 - ii. Protests of the decision to use the alternative selection process must be submitted to the public body within seven calendar days of the decision. Note that often the GCCM during the hearing process. The protest must

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- Changing criteria after evaluations (price score)
- Changing criteria after hearings and potential impact “material changes not permitted” not consistent with RCW changes

still be addressed to the public body to be valid. It is helpful to copy the GCCM on any protest correspondence. The public body may not proceed with the solicitation process until after responding to the protest.

(E/F/G Combined) Public hearings, comments, written final determination

Public hearings are an important part of the alternative contractor selection process and they are required under RCW 39.10.385(1). This is the owner's opportunity to communicate to the subcontractor community why this selection method is being used, what type of work it is being bid, and what qualifications an owner is looking for from potential subcontractors. Because this selection method is qualifications based, it's important to hold these hearings as early as possible to ensure sufficient competition. It also allows the subcontracting community an opportunity to interact directly with the Owner and the GCCM prior to submitting a proposal, understanding what qualifications are being sought, and how the selection process will proceed.

Prior to holding a public hearing, the GCCM must publish a notice of intent to use the alternative delivery selection along with information about the public hearing, no less than, 14 days before holding the public hearing. This notification is required to be published in a legal newspaper which is distributed as close as possible to the location of the project. This publication allows location subcontractors an opportunity to pursue this work. It's important to note that an Owner can also have the GCCM publish additional notifications at other locations to generate more interest and potentially more proposals. RCW 39.10.385(1)a outlines what information must be included in the public notice;

- Date, time, and location of hearing;
- Justification for utilizing the alternative selection process;
- How interested parties can obtain the evaluation criteria, including criteria scoring;
- Protest procedures with time limits for filing a protest (RCW requires no less than four business days from the date of selection decision).

The public hearing (RCW 39.10.385[1]b) is conducted by the GCCM, but the Owner should attend. This not only demonstrates the collaborative relationship the Owner and the GCCM have built tot the public, but it also allows the Owner to better understand what interest there is in this body of work, what challenges the subcontracting community might have with the qualifications or evaluation criteria, and to ensure the GCCM is complying with the RCW requirements.

During the hearing, the GCCM should explain why they are using the alternative delivery selection process, scope of work, budget, schedule, evaluation criteria, the selection process, and the protest process for this package of work. The GCCM must record and collect any comments received, whether written or verbal. This is a critical part of the public hearing as RCW 39.10.3835 (1)c and (1)d requires the GCCM and the Owner to issue a final determination to interested parties. An interested party would be any firm

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that attended the hearing or submitted comments either in the hearing or outside the hearing.

The final determination that the GCCM must include several items:

- Why using the alternative delivery process is in the best interest of the public;
- Modifications to the evaluation criteria
- Modifications to the criterion weights;
- Modifications to the protest process.

While not required by statute, it's best practice that the final determination provides a response to each comment or question received. This ensures the GCCM and Owner have reviewed and considered the comments received, provides transparency to the decision process, and shows that subcontractor input is valued by the GCCM and Owner.

Any party may protest the final determination and per RCW 39.10.385(1)d requires said protests to be submitted, in writing, to the Owner within seven business days of final determination. The RCW is silent on how a GCCM or Owner are to respond to protests on the final determination, but it's best practice for an Owner to perform a review of the protest and respond to the protester directly. If the GCCM and Owner decides to make any changes to the final determination because of a protest, they should notify all interested parties of those changes.

After completing the notification and hearing process, the evaluation criteria and scoring should not materially change through the selection process. Materially changing evaluation criteria or scoring weights after the final determination is issued may have a negative impact in the selection of the subcontractor under this process, as firms typically decide whether to pursue this work or not based on the final determination documentation.

IV.III. Developing Evaluation Criteria

The evaluation criteria used to select a firm under the Alternative Subcontractor Selection method is a critical part of the process. Because this process is qualifications heavy, the GCCM and Owner must establish an appropriate level of experience needed to successfully complete the subcontract work. At the same time, too restrictive qualifications may reduce the number of firms able to pursue this work. Additionally, most Owners are looking to expand small and disadvantaged business utilization and this selection method for subcontractors can potentially open the door to S/DBE firms, but establishing onerous qualifications may prevent many of those firms from pursuing the package of work.

The evaluation criteria for Alternative Subcontractor selection process can be broken down into ~~two~~ three categories:

- i. Statement of Qualifications (Required by Statute)
- ~~ii. I-and/or- interviews~~ (Optional)
- iii. Final proposals (Submitted by short-listed firms) (Required by Statute)

A. Request for Proposal Evaluation Criteria

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Commented [ke25]: (optional) Interviews

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The Request for Proposals (RFP) is a solicitation document published by the GCCM and approved by the Owner. The RFP contains several important items (General Conditions, Special Conditions, Specifications, Drawings, etc.), but for this section we will focus on the evaluation criteria.

RCW 39.10.385(3)(a) through (i) identifies several criteria that are required evaluation factors in the RFQ under this selection process. The required criteria are:

- (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.

The request for proposal can request more information and many GCCM firms and Owners will include more evaluation criteria to better gauge other qualifications they are seeking in a subcontractor. ~~but~~ However, the GCCM and public body should balance the interests in the need to desire to add more evaluation criteria against the gain relevant information and the burden placed on the subcontractors in responding to an overbroad the request for proposal. Additionally, too many or too specific requirements can and will limit the pool of potential proposers and may result in less than ideal firms or higher pricing. Changes were made to some of the evaluation factors in 2021 to call for information that is more narrowly tailored narrowly tailored to projects similar in size, scope and complexity to the project at hand.

~~In 2021, the statute was changed to require that a proposing firm submit its plan for inclusion of disadvantaged business enterprises to the extent permitted by law. [more needed here; place holder]~~

B. Interviews

The second part of the evaluation process used to select a subcontractor under the Alternative Delivery Selection process are interviews. Interviews are commonly used by many GCCM firms and Owners but are not required. This is an opportunity to have a

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Commented [ke30]: 2021 changes from my perspective were intended to broaden the application of previous experience of the sub based on projects of similar size and complexity. The changes also changed the criteria from referencing previous "alternative" subcontracting experience. This makes previous work under ALL delivery methods applicable for resume demonstration by the subcontracting community.

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face to face meeting with the proposers and see how they respond in a live environment. Interviews are not required, and an agency has many different options when using them and how they will be incorporated into the proposers final score. Some Owners short-list the highest ranked firms from written response, conduct interviews and then short-list again to the final proposal phase, establishing a 3 phased selection approach. Some Owners will combine the written response with the interviews, then short-list the highest ranked firms for the final proposal phase, creating a 2 phased approach. Whatever approach used; the RFP documents must clearly state how the process will unfold.

~~B.~~ If interviews are a part of the selection process under the Alternative Delivery Selection for subcontractors, the RFP must As explained above, if interviews are going to be used as an evaluation tool, then the request for proposal must address how they will be evaluated and scored per RCW 39.10.385(2)(j). While it is not necessary to list the interview questions, it is helpful to all parties to identify the key topics that will be asked, the structure of the interview, number of participants, along with how proposers are scored from the interview. about in the interview and related scoring should be set forth in the request for proposal. An example of interview details in a request for proposal is:

Criterion	Points
Ability of proposed personnel and qualifications necessary for satisfactory performance of required services	20
Demonstrated expertise and experience in the required services, with emphasis on experience on occupied and/or phased occupancy K-12 projects	15
Understanding of the concept of this proposal and the proposed MC/CM role	10
Ability to work within an integrated team	15
Ability to actively participate in the development of the design within budget and time	20
Approach to setting and working within the Maximum Allowable Subcontract Cost (MASC)	15
Ability to submit a fully compliant priced proposal at the next stage	5

C. Cost Proposals-

The third category used for evaluating potential subcontractors are cost proposals. Per RCW 39.10.385(4), cost proposals are composed of two elements: a fixed amount for the subcontract specified general conditions and the percent fee on the estimated

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Commented [DN34]: I might recommend we remove the points but keep the category examples. There are many different ways to approach an interview and the important part of the changes is transparency to all proposers.

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maximum allowable subcontract work-. Alt's important to repeat that's discussed previously, not all firms will submit a cost proposal; only the short-listed firms will receive a request to submit a cost proposal from the GCCM and Owner as discussed previously in this chapter.

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The RFP must include how the GCCM and Owner will score and incorporate the cost component into the final determination of the highest ranked firm. Again, the GCCM and Owner have multiple ways to incorporate the cost proposal score into the final scoring. One approach is to combine the written submittal score, interview score, and cost proposal score together. Another approach is to drop off the scoring from the written submittal and interview and select the highest ranked firm based on the lowest submitted cost proposal. Both are acceptable approaches, but the GCCM and Owner should understand how the final selection decision can impact what firm they eventually work with.

Another important factor to consider is the amount of points associated with the cost proposal. This will depend on the process selected by the GCCM and the Owner. If combining the cost scoring with the written score and interview, the amount of points associated with the cost proposal will impact the importance of price vs. qualifications. A high percentage of points associated to the cost proposal will make price a more important factor in selection than qualifications and vice versa. When selecting the appropriate points allocated to price, it's important to remember that the Alternative Selection Process outlined in this chapter is established so the GCCM and Owner can select critical subcontractors for the project based more heavily on qualifications rather than low price.

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IV. Budget Categories/Contract Structure?

A. Price-Related Factors (fee and SGC definitions/matrix)

1. Cost of Work, Specified General Conditions, Negotiated Support Services, and Fee.

B. MASC - Maximum Allowable Subcontract Cost. The total anticipated cost of the subcontract defined by the GCCM/Public Body.

Commented [ke37]: I added COW, NSS to the matrix inclusion because a good matrix shows how ALL the various costs in the subcontract fall into the right categories defined by the GCCM/Public body.

V. Procurement

VI. Scoring/Selection

A. Evaluation Committee. The GCCM must establish a committee to evaluate proposals which must include at least one representative of the public body.

B. Scoring

- i. Written proposals and interviews are typically part of a first phase. Those scores are added together to determine finalists who are asked to submit cost proposals as part of a second phase. The GCCM must notify firms who are not selected as finalists and may not proceed with the selection process until two business days after such notice is provided.
- ii. Nonprice factors must be added to the scoring of the price factors (SGC and fee) to determine the highest scoring firm.

~~VI~~VII. Debriefing – though not required by statute, it is helpful to provide an opportunity for unsuccessful proposers to review their solicitation with the project team to better understand how the selection was made and review areas where they excelled or need improvement. Since alternative subcontractor selection is still relatively new in general and specifically now that it is open to all trades, this may help encourage competition.

~~VII~~ Budget Categories/ Categories/Contract Structure?

A. Price Related Factors (fee and SGC definitions/matrix)

Cost of Work, Specified General Conditions, Negotiated Support Services, and Fee.

B. MASC – Maximum Allowable Subcontract Cost. The total anticipated cost of the subcontract defined by the GCCM/Public Body.

VIII. Preconstruction services

IX. MASC Negotiations and relation to project budget

X.

~~VIII~~XI. Independent Audits. RCW 39.10.385 requires an independent audit, paid for by the public body to be conducted to confirm the proper accrual of costs as outlined in the contract. The public body must define the scope of the audit in the contract.

- A. Lump sum
- B. Cost reimbursable

XII. Process Overview

A. Managing subcontract work – RCW 39.10.380 (lump sum)

i. Procurement Details (the matrix) will relate to execution expectations with respect to staffing, reporting, and scope.

ii. Billing/Payment Processing

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iv. Incentives – how and when

1. How is risk being managed through project

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