

VII. STANDING COMMITTEES

A. Academic and Student Affairs Committee

In Joint Session With

B. Finance, Audit and Facilities Committee

Establishment of Contracting RegulationsRECOMMENDED ACTION:

It is the recommendation of the Administration and of the Finance, Audit and Facilities Committee that the Board of Regents take the following actions under the authority granted in RCW 28B.20.140:

- 1) Establish regulations providing for a fair, open, and efficient development agreement method by which the University may, under limited circumstances, move expeditiously and efficiently to contract for Capital Projects in a way that protects the best interests of the university and assures the delivery of quality work and products at a reasonable price under the most advantageous terms, and
- 2) Authorize the President to have such regulation take effect immediately as an emergency, and initiate the permanent rule making process.

The full text of the proposed regulations is attached.

BACKGROUND:

In 1969, the legislature amended RCW 28B.20.140 to authorize the Board of Regents to construct and improve University buildings through contracts as the Regents deem to be in the best interest of the University. The statute authorizes the Regents to let such contracts under regulations as the Regents may establish or through processes established elsewhere in state law.

The University has historically used the processes set forth in other state laws (for instance, the General Contractor Construction Manager (GCCM) process set forth in chapter 39.10 RCW) in contracting for construction and improvement of University facilities. Currently, there are plans for construction of the Sound Transit Station, as well as consideration by other transportation agencies, regarding the sites adjacent to Husky Stadium. The University is at the same time considering plans for major renovations of Husky Stadium.

VII. STANDING COMMITTEES

B. Finance, Audit and Facilities Committee

Establishment of Contracting Regulations (continued p. 2)

If the University were to follow existing contracting processes for the Stadium renovations, it may suffer significant adverse effects on its operation, mission, and/or financial interests due to the Sound Transit project. These circumstances call for a specialized contracting method to protect the interests of the University.

The purpose of the proposed regulations is to establish a fair, open, and efficient contracting method by which the University may, under limited circumstances, move expeditiously and efficiently to contract for a project in a way that protects the best interests of the university and assures the timely delivery of quality work at a reasonable price under the most advantageous terms. For this reason, the Regents are being asked to use the authority of RCW 28B.20.140 to establish the regulation to enable use of different contracting methods.

Because time is a crucial factor in this situation, the regulations, if adopted by the Regents, would then be adopted by the University as emergency regulations under the Washington Administrative Code. Following a full period of notice and comment, these regulations would come back to the Board for final adoption. This period of notice and comment will include: filing and publication of a Pre-proposal Statement of Inquiry; no earlier than 30 days thereafter, filing the Proposed Rule Making Notice; and no earlier than 20 days thereafter, hold a hearing. After the hearing and completion of a report, the rule will return to the Board of Regents for adoption.

Attachment: Alternative Contracting Process for the University of Washington

Chapter 478-350 WAC

Alternative Contracting Process for the University of Washington

NEW SECTION

WAC 478-350-010 Authority. The University of Washington adopts these rules pursuant to RCW 28B.20.140.

NEW SECTION

WAC 478-350-020 Purpose. The purpose of this chapter is to establish a fair, open, and efficient method by which the university may, under certain circumstances, contract for the erection and construction of university buildings or improvements thereto, in lieu of other statutorily authorized contracting methods. These rules are intended to protect the best interests of the university and assure the delivery of quality work and products at a reasonable price under the most advantageous terms.

NEW SECTION

WAC 478-350-030 Applicability. The contracting method set forth in this chapter may be used only when the president of the university finds that all of the following criteria are met:

(1) The building or improvement involved has a total project cost in excess of \$25,000,000;

(2) The design or construction of the building or improvement or its construction schedule may be directly impacted by large construction projects being planned or constructed by other agencies or private developers;

(3) Postponing the building or improvement or delaying it through the use of other contracting methods is likely to have a significant

adverse effect on the operation, mission, or financial interests of the university, and;

(4) The building or improvement may benefit from a contracting method that integrates services including but not limited to a developer, designer, construction manager and contractor being on the same team and working collaboratively.

A finding by the university president that a project meets all of the above criteria shall be subject to review by the University of Washington board of regents.

NEW SECTION

WAC 478-350-040 Contracting method. Upon a finding by the President that a project meets the criteria set forth above, the president or the president's designee may proceed to conduct a competitive process that is open, fair, and unbiased and results in one or more contracts with a highly qualified entity or team on the most advantageous terms. The process must include at least the following elements:

(1) RFQ/RFP. Contracts will be awarded through either a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process or a combination thereof. The RFQ/RFP will include a clear description of what the university believes to be most important about the project as well as the weight of selection criteria.

(2) Public notice. The university shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the project will be constructed, a notice of its RFQ/RFP, and information regarding the availability and location of the RFQ/RFP documents.

(3) Selection criteria. Selection criteria shall include, but are not limited to, qualifications of the project team, technical excellence and competence, experience, capacity to accomplish the work, ability to deliver a quality project, past performance of the team or its constituent members, and price or fee, taking into

consideration the estimated cost of construction as well as the long-term performance, operation and maintenance of the building or improvement.

(4) Negotiations. The university shall first attempt to negotiate a contract with the entity deemed to have submitted the best overall response. If such negotiations are not successful, the university may proceed to negotiate with the entity deemed to have submitted the next best response.

NEW SECTION

WAC 478-350-050 Prevailing wages, bonds and retainage. Any contract awarded pursuant to these rules shall require full compliance with applicable sections of chapters 39.08, 39.12, and 60.28 RCW. The selected entity shall also be encouraged to work closely with the university's business diversity program.