

HOUSE OF REPRESENTATIVES

Olympia, Washington

Bill Analysis

Bill No. HB 1074

Regulating the awarding of  
public works  
Brief title

Hearing Date 1/26/99

Reps D. Schmidt and Romero  
Sponsor (s)

Staff Steve Lundin  
State Government Committee  
Phone 786-7127

**BACKGROUND:**

Different procedures are established at agencies and various governmental award contracts for public works projects.

Frequently different sets of procedures have been established at agencies and local governmental award public works contracts depending on the estimated cost of the project with varying requirements as follows:

- o An agency or local government may award contracts for public works projects of a relative value estimated in any manner it chooses.
- o An agency or local government may award contracts using a small works cost bidding process awarding contracts for projects up to a medium estimated cost. Under this process a limited number of contractors are contacted and asked to submit bids. The contract is awarded to the lowest responsible bidder.
- o An agency or local government may award contracts using a formal competitive bidding process for awarding contracts of a higher estimated value where a notice published requesting sealed bids and the sealed bids are opened at a designated time and place. The contract is awarded to the lowest responsible bidder.

In addition several different agencies and local governments have been authorized alternative public works contracting procedures for awarding contracts for certain public works contracts of a very large dollar value. One alternative procedure is the design-build procedure. Another alternative procedure is the general contractor/contract manager procedure. Authority for these alternative procedures

terminated July, 2001. The Department of General Administration, University of Washington, Washington State University county with a population greater than 450,000 (King, Pierce and Snohomish Counties) every city with a population in excess of 150,000 (Seattle, Tacoma and Spokane) and any port district with a population in excess of 500,000 (Port of Seattle and Port of Tacoma) may use the alternative public works contracting procedures.

**SUMMARY:**

Public bodies authorized the alternative public works contracting procedures may award contracts using a new procedure called job order contracts. The authority to use job order contracts terminated July, 2004.

A job order contract is a contract where a contractor agrees to perform an indefinite quantity of public works over a fixed period of time on the basis of defined work orders where charges for the defined work that is ordered are based on prices contained in a unit price book. Unit price books contain specific prices based on general accepted industry standards and information where available for various items of work to be performed and may include costs for materials, labor, equipment, overhead, bonds.

1. Agencies that may use job order contracting.

The Department of General Administration, University of Washington, Washington State University, county with a population greater than 450,000 (King, Pierce and Snohomish Counties) every city with a population in excess of 150,000 (Seattle, Tacoma and Spokane) and port district with a population in excess of 500,000 (Port of Seattle and Port of Tacoma) are authorized to use job order contracting.

2. Restrictions on job order contracting:

Job order contracts are subject to the following restrictions:

- o A job order contract may not be executed for an initial term of more than two years but may be renewed or extended for an additional year.
- o All job order contracts must be executed before July, 2001 but an existing job order contract may be extended or renewed after that date.
- o A public entity may not have more than two job order contracts in effect at any one time.
- o The maximum total dollar amount that is awarded under a job order contract may not exceed \$3 million in the first year, \$5 million over the first two years, \$8 million over the three year period if the contract is renewed or extended.
- o A work order for a single project may not exceed \$200,000.

- o Public body may not issue more than two work orders for the same job order contract greater than \$150,000 in a 12-month period.
- o No more than 20% of the total value of the work order may consist of items that are not included in the unit price book.
- o At least 80% of the job order contracts be subcontracted to entities other than the job order contractor.
- o A new permanent enclosed building project that is constructed during this process may not exceed 2000 square feet.
- o If the public body identifies a minimum amount of work indicated in the request for proposal, the public body must pay the contractor an amount equal to the difference between the minimum amount of work that is indicated in the request for proposal less the amount of work actually performed multiplied by an appropriate percentage overhead and profit contained in the general unit price book for Washington State facilities construction. Other remedies shall exist.

Requirements for performance bonds and interest that is paid on public contracts apply to each work order rather than the job order contract. Retainage requirements do not apply to either the job order contract or work order made under a job order contract.

The requirement that subcontractors perform 10% or more of the total contract amount listed in the general contract within 90 days after the general contract is submitted to a project does not apply to job order contracts.

Job order contracts are required to pay prevailing wages for work that otherwise would be subject to those requirements.

### 3. Process award a job order contract.

Prior to using job order contracts, a public body must determine that these unit price books and work orders will eliminate the consuming aspects of traditional works contracts. Once this determination is made, a job order contract is awarded using a competitive bidding process involving the following steps:

- o Notice for request for proposal is published describing in detail, including description of the scope of job order contract, identification of the specific unit price book that will be used, and the minimum contract amount committed to the selected job order contractor.
- o The public body establishes a committee to evaluate proposals and select the most qualified finalist.

- o The most qualified firms submitting proposals, including those based on the identification in the book.
- o The public body awards the contract to the firm submitting the highest priced proposal using evaluation factors and the relative weight of factors published in the public request for proposals.

A protest period of 10 days is allowed following announcement of the apparent successful proposal. A protest must be detailed and state the grounds for the protest. The public body promptly determines the merits of the protest and provides a written determination.

A job order contract may not be executed until at least two business days following decision on the protest. A work order may not be issued until the public body approves a plan the job order contractor prepares to attain applicability to other business enterprises. Job order contracts that equitably spread subcontracting opportunities are certified for and minor business enterprises.

**FISCANOTE:** Not requested.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill passed.