

SENATE BILL REPORT

SHB 1074

As Reported By Senate Committee On:
State & Local Government, April 1, 1999

Title: An act relating to job order contracting for public works.

Brief Description: Regulating job order contracting for public works.

Sponsors: House Committee on State Government (originally sponsored by Representatives D. Schmidt, Romero and Santos; by request of Alternative Public Works Methods Oversight Committee).

Brief History:

Committee Activity: State & Local Government: 3/18/99, 4/1/99 [DP].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: Do pass.

Signed by Senators Patterson, Chair; Gardner, Vice Chair; Hale, Haugen, Horn, Kline and McCaslin.

Staff: Diane Smith (786-7410).

Background: Differing procedures are established for state agencies and various local governments to award contracts for public works projects.

Several different state agencies and local governments have been authorized to use alternative public works contracting procedures to award contracts on 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/construction manager" procedure. Authority to use these alternative procedures terminates on July 1, 2001. The Department of General Administration, University of Washington, Washington State University, every county with a population of 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 of Bill: Public bodies authorized to use the alternative public works contracting procedures may award contracts using a new procedure called a job order contract for public works. The authority to use job order contracts terminates on July 1, 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 definite work orders where charges for the definite work that is ordered are based upon prices contained in a unit price book. Unit price books contain specific prices based on generally accepted industry

standards and information, where available, for various items of work to be performed, and may include costs for materials, labor, equipment, overhead, and bonds.

1. Restrictions on job order contracts. A job order contract may not be executed for an initial contract term of more than two years, but may be renewed or extended for an additional year. All job order contracts must be executed before July 1, 2001, but an existing job order contract may be extended or renewed after that date. A public entity may not have more than two job order contracts in effect at any one time. 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, or \$8 million over the three-year period if the contract is renewed or extended. A work order for a single project may not exceed \$200,000, and a public body may not issue more than two work orders equal to or greater than \$150,000 in a 12-month period.

No more than 20 percent of the dollar value of the work order may consist of items that are not included in the unit price book. At least 80 percent of the job order contract must be subcontracted to entities other than the job order contractor.

A new permanent, enclosed building space that is constructed under this process may not exceed 2000 square feet.

Special provisions are made to measure damages to a contractor if the public entity fails to order a minimum amount of work indicated in its request for proposals. No other remedies are allowed. The damages are equal to the minimum amount of work that is indicated in the request for proposals, less the amount of work actually done, multiplied by an appropriate percentage for overhead and profit contained in the general conditions for Washington State facility construction.

Performance bonds for job order contracts must be at least equal to the dollar value of all open work orders. Retainage requirements do not apply to either the job order contract or a work order made under a job order contract.

The requirement that subcontractors performing 10 percent or more of the total contract amount be listed by the general contractor within one hour after the general contractor submits its bid on a project does not apply to job order contracts.

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

2. Process to award a job order contract. A public entity must determine that the job order contract process will eliminate time-consuming and costly aspects of traditional public works contracting before using this process. Once this determination is made, a request for proposals is published describing a number of details, including a description of the scope of job order contracts, identification of the specific unit price book that will be used, and the minimum contracted amount committed to the selected job order contractor. The public body establishes a committee that evaluates proposals and selects the most qualified finalists. The most qualified finalists submit final proposals, including sealed bids based upon the identified unit price book.

The public body awards the contract to the firm submitting the highest scored final 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 the announcement of the apparent successful proposal to allow a protester to file a detailed statement of 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 the decision on the protest. A winning contractor must develop a plan to spread certified women and minority business enterprise subcontracting opportunities equitably among the various subcontracting disciplines.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is a consensus bill that has been under negotiation for about two years. Once one contractor becomes familiar with these larger complex buildings, it saves money to permit that contractor to be in charge of seeing to the building's future needs. This approach is used by other states and the federal government.

Testimony Against: None.

Testified: PRO: Representative Dave Schmidt, prime sponsor; John Lynch, General Administration; Fred King, UW Capital Project Alternative Public Works Oversight Committee; Kendall Moore, King County Department of Finance; Dan Sexton, Washington State Association of Plumbers and Pipefitters.