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SECOND SUBSTITUTE HOUSE BILL 1074

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State of Washington

56th Legislature

2000 Regular Session

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

Read first time 02/02/2000. Referred to Committee on .

1 AN ACT Relating to job order contracting for public works; amending  
2 RCW 39.10.020, 39.08.030, 39.30.060, 60.28.011, and 39.10.902; adding  
3 a new section to chapter 39.10 RCW; adding a new section to chapter  
4 39.12 RCW; and repealing RCW 39.10.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.10 RCW  
7 to read as follows:

8 (1) Public bodies may use a job order contract for public works  
9 projects when:

10 (a) A public body has made a determination that the use of job  
11 order contracts will benefit the public by providing an effective means  
12 of reducing the total lead-time and cost for public works projects or  
13 repair required at public facilities through the use of unit price  
14 books and work orders by eliminating time-consuming, costly aspects of  
15 the traditional public works process, which require separate  
16 contracting actions for each small project;

17 (b) The work order to be issued for a particular project does not  
18 exceed two hundred thousand dollars;

1 (c) Less than twenty percent of the dollar value of the work order  
2 consists of items of work not contained in the unit price book; and

3 (d) At least eighty percent of the job order contract must be  
4 subcontracted to entities other than the job order contractor.

5 (2) Public bodies shall award job order contracts through a  
6 competitive process utilizing public requests for proposals. The  
7 public body shall publish, at least once in a legal newspaper of  
8 general circulation published in or as near as possible to that part of  
9 the county in which the public works will be done, a request for  
10 proposals for job order contracts and the availability and location of  
11 the request for proposal documents. The public body shall ensure that  
12 the request for proposal documents at a minimum includes:

13 (a) A detailed description of the scope of the job order contract  
14 including performance, technical requirements and specifications,  
15 functional and operational elements, minimum and maximum work order  
16 amounts, duration of the contract, and options to extend the job order  
17 contract;

18 (b) The reasons for using job order contracts;

19 (c) A description of the qualifications required of the proposer;

20 (d) The identity of the specific unit price book to be used;

21 (e) The minimum contracted amount committed to the selected job  
22 order contractor;

23 (f) A description of the process the public body will use to  
24 evaluate qualifications and proposals, including evaluation factors and  
25 the relative weight of factors. The public body shall ensure that  
26 evaluation factors include, but are not limited to, proposal price and  
27 the ability of the proposer to perform the job order contract. In  
28 evaluating the ability of the proposer to perform the job order  
29 contract, the public body may consider: The ability of the  
30 professional personnel who will work on the job order contract; past  
31 performance on similar contracts; ability to meet time and budget  
32 requirements; ability to provide a performance and payment bond for the  
33 job order contract; recent, current, and projected work loads of the  
34 proposer; location; and the concept of the proposal;

35 (g) The form of the contract to be awarded;

36 (h) The method for pricing renewals of or extensions to the job  
37 order contract;

38 (i) A notice that the proposals are subject to the provisions of  
39 RCW 39.10.100; and

1 (j) Other information relevant to the project.

2 (3) A public body shall establish a committee to evaluate the  
3 proposals. After the committee has selected the most qualified  
4 finalists, the finalists shall submit final proposals, including sealed  
5 bids based upon the identified unit price book. Such bids may be in  
6 the form of coefficient markups from listed price book costs. The  
7 public body shall award the contract to the firm submitting the highest  
8 scored final proposal using the evaluation factors and the relative  
9 weight of factors published in the public request for proposals.

10 (4) The public body shall provide a protest period of at least ten  
11 business days following the day of the announcement of the apparent  
12 successful proposal to allow a protester to file a detailed statement  
13 of the grounds of the protest. The public body shall promptly make a  
14 determination on the merits of the protest and provide to all proposers  
15 a written decision of denial or acceptance of the protest. The public  
16 body shall not execute the contract until two business days following  
17 the public body's decision on the protest.

18 (5) Job order contracts may be executed for an initial contract  
19 term of not to exceed two years, with the option of extending or  
20 renewing the job order contract for one year. All extensions or  
21 renewals must be priced as provided in the request for proposals. The  
22 extension or renewal must be mutually agreed to by the public body and  
23 the job order contractor.

24 (6) The maximum total dollar amount that may be awarded under a job  
25 order contract shall not exceed three million dollars in the first year  
26 of the job order contract, five million dollars over the first two  
27 years of the job order contract, and, if extended or renewed, eight  
28 million dollars over the three years of the job order contract.

29 (7) For each job order contract, public bodies shall not issue more  
30 than two work orders equal to or greater than one hundred fifty  
31 thousand dollars in a twelve-month contract performance period.

32 (8) All work orders issued for the same project shall be treated as  
33 a single work order for purposes of the one hundred fifty thousand  
34 dollar limit on work orders in subsection (7) of this section and the  
35 two hundred thousand dollar limit on work orders in subsection (1)(b)  
36 of this section.

37 (9) Any new permanent, enclosed building space constructed under a  
38 work order shall not exceed two thousand gross square feet.

1 (10) Each public body may have no more than two job order contracts  
2 in effect at any one time.

3 (11) For purposes of chapters 39.08, 39.76, and 60.28 RCW, each  
4 work order issued shall be treated as a separate contract.

5 (12) The requirements of RCW 39.30.060 do not apply to requests for  
6 proposals for job order contracts.

7 (13) Job order contractors shall pay prevailing wages for all work  
8 that would otherwise be subject to the requirements of chapter 39.12  
9 RCW. Prevailing wages for a job order contract must be determined as  
10 of the time of the execution of the job order contract and any  
11 extension or renewal.

12 (14) If, in the initial contract term, the public body, at no fault  
13 of the job order contractor, fails to issue the minimum amount of work  
14 orders stated in the public request for proposals, the public body  
15 shall pay the contractor an amount equal to the difference between the  
16 minimum work order amount and the actual total of the work orders  
17 issued multiplied by an appropriate percentage for overhead and profit  
18 contained in the general conditions for Washington state facility  
19 construction. This will be the contractor's sole remedy.

20 (15) All job order contracts awarded under this section must be  
21 executed before July 1, 2001, however the job order contract may be  
22 extended or renewed as provided for in this section.

23 **Sec. 2.** RCW 39.10.020 and 1997 c 376 s 1 are each amended to read  
24 as follows:

25 Unless the context clearly requires otherwise, the definitions in  
26 this section apply throughout this chapter.

27 (1) "Alternative public works contracting procedure" means the  
28 design-build and the general contractor/construction manager  
29 contracting procedures authorized in RCW 39.10.050 and 39.10.060,  
30 respectively.

31 (2) "Public body" means the state department of general  
32 administration; the University of Washington; Washington State  
33 University; every city with a population greater than one hundred fifty  
34 thousand; every city authorized to use the design-build procedure for  
35 a water system demonstration project under RCW 39.10.065(3); every  
36 county with a population greater than four hundred fifty thousand; and  
37 every port district with a population greater than five hundred  
38 thousand.

1 (3) "Public works project" means any work for a public body within  
2 the definition of the term public work in RCW 39.04.010.

3 (4) "Job order contract" means a contract between a public body and  
4 a registered or licensed contractor in which the contractor agrees to  
5 a fixed period, indefinite quantity delivery order contract which  
6 provides for the use of negotiated, definitive work orders for public  
7 works as defined in RCW 39.04.010.

8 (5) "Job order contractor" means a registered or licensed  
9 contractor awarded a job order contract.

10 (6) "Unit price book" means a book containing specific prices,  
11 based on generally accepted industry standards and information, where  
12 available, for various items of work to be performed by the job order  
13 contractor. The prices may include: All the costs of materials;  
14 labor; equipment; overhead, including bonding costs; and profit for  
15 performing the items of work.

16 (7) "Work order" means an order issued for a definite scope of work  
17 to be performed pursuant to a job order contract.

18 **Sec. 3.** RCW 39.08.030 and 1989 c 58 s 1 are each amended to read  
19 as follows:

20 The bond mentioned in RCW 39.08.010 shall be in an amount equal to  
21 the full contract price agreed to be paid for such work or improvement,  
22 except for job order contracts authorized in section 1 of this act, and  
23 shall be to the state of Washington, except as otherwise provided in  
24 RCW 39.08.100, and except in cases of cities and towns, in which cases  
25 such municipalities may by general ordinance fix and determine the  
26 amount of such bond and to whom such bond shall run: PROVIDED, The  
27 same shall not be for a less amount than twenty-five percent of the  
28 contract price of any such improvement, and may designate that the same  
29 shall be payable to such city, and not to the state of Washington, and  
30 all such persons mentioned in RCW 39.08.010 shall have a right of  
31 action in his, her, or their own name or names on such bond for work  
32 done by such laborers or mechanics, and for materials furnished or  
33 provisions and goods supplied and furnished in the prosecution of such  
34 work, or the making of such improvements: PROVIDED, That such persons  
35 shall not have any right of action on such bond for any sum whatever,  
36 unless within thirty days from and after the completion of the contract  
37 with an acceptance of the work by the affirmative action of the board,  
38 council, commission, trustees, officer, or body acting for the state,

1 county or municipality, or other public body, city, town or district,  
2 the laborer, mechanic or subcontractor, or materialman, or person  
3 claiming to have supplied materials, provisions or goods for the  
4 prosecution of such work, or the making of such improvement, shall  
5 present to and file with such board, council, commission, trustees or  
6 body acting for the state, county or municipality, or other public  
7 body, city, town or district, a notice in writing in substance as  
8 follows:

9 To (here insert the name of the state, county or municipality or  
10 other public body, city, town or district):

11 Notice is hereby given that the undersigned (here insert the name  
12 of the laborer, mechanic or subcontractor, or materialman, or person  
13 claiming to have furnished labor, materials or provisions for or upon  
14 such contract or work) has a claim in the sum of . . . . . dollars  
15 (here insert the amount) against the bond taken from . . . . . (here  
16 insert the name of the principal and surety or sureties upon such bond)  
17 for the work of . . . . . (here insert a brief mention or description  
18 of the work concerning which said bond was taken).

19 (here to be signed) . . . . .

20 Such notice shall be signed by the person or corporation making the  
21 claim or giving the notice, and said notice, after being presented and  
22 filed, shall be a public record open to inspection by any person, and  
23 in any suit or action brought against such surety or sureties by any  
24 such person or corporation to recover for any of the items hereinbefore  
25 specified, the claimant shall be entitled to recover in addition to all  
26 other costs, attorney's fees in such sum as the court shall adjudge  
27 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be  
28 allowed in any suit or action brought or instituted before the  
29 expiration of thirty days following the date of filing of the notice  
30 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail  
31 itself of the provisions of RCW 39.08.010 through 39.08.030,  
32 notwithstanding any charter provisions in conflict herewith: AND  
33 PROVIDED FURTHER, That any city or town may impose any other or further  
34 conditions and obligations in such bond as may be deemed necessary for  
35 its proper protection in the fulfillment of the terms of the contract  
36 secured thereby, and not in conflict herewith. However, the bond for  
37 job order contracts authorized in section 1 of this act must be in an  
38 amount not less than the dollar value of all open work orders.

1       **Sec. 4.** RCW 39.30.060 and 1999 c 109 s 1 are each amended to read  
2 as follows:

3       Every invitation to bid on a contract that is expected to cost one  
4 million dollars or more for the construction, alteration, or repair of  
5 any public building or public work of the state or a state agency or  
6 municipality as defined under RCW 39.04.010 or an institution of higher  
7 education as defined under RCW 28B.10.016 shall require each bidder to  
8 submit as part of the bid, or within one hour after the published bid  
9 submittal time, the names of the subcontractors with whom the bidder,  
10 if awarded the contract, will subcontract for performance of the work  
11 of heating, ventilation and air conditioning, plumbing as described in  
12 chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW,  
13 or to name itself for the work. The bidder shall not list more than  
14 one subcontractor for each category of work identified, unless  
15 subcontractors vary with bid alternates, in which case the bidder must  
16 indicate which subcontractor will be used for which alternate. Failure  
17 of the bidder to submit as part of the bid the names of such  
18 subcontractors or to name itself to perform such work or the naming of  
19 two or more subcontractors to perform the same work shall render the  
20 bidder's bid nonresponsive and, therefore, void. The requirement of  
21 this section to name the bidder's proposed heating, ventilation and air  
22 conditioning, plumbing, and electrical subcontractors applies only to  
23 proposed heating, ventilation and air conditioning, plumbing, and  
24 electrical subcontractors who will contract directly with the general  
25 contractor submitting the bid to the public entity. This section does  
26 not apply to job order contract requests for proposals under section 1  
27 of this act.

28       NEW SECTION. **Sec. 5.** A new section is added to chapter 39.12 RCW  
29 to read as follows:

30       Job order contracts under section 1 of this act must pay prevailing  
31 wages for all work that would otherwise be subject to the requirements  
32 of this chapter. Prevailing wages for a job order contract must be  
33 determined as of the time the job order contract and any extension or  
34 renewal is executed.

35       **Sec. 6.** RCW 60.28.011 and 1994 c 101 s 1 are each amended to read  
36 as follows:

1 (1) Public improvement contracts shall provide, and public bodies  
2 shall reserve, a contract retainage not to exceed five percent of the  
3 moneys earned by the contractor as a trust fund for the protection and  
4 payment of: (a) The claims of any person arising under the contract;  
5 and (b) the state with respect to taxes imposed pursuant to Title 82  
6 RCW which may be due from such contractor.

7 (2) Every person performing labor or furnishing supplies toward the  
8 completion of a public improvement contract shall have a lien upon  
9 moneys reserved by a public body under the provisions of a public  
10 improvement contract. However, the notice of the lien of the claimant  
11 shall be given within forty-five days of completion of the contract  
12 work, and in the manner provided in RCW 39.08.030.

13 (3) The contractor at any time may request the contract retainage  
14 be reduced to one hundred percent of the value of the work remaining on  
15 the project.

16 (a) After completion of all contract work other than landscaping,  
17 the contractor may request that the public body release and pay in full  
18 the amounts retained during the performance of the contract, and sixty  
19 days thereafter the public body must release and pay in full the  
20 amounts retained (other than continuing retention of five percent of  
21 the moneys earned for landscaping) subject to the provisions of  
22 chapters 39.12 and 60.28 RCW.

23 (b) Sixty days after completion of all contract work the public  
24 body must release and pay in full the amounts retained during the  
25 performance of the contract subject to the provisions of chapters 39.12  
26 and 60.28 RCW.

27 (4) The moneys reserved by a public body under the provisions of a  
28 public improvement contract, at the option of the contractor, shall be:

29 (a) Retained in a fund by the public body;

30 (b) Deposited by the public body in an interest bearing account in  
31 a bank, mutual savings bank, or savings and loan association. Interest  
32 on moneys reserved by a public body under the provision of a public  
33 improvement contract shall be paid to the contractor;

34 (c) Placed in escrow with a bank or trust company by the public  
35 body. When the moneys reserved are placed in escrow, the public body  
36 shall issue a check representing the sum of the moneys reserved payable  
37 to the bank or trust company and the contractor jointly. This check  
38 shall be converted into bonds and securities chosen by the contractor  
39 and approved by the public body and the bonds and securities shall be



1 held in escrow. Interest on the bonds and securities shall be paid to  
2 the contractor as the interest accrues.

3 (5) The contractor or subcontractor may withhold payment of not  
4 more than five percent from the moneys earned by any subcontractor or  
5 sub-subcontractor or supplier contracted with by the contractor to  
6 provide labor, materials, or equipment to the public project. Whenever  
7 the contractor or subcontractor reserves funds earned by a  
8 subcontractor or sub-subcontractor or supplier, the contractor or  
9 subcontractor shall pay interest to the subcontractor or sub-  
10 subcontractor or supplier at a rate equal to that received by the  
11 contractor or subcontractor from reserved funds.

12 (6) A contractor may submit a bond for all or any portion of the  
13 contract retainage in a form acceptable to the public body and from a  
14 bonding company meeting standards established by the public body. The  
15 public body shall accept a bond meeting these requirements unless the  
16 public body can demonstrate good cause for refusing to accept it. This  
17 bond and any proceeds therefrom are subject to all claims and liens and  
18 in the same manner and priority as set forth for retained percentages  
19 in this chapter. The public body shall release the bonded portion of  
20 the retained funds to the contractor within thirty days of accepting  
21 the bond from the contractor. Whenever a public body accepts a bond in  
22 lieu of retained funds from a contractor, the contractor shall accept  
23 like bonds from any subcontractors or suppliers from which the  
24 contractor has retained funds. The contractor shall then release the  
25 funds retained from the subcontractor or supplier to the subcontractor  
26 or supplier within thirty days of accepting the bond from the  
27 subcontractor or supplier.

28 (7) If the public body administering a contract, after a  
29 substantial portion of the work has been completed, finds that an  
30 unreasonable delay will occur in the completion of the remaining  
31 portion of the contract for any reason not the result of a breach  
32 thereof, it may, if the contractor agrees, delete from the contract the  
33 remaining work and accept as final the improvement at the stage of  
34 completion then attained and make payment in proportion to the amount  
35 of the work accomplished and in this case any amounts retained and  
36 accumulated under this section shall be held for a period of sixty days  
37 following the completion. In the event that the work is terminated  
38 before final completion as provided in this section, the public body  
39 may thereafter enter into a new contract with the same contractor to

1 perform the remaining work or improvement for an amount equal to or  
2 less than the cost of the remaining work as was provided for in the  
3 original contract without advertisement or bid. The provisions of this  
4 chapter are exclusive and shall supersede all provisions and  
5 regulations in conflict herewith.

6 (8) Whenever the department of transportation has contracted for  
7 the construction of two or more ferry vessels, sixty days after  
8 completion of all contract work on each ferry vessel, the department  
9 must release and pay in full the amounts retained in connection with  
10 the construction of the vessel subject to the provisions of RCW  
11 60.28.020 and chapter 39.12 RCW. However, the department of  
12 transportation may at its discretion condition the release of funds  
13 retained in connection with the completed ferry upon the contractor  
14 delivering a good and sufficient bond with two or more sureties, or  
15 with a surety company, in the amount of the retained funds to be  
16 released to the contractor, conditioned that no taxes shall be  
17 certified or claims filed for work on the ferry after a period of sixty  
18 days following completion of the ferry; and if taxes are certified or  
19 claims filed, recovery may be had on the bond by the department of  
20 revenue and the materialmen and laborers filing claims.

21 (9) Except as provided in subsection (1) of this section,  
22 reservation by a public body for any purpose from the moneys earned by  
23 a contractor by fulfilling its responsibilities under public  
24 improvement contracts is prohibited.

25 (10) Contracts on projects funded in whole or in part by farmers  
26 home administration and subject to farmers home administration  
27 regulations are not subject to subsections (1) through (9) of this  
28 section.

29 (11) Unless the context clearly requires otherwise, the definitions  
30 in this subsection apply throughout this section.

31 (a) "Contract retainage" means an amount reserved by a public body  
32 from the moneys earned by a person under a public improvement contract.

33 (b) "Person" means a person or persons, mechanic, subcontractor, or  
34 materialperson who performs labor or provides materials for a public  
35 improvement contract, and any other person who supplies the person with  
36 provisions or supplies for the carrying on of a public improvement  
37 contract.

38 (c) "Public body" means the state, or a county, city, town,  
39 district, board, or other public body.

1 (d) "Public improvement contract" means a contract for public  
2 improvements or work, other than for professional services, or a work  
3 order as defined in RCW 39.10.020.

4 **Sec. 7.** RCW 39.10.902 and 1997 c 376 s 8 are each amended to read  
5 as follows:

6 The following acts or parts of acts, as now existing or hereafter  
7 amended, are each repealed, effective July 1, 2001:

8 (1) RCW 39.10.010 and 1994 c 132 s 1;

9 (2) (~~(RCW 39.10.020 and 1994 c 132 s 2;~~

10 ~~(3))~~ RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

11 (~~(4))~~ (3) RCW 39.10.040 and 1994 c 132 s 4;

12 (~~(5))~~ (4) RCW 39.10.050 and 1997 c 376 s 3 & 1994 c 132 s 5;

13 (~~(6))~~ (5) RCW 39.10.060 and 1997 c 376 s 4, 1996 c 18 s 6, & 1994  
14 c 132 s 6;

15 (~~(7))~~ (6) RCW 39.10.065 and 1997 c 376 s 5;

16 (~~(8))~~ (7) RCW 39.10.070 and 1994 c 132 s 7;

17 (~~(9))~~ (8) RCW 39.10.080 and 1994 c 132 s 8;

18 (~~(10))~~ (9) RCW 39.10.090 and 1994 c 132 s 9;

19 (~~(11))~~ (10) RCW 39.10.100 and 1994 c 132 s 10;

20 (~~(12))~~ (11) RCW 39.10.110 and 1997 c 376 s 6 & 1994 c 132 s 11;

21 (~~(13))~~ (12) RCW 39.10.900 and 1994 c 132 s 13; and

22 (~~(14))~~ (13) RCW 39.10.901 and 1994 c 132 s 14(~~(; and~~

23 ~~(15) RCW 39.10.902 and 1994 c 132 s 15)).~~

24 NEW SECTION. **Sec. 8.** The following acts or parts of acts, as now  
25 existing or hereafter amended, are each repealed, effective July 1,  
26 2004:

27 (1) RCW 39.10.020 and 2000 c . . . s 2 (section 2 of this act),  
28 1997 c 376 s 1, & 1994 c 132 s 2; and

29 (2) RCW 39.10.--- and 2000 c . . . s 1 (section 1 of this act).

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