
SENATE BILL 5221

State of Washington

56th Legislature

1999 Regular Session

By Senators Patterson and Winsley; by request of Alternative Public Works Methods Oversight Committee

Read first time 01/18/1999. Referred to Committee on State & Local Government.

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 minority and women business enterprise goals;

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

1 (j) A notice that the proposals are subject to the provisions of
2 RCW 39.10.100; and

3 (k) Other information relevant to the project.

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

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

20 (5) The public body shall issue no work orders until it has
21 approved, in consultation with the office of minority and women's
22 business enterprises or the equivalent local agency, a plan prepared by
23 the job order contractor for attaining applicable minority and women
24 business enterprise total job order contract goals that equitably
25 spreads certified women and minority business enterprise subcontracting
26 opportunities among the various subcontract disciplines.

27 (6) Job order contracts may be executed for an initial contract
28 term of not to exceed two years, with the option of extending or
29 renewing the job order contract for one year. All extensions or
30 renewals must be priced as provided in the request for proposals. The
31 extension or renewal must be mutually agreed to by the public body and
32 the job order contractor.

33 (7) The maximum total dollar amount that may be awarded under a job
34 order contract shall not exceed three million dollars in the first year
35 of the job order contract, five million dollars over the first two
36 years of the job order contract, and, if extended or renewed, eight
37 million dollars over the three years of the job order contract.

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

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

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

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

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

15 (13) The requirements of RCW 39.30.060 do not apply to requests for
16 proposals for job order contracts.

17 (14) Job order contractors shall pay prevailing wages for all work
18 that would otherwise be subject to the requirements of chapter 39.12
19 RCW. Prevailing wages for a job order contract must be determined as
20 of the time of the execution of the job order contract and any
21 extension or renewal.

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

30 (16) All job order contracts awarded under this section must be
31 executed before July 1, 2001, however the job order contract may be
32 extended or renewed as provided for in this section.

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

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

37 (1) "Alternative public works contracting procedure" means the
38 design-build and the general contractor/construction manager

1 contracting procedures authorized in RCW 39.10.050 and 39.10.060,
2 respectively.

3 (2) "Public body" means the state department of general
4 administration; the University of Washington; Washington State
5 University; every city with a population greater than one hundred fifty
6 thousand; every city authorized to use the design-build procedure for
7 a water system demonstration project under RCW 39.10.065(3); every
8 county with a population greater than four hundred fifty thousand; and
9 every port district with a population greater than five hundred
10 thousand.

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

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

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

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

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

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

30 The bond mentioned in RCW 39.08.010 shall be in an amount equal to
31 the full contract price agreed to be paid for such work or improvement,
32 except for job order contracts authorized in section 1 of this act, and
33 shall be to the state of Washington, except as otherwise provided in
34 RCW 39.08.100, and except in cases of cities and towns, in which cases
35 such municipalities may by general ordinance fix and determine the
36 amount of such bond and to whom such bond shall run: PROVIDED, The
37 same shall not be for a less amount than twenty-five percent of the
38 contract price of any such improvement, and may designate that the same

1 shall be payable to such city, and not to the state of Washington, and
2 all such persons mentioned in RCW 39.08.010 shall have a right of
3 action in his, her, or their own name or names on such bond for work
4 done by such laborers or mechanics, and for materials furnished or
5 provisions and goods supplied and furnished in the prosecution of such
6 work, or the making of such improvements: PROVIDED, That such persons
7 shall not have any right of action on such bond for any sum whatever,
8 unless within thirty days from and after the completion of the contract
9 with an acceptance of the work by the affirmative action of the board,
10 council, commission, trustees, officer, or body acting for the state,
11 county or municipality, or other public body, city, town or district,
12 the laborer, mechanic or subcontractor, or materialman, or person
13 claiming to have supplied materials, provisions or goods for the
14 prosecution of such work, or the making of such improvement, shall
15 present to and file with such board, council, commission, trustees or
16 body acting for the state, county or municipality, or other public
17 body, city, town or district, a notice in writing in substance as
18 follows:

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

21 Notice is hereby given that the undersigned (here insert the name
22 of the laborer, mechanic or subcontractor, or materialman, or person
23 claiming to have furnished labor, materials or provisions for or upon
24 such contract or work) has a claim in the sum of dollars
25 (here insert the amount) against the bond taken from (here
26 insert the name of the principal and surety or sureties upon such bond)
27 for the work of (here insert a brief mention or description
28 of the work concerning which said bond was taken).

29 (here to be signed)

30 Such notice shall be signed by the person or corporation making the
31 claim or giving the notice, and said notice, after being presented and
32 filed, shall be a public record open to inspection by any person, and
33 in any suit or action brought against such surety or sureties by any
34 such person or corporation to recover for any of the items hereinbefore
35 specified, the claimant shall be entitled to recover in addition to all
36 other costs, attorney's fees in such sum as the court shall adjudge
37 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
38 allowed in any suit or action brought or instituted before the

1 expiration of thirty days following the date of filing of the notice
2 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
3 itself of the provisions of RCW 39.08.010 through 39.08.030,
4 notwithstanding any charter provisions in conflict herewith: AND
5 PROVIDED FURTHER, That any city or town may impose any other or further
6 conditions and obligations in such bond as may be deemed necessary for
7 its proper protection in the fulfillment of the terms of the contract
8 secured thereby, and not in conflict herewith. However, the bond for
9 job order contracts authorized in section 1 of this act must be in an
10 amount not less than the dollar value of all open work orders.

11 **Sec. 4.** RCW 39.30.060 and 1995 c 94 s 1 are each amended to read
12 as follows:

13 Every invitation to bid on a contract that is expected to cost in
14 excess of one hundred thousand dollars for the construction,
15 alteration, or repair of any public building or public work of the
16 state or a state agency or municipality as defined under RCW 39.04.010,
17 an institution of higher education as defined under RCW 28B.10.016, or
18 a school district shall require each bidder to submit as part of the
19 bid, or within one hour after the published bid submittal time, the
20 names of the subcontractors whose subcontract amount is more than ten
21 percent of the bid price with whom the bidder, if awarded the contract,
22 will subcontract for performance of the work designated on the list to
23 be submitted with the bid. Failure to name such subcontractors shall
24 render the bidder's bid nonresponsive and, therefore, void. This
25 section does not apply to job order contract requests for proposals
26 under section 1 of this act.

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

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

34 **Sec. 6.** RCW 60.28.011 and 1994 c 101 s 1 are each amended to read
35 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 1999 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 1999 c . . . s 1 (section 1 of this act).

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