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HOUSE BILL 1153

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives D. Schmidt, Miloscia and Romero

Read first time 01/18/2001. Referred to Committee on State Government.

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

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

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

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

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

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

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

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

3 (2) Public bodies shall award job order contracts through a  
4 competitive process utilizing public requests for proposals. Public  
5 bodies shall make an effort to solicit proposals from a certified  
6 minority or certified woman-owned contractor to the extent permitted by  
7 the Washington state civil rights act, RCW 49.60.400. The public body  
8 shall publish, at least once in a legal newspaper of general  
9 circulation published in or as near as possible to that part of the  
10 county in which the public works will be done, a request for proposals  
11 for job order contracts and the availability and location of the  
12 request for proposal documents. The public body shall ensure that the  
13 request for proposal documents at a minimum includes:

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

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

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

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

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

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

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

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

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

3 (j) 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 that equitably spreads certified women and  
24 minority business enterprise subcontracting opportunities, to the  
25 extent permitted by the Washington state civil rights act, RCW  
26 49.60.400, 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, 2007, 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 2000 c 209 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;  
9 every port district with a population greater than five hundred  
10 thousand; and those school districts proposing projects that are  
11 considered and approved by the school district project review board  
12 under RCW 39.10.115.

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

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

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

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

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

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

32 The bond mentioned in RCW 39.08.010 shall be in an amount equal to  
33 the full contract price agreed to be paid for such work or improvement,  
34 except for job order contracts authorized in section 1 of this act, and  
35 shall be to the state of Washington, except as otherwise provided in  
36 RCW 39.08.100, and except in cases of cities and towns, in which cases  
37 such municipalities may by general ordinance fix and determine the  
38 amount of such bond and to whom such bond shall run: PROVIDED, The

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

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

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

31 (here to be signed) . . . . .

32 Such notice shall be signed by the person or corporation making the  
33 claim or giving the notice, and said notice, after being presented and  
34 filed, shall be a public record open to inspection by any person, and  
35 in any suit or action brought against such surety or sureties by any  
36 such person or corporation to recover for any of the items hereinbefore  
37 specified, the claimant shall be entitled to recover in addition to all  
38 other costs, attorney's fees in such sum as the court shall adjudge

1 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be  
2 allowed in any suit or action brought or instituted before the  
3 expiration of thirty days following the date of filing of the notice  
4 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail  
5 itself of the provisions of RCW 39.08.010 through 39.08.030,  
6 notwithstanding any charter provisions in conflict herewith: AND  
7 PROVIDED FURTHER, That any city or town may impose any other or further  
8 conditions and obligations in such bond as may be deemed necessary for  
9 its proper protection in the fulfillment of the terms of the contract  
10 secured thereby, and not in conflict herewith. However, the bond for  
11 job order contracts authorized in section 1 of this act must be in an  
12 amount not less than the dollar value of all open work orders.

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

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

1        This section does not apply to job order contract requests for  
2 proposals under section 1 of this act.

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

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

10       **Sec. 6.** RCW 60.28.011 and 2000 c 185 s 1 are each amended to read  
11 as follows:

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

18        (2) Every person performing labor or furnishing supplies toward the  
19 completion of a public improvement contract shall have a lien upon  
20 moneys reserved by a public body under the provisions of a public  
21 improvement contract. However, the notice of the lien of the claimant  
22 shall be given within forty-five days of completion of the contract  
23 work, and in the manner provided in RCW 39.08.030.

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

27        (a) After completion of all contract work other than landscaping,  
28 the contractor may request that the public body release and pay in full  
29 the amounts retained during the performance of the contract, and sixty  
30 days thereafter the public body must release and pay in full the  
31 amounts retained (other than continuing retention of five percent of  
32 the moneys earned for landscaping) subject to the provisions of  
33 chapters 39.12 and 60.28 RCW.

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



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

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

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

8 (c) Placed in escrow with a bank or trust company by the public  
9 body. When the moneys reserved are placed in escrow, the public body  
10 shall issue a check representing the sum of the moneys reserved payable  
11 to the bank or trust company and the contractor jointly. This check  
12 shall be converted into bonds and securities chosen by the contractor  
13 and approved by the public body and the bonds and securities shall be  
14 held in escrow. Interest on the bonds and securities shall be paid to  
15 the contractor as the interest accrues.

16 (5) The contractor or subcontractor may withhold payment of not  
17 more than five percent from the moneys earned by any subcontractor or  
18 sub-subcontractor or supplier contracted with by the contractor to  
19 provide labor, materials, or equipment to the public project. Whenever  
20 the contractor or subcontractor reserves funds earned by a  
21 subcontractor or sub-subcontractor or supplier, the contractor or  
22 subcontractor shall pay interest to the subcontractor or sub-  
23 subcontractor or supplier at a rate equal to that received by the  
24 contractor or subcontractor from reserved funds.

25 (6) A contractor may submit a bond for all or any portion of the  
26 contract retainage in a form acceptable to the public body and from a  
27 bonding company meeting standards established by the public body. The  
28 public body shall accept a bond meeting these requirements unless the  
29 public body can demonstrate good cause for refusing to accept it. This  
30 bond and any proceeds therefrom are subject to all claims and liens and  
31 in the same manner and priority as set forth for retained percentages  
32 in this chapter. The public body shall release the bonded portion of  
33 the retained funds to the contractor within thirty days of accepting  
34 the bond from the contractor. Whenever a public body accepts a bond in  
35 lieu of retained funds from a contractor, the contractor shall accept  
36 like bonds from any subcontractors or suppliers from which the  
37 contractor has retained funds. The contractor shall then release the  
38 funds retained from the subcontractor or supplier to the subcontractor

1 or supplier within thirty days of accepting the bond from the  
2 subcontractor or supplier.

3 (7) If the public body administering a contract, after a  
4 substantial portion of the work has been completed, finds that an  
5 unreasonable delay will occur in the completion of the remaining  
6 portion of the contract for any reason not the result of a breach  
7 thereof, it may, if the contractor agrees, delete from the contract the  
8 remaining work and accept as final the improvement at the stage of  
9 completion then attained and make payment in proportion to the amount  
10 of the work accomplished and in this case any amounts retained and  
11 accumulated under this section shall be held for a period of sixty days  
12 following the completion. In the event that the work is terminated  
13 before final completion as provided in this section, the public body  
14 may thereafter enter into a new contract with the same contractor to  
15 perform the remaining work or improvement for an amount equal to or  
16 less than the cost of the remaining work as was provided for in the  
17 original contract without advertisement or bid. The provisions of this  
18 chapter are exclusive and shall supersede all provisions and  
19 regulations in conflict herewith.

20 (8) Whenever the department of transportation has contracted for  
21 the construction of two or more ferry vessels, sixty days after  
22 completion of all contract work on each ferry vessel, the department  
23 must release and pay in full the amounts retained in connection with  
24 the construction of the vessel subject to the provisions of RCW  
25 60.28.020 and chapter 39.12 RCW. However, the department of  
26 transportation may at its discretion condition the release of funds  
27 retained in connection with the completed ferry upon the contractor  
28 delivering a good and sufficient bond with two or more sureties, or  
29 with a surety company, in the amount of the retained funds to be  
30 released to the contractor, conditioned that no taxes shall be  
31 certified or claims filed for work on the ferry after a period of sixty  
32 days following completion of the ferry; and if taxes are certified or  
33 claims filed, recovery may be had on the bond by the department of  
34 revenue and the materialmen and laborers filing claims.

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

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

5 (11) This subsection applies only to a public body that has  
6 contracted for the construction of a facility using the general  
7 contractor/construction manager procedure, as defined under RCW  
8 39.10.060. If the work performed by a subcontractor on the project has  
9 been completed within the first half of the time provided in the  
10 general contractor/construction manager contract for completing the  
11 work, the public body may accept the completion of the subcontract.  
12 The public body must give public notice of this acceptance. After a  
13 forty-five day period for giving notice of liens, and compliance with  
14 the retainage release procedures in RCW 60.28.021, the public body may  
15 release that portion of the retained funds associated with the  
16 subcontract. Claims against the retained funds after the forty-five  
17 day period are not valid.

18 (12) Unless the context clearly requires otherwise, the definitions  
19 in this subsection apply throughout this section.

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

22 (b) "Person" means a person or persons, mechanic, subcontractor, or  
23 materialperson who performs labor or provides materials for a public  
24 improvement contract, and any other person who supplies the person with  
25 provisions or supplies for the carrying on of a public improvement  
26 contract.

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

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

32 NEW SECTION. Sec. 7. A new section is added to chapter 39.10 RCW  
33 to read as follows:

34 The following acts or parts of acts, as now existing or hereafter  
35 amended, are each repealed, effective July 1, 2007:

36 RCW 39.10.-- and 2001 c . . . s 1 (section 1 of this act).

1        NEW SECTION.    **Sec. 8.**    A new section is added to chapter 39.12 RCW  
2 to read as follows:

3        The following acts or parts of acts, as now existing or hereafter  
4 amended, are each repealed, effective July 1, 2007:

5        RCW 39.12.-- and 2001 c . . . s 5 (section 5 of this act).

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