

HOUSE BILL REPORT

SB 5801

As Reported by House Committee On:

State Government

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

Brief Description: Regulating job order contracting for public works.

Sponsors: Senators Winsley, Benton, Kastama, Reardon and Schmidt.

Brief History:

Committee Activity:

State Government: 4/1/03, 4/3/03 [DPA].

Brief Summary of Bill (As Amended by House Committee)

- Allows public bodies authorized to use alternative public works contracting procedures to award contracts using the job order contract process.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Hunt, McDermott, Nixon, Tom and Wallace.

Minority Report: Do not pass. Signed by 2 members: Representatives Armstrong, Ranking Minority Member; and Shabro, Assistant Ranking Minority Member.

Staff: Marsha Reilly (786-7135).

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 July 1, 2007.

Agencies authorized to use alternative public works contracting procedures include: the Department of General Administration; the University of Washington; Washington State University; cities with a population in excess of 75,000 (and any public authority chartered by such city under RCW 35.21.730 through 35.21.755); counties with a population of greater than 450,000; public utility districts with revenues in excess of \$23 million per year; port districts with revenues in excess of \$15 million per year; and school districts proposing projects that are considered and approved by the School District Project Review Board.

Summary of Amended 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, 2007.

A job order contract is a contract where a contractor agrees to perform an indefinite quantity of public works jobs as defined under individual work orders over a fixed period of time.

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 to determine accepted industry standards for materials, labor, equipment, overhead, and bonds, 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.

The job order contractor is required to submit a plan that would equitably spread subcontracting opportunities to certified women and minority businesses. The public body will not issue any work orders until the job order contractor's plan has been approved.

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, 2007, but a job order contract existing at that date 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 2,000 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 facility constructions in the state of Washington.

Individual work orders are treated as separate contracts. Therefore, requirements for performance bonds, prevailing wages, retainage requirements, and interest paid on public contracts apply to work orders.

Amended Bill Compared to Original Bill:

The amended bill requires that prevailing wage law apply to individual work orders.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Job order contracting is an incubator for small business. It has been used successfully on federal projects and in other states for years. Job order contracting works very well in the military environment. It is efficient, cost effective, and more responsive to events such as earthquakes.

(In support with concerns) REBOUND supports the bill but has concerns. Under this bill, only the primary job order contract in designated types of construction projects is recognized. All subcontracts meeting certain specified criteria will be granted by purchase order. The understanding is that purchase orders are no longer considered to be contracts in relationship to prevailing wage law. Any exemption from prevailing wage law will result in a negative fiscal impact on the Prevailing Wage/Employment Standards Section of the Department of Labor and Industries (Department). Estimates indicate that as much as 70 percent of all revenue provided to the Department from required filings comes from contracts of \$250,000 or less. The financial impact to the Department would be approximately \$400,000.

Testimony Against: None.

Testified: (In support) Senator Winsley, prime sponsor; Doug Holen, University of Washington; Charlie Brown, King County School Coalition; and Marilyn Eleno, Corps of Engineers.

(In support with concerns) Miriam Israel Moses, REBOUND.