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HOUSE BILL 1437

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Haigh, Nixon, Green and Miloscia; by request of Department of General Administration

Read first time 01/24/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to authorizing the department of general  
2 administration to enter into additional job order contracts; and  
3 amending RCW 39.10.130.

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

5 **Sec. 1.** RCW 39.10.130 and 2003 c 301 s 1 are each amended to read  
6 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, except that the department of general  
13 administration may have no more than ten job order contracts in effect  
14 at any one time.

15 (12) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
16 each work order issued shall be treated as a separate contract. The  
17 alternate filing provisions of RCW 39.12.040(2) shall apply to each  
18 work order that otherwise meets the eligibility requirements of RCW  
19 39.12.040(2).

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

22 (14) Job order contractors shall pay prevailing wages for all work  
23 that would otherwise be subject to the requirements of chapter 39.12  
24 RCW. Prevailing wages for all work performed pursuant to each work  
25 order must be the rates in effect at the time the individual work order  
26 is issued.

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

35 (16) All job order contracts awarded under this section must be  
36 executed before July 1, 2007, however the job order contract may be  
37 extended or renewed as provided for in this section.

1           (17) For purposes of this section, "public body" includes any  
2 school district.

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