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HOUSE BILL 2822

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State of Washington

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By Representatives Santos, Pettigrew, Ryu, Walkinshaw, Ortiz-Self, Gregerson, Moscoso, Tarleton, Reykdal, McBride, Morris, Stanford, and Hudgins

Read first time 01/21/16. Referred to Committee on Capital Budget.

1 AN ACT Relating to restoring the fair treatment of underserved  
2 groups in public employment, education, and contracting; amending RCW  
3 28B.20.744, 39.10.430, 39.10.450, and 49.04.100; and repealing RCW  
4 49.60.400 and 49.60.401.

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

6 NEW SECTION. **Sec. 1.** The following acts or parts of acts are  
7 each repealed:

8 (1) RCW 49.60.400 (Discrimination, preferential treatment  
9 prohibited) and 2013 c 242 s 7 & 1999 c 3 s 1; and

10 (2) RCW 49.60.401 (Short title—1999 c 3) and 1999 c 3 s 2.

11 **Sec. 2.** RCW 28B.20.744 and 2015 3rd sp.s. c 3 s 7043 are each  
12 amended to read as follows:

13 (1) This section provides an alternative process for awarding  
14 contracts for construction, building, renovation, remodeling,  
15 alteration, repair, or improvement of university buildings and  
16 facilities in which critical patient care or highly specialized  
17 medical research is located. These provisions may be used, in lieu of  
18 other procedures to award contracts for such work, when the estimated  
19 cost of the work is equal to or less than five million dollars and  
20 the project involves construction, renovation, remodeling, or

1 alteration of improvements within a building that is used directly  
2 for critical patient care or highly specialized medical research.

3 (2) The university may create a single critical patient care or  
4 specialized medical research facilities roster or may create multiple  
5 critical patient care or specialized medical research facilities  
6 rosters for different trade specialties or categories of anticipated  
7 work. At least once a year, the university shall publish in a  
8 newspaper of general circulation a notice of the existence of the  
9 roster or rosters and solicit a statement of qualifications from  
10 contractors who wish to be on the roster or rosters of prime  
11 contractors. In addition, qualified contractors shall be added to the  
12 roster or rosters at any time they submit a written request,  
13 necessary records, and meet the qualifications established by the  
14 university. The university may require eligible contractors desiring  
15 to be placed on a roster to keep current records of any applicable  
16 licenses, certifications, registrations, bonding, insurance, or other  
17 appropriate matters on file with the university as a condition of  
18 being placed on a roster or rosters. Placement on a roster shall be  
19 on the basis of qualifications.

20 (3) The public solicitation of qualifications shall include but  
21 not be limited to:

22 (a) A description of the types of projects to be completed and  
23 where possible may include programmatic, performance, and technical  
24 requirements and specifications;

25 (b) The reasons for using the critical patient care and  
26 specialized medical research roster process;

27 (c) A description of the qualifications to be required of a  
28 contractor, including submission of an accident prevention program;

29 (d) A description of the process the university will use to  
30 evaluate qualifications, including evaluation factors and the  
31 relative weight of factors;

32 (e) The form of the contract to be awarded;

33 (f) A description of the administrative process by which the  
34 required qualifications, evaluation process, and project types may be  
35 appealed; and

36 (g) A description of the administrative process by which  
37 decisions of the university may be appealed.

38 (4) The university shall establish a committee to evaluate the  
39 contractors submitting qualifications. Evaluation criteria for

1 selection of the contractor or contractors to be included on a roster  
2 shall include, but not be limited to:

3 (a) Ability of a contractor's professional personnel;

4 (b) A contractor's past performance on similar projects,  
5 including but not limited to medical facilities, and involving either  
6 negotiated work or other public works contracts;

7 (c) The contractor's ability to meet time and budget  
8 requirements;

9 (d) The contractor's ability to provide preconstruction services,  
10 as appropriate;

11 (e) The contractor's capacity to successfully complete the  
12 project;

13 (f) The contractor's approach to executing projects;

14 (g) The contractor's approach to safety and the contractor's  
15 safety history; and

16 (h) The contractor's record of performance, integrity, judgment,  
17 and skills.

18 (5) Contractors meeting the evaluation committee's criteria for  
19 selection must be placed on the applicable roster or rosters.

20 (6) When a project is selected for delivery through this roster  
21 process, the university must establish a procedure for securing  
22 written quotations from all contractors on a roster to assure that a  
23 competitive price is established. Invitations for quotations shall  
24 include an estimate of the scope and nature of the work to be  
25 performed as well as materials and equipment to be furnished. Plans  
26 and specifications must be included in the invitation but may not be  
27 detailed. Award of a project must be made to the responsible bidder  
28 submitting the lowest responsive bid.

29 (7) The university shall make an effort to solicit proposals from  
30 certified minority or certified woman-owned contractors (~~to the~~  
31 ~~extent permitted by the Washington state civil rights act, RCW~~  
32 ~~49.60.400~~)).

33 (8) Beginning in September 2010 and every other September  
34 thereafter, the university shall provide a report to the capital  
35 projects advisory review board which must, at a minimum, include a  
36 list of rosters used, contracts awarded, and a description of  
37 outreach to and participation by women and minority-owned businesses.

38 (9) Beginning in September 2015 and every September thereafter,  
39 the university shall report to the office of minority and women's  
40 business enterprises and to the appropriate legislative fiscal

1 committees the number of qualified women and minority-owned business  
2 contractors on the roster or rosters and the number of contracts  
3 awarded to women and minority-owned businesses.

4 **Sec. 3.** RCW 39.10.430 and 2007 c 494 s 402 are each amended to  
5 read as follows:

6 (1) Job order contracts shall be awarded through a competitive  
7 process using public requests for proposals.

8 (2) The public body shall make an effort to solicit proposals  
9 from certified minority or certified woman-owned contractors (~~to the~~  
10 ~~extent permitted by the Washington state civil rights act, RCW~~  
11 ~~49.60.400~~)).

12 (3) The public body shall publish, at least once in a statewide  
13 publication and legal newspaper of general circulation published in  
14 every county in which the public works project is anticipated, a  
15 request for proposals for job order contracts and the availability  
16 and location of the request for proposal documents. The public body  
17 shall ensure that the request for proposal documents at a minimum  
18 includes:

19 (a) A detailed description of the scope of the job order contract  
20 including performance, technical requirements and specifications,  
21 functional and operational elements, minimum and maximum work order  
22 amounts, duration of the contract, and options to extend the job  
23 order contract;

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

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

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

27 (e) The minimum contracted amount committed to the selected job  
28 order contractor;

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

1 the job order contract; recent, current, and projected workloads of  
2 the proposer; location; and the concept of the proposal;

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

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

6 (i) A notice that the proposals are subject to RCW 39.10.470; and

7 (j) Other information relevant to the project.

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

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

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

28 **Sec. 4.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to  
29 read as follows:

30 (1) The maximum dollar amount for a work order is three hundred  
31 fifty thousand dollars.

32 (2) All work orders issued for the same project shall be treated  
33 as a single work order for purposes of the dollar limit on work  
34 orders.

35 (3) No more than twenty percent of the dollar value of a work  
36 order may consist of items of work not contained in the unit price  
37 book.

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

1 (5) A public body may issue no work orders under a job order  
2 contract until it has approved, in consultation with the office of  
3 minority and women's business enterprises or the equivalent local  
4 agency, a plan prepared by the job order contractor that equitably  
5 spreads certified women and minority business enterprise  
6 subcontracting opportunities(~~(, to the extent permitted by the~~  
7 ~~Washington state civil rights act, RCW 49.60.400,)~~) among the various  
8 subcontract disciplines.

9 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,  
10 each work order issued shall be treated as a separate contract. The  
11 alternate filing provisions of RCW 39.12.040(2) apply to each work  
12 order that otherwise meets the eligibility requirements of RCW  
13 39.12.040(2).

14 (7) The job order contract shall not be used for the procurement  
15 of architectural or engineering services not associated with specific  
16 work orders. Architectural and engineering services shall be procured  
17 in accordance with RCW 39.80.040.

18 **Sec. 5.** RCW 49.04.100 and 2001 c 204 s 7 are each amended to  
19 read as follows:

20 As provided by the rules adopted by the apprenticeship council,  
21 apprenticeship programs entered into under authority of this chapter  
22 with five or more apprentices shall conform with 29 C.F.R. Part 30 to  
23 the extent required by federal law (~~(while advancing the~~  
24 ~~nondiscriminatory principles of the Washington state civil rights~~  
25 ~~act, RCW 49.60.400)~~).

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