
HOUSE BILL 2412

State of Washington

55th Legislature

1998 Regular Session

By Representatives Romero and D. Schmidt

Read first time 01/13/98. Referred to Committee on Capital Budget.

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 and 39.10.---

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 utilize 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 property maintenance or repair required at public facilities through
14 the use of unit price books and work orders by eliminating time-
15 consuming, costly aspects of the traditional public works process,
16 which require separate 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; and

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.

3 (2) Public bodies shall award job order contracts through a
4 competitive process utilizing public requests for proposals. The
5 public body shall publish, at least once in a legal newspaper of
6 general circulation published in or as near as possible to that part of
7 the county in which the public works will be done, a request for
8 proposals for job order contracts and the availability and location of
9 the request for proposal documents. The public body shall ensure that
10 the request for proposal documents at a minimum includes:

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

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

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

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

19 (e) The minimum contracted amount committed to the selected job
20 order contractor;

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

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

34 (h) The minority and women business enterprise goals;

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

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

39 (k) Other information relevant to the project.

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

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

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

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

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

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

35 (9) The requirements of RCW 39.30.060 do not apply to requests for
36 proposals for job order contracts.

37 (10) Job order contractors shall pay prevailing wages for all work
38 that would otherwise be subject to the requirements of chapter 39.12
39 RCW. Prevailing wages for a job order contract must be determined as

1 of the time of the execution of the job order contract and any
2 extension or renewal.

3 (11) If, in the initial contract term, the public body, at no fault
4 of the job order contractor, fails to issue the minimum amount of work
5 orders stated in the public request for proposals, the public body
6 shall pay the contractor an amount equal to the difference between the
7 minimum work order amount and the actual total of the work orders
8 issued multiplied by an appropriate percentage for overhead and profit
9 contained in the general conditions for Washington state facility
10 construction. This will be the contractor's sole remedy.

11 (12) This section expires July 1, 2003.

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

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Alternative public works contracting procedure" means the
17 design-build and the general contractor/construction manager
18 contracting procedures authorized in RCW 39.10.050 and 39.10.060,
19 respectively.

20 (2) "Public body" means the state department of general
21 administration; the University of Washington; Washington State
22 University; every city with a population greater than one hundred fifty
23 thousand; every city authorized to use the design-build procedure for
24 a water system demonstration project under RCW 39.10.065(3); every
25 county with a population greater than four hundred fifty thousand; and
26 every port district with a population greater than five hundred
27 thousand.

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

30 (4) "Job order contract" means a contract between a public body and
31 a registered or licensed contractor in which the contractor agrees to
32 a fixed period, indefinite quantity delivery order contract which
33 provides for the use of negotiated, definitive work orders for public
34 works or maintenance.

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

37 (6) "Unit price book" means a book containing specific prices,
38 based on generally accepted industry standards and information, where

1 available, for various items of work to be performed by the job order
2 contractor. The prices may include: All the costs of materials;
3 labor; equipment; overhead, including bonding costs; and profit for
4 performing the items of work.

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

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

9 The bond mentioned in RCW 39.08.010 shall be in an amount equal to
10 the full contract price agreed to be paid for such work or improvement,
11 except for job order contracts authorized in section 1 of this act, and
12 shall be to the state of Washington, except as otherwise provided in
13 RCW 39.08.100, and except in cases of cities and towns, in which cases
14 such municipalities may by general ordinance fix and determine the
15 amount of such bond and to whom such bond shall run: PROVIDED, The
16 same shall not be for a less amount than twenty-five percent of the
17 contract price of any such improvement, and may designate that the same
18 shall be payable to such city, and not to the state of Washington, and
19 all such persons mentioned in RCW 39.08.010 shall have a right of
20 action in his, her, or their own name or names on such bond for work
21 done by such laborers or mechanics, and for materials furnished or
22 provisions and goods supplied and furnished in the prosecution of such
23 work, or the making of such improvements: PROVIDED, That such persons
24 shall not have any right of action on such bond for any sum whatever,
25 unless within thirty days from and after the completion of the contract
26 with an acceptance of the work by the affirmative action of the board,
27 council, commission, trustees, officer, or body acting for the state,
28 county or municipality, or other public body, city, town or district,
29 the laborer, mechanic or subcontractor, or materialman, or person
30 claiming to have supplied materials, provisions or goods for the
31 prosecution of such work, or the making of such improvement, shall
32 present to and file with such board, council, commission, trustees or
33 body acting for the state, county or municipality, or other public
34 body, city, town or district, a notice in writing in substance as
35 follows:

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

1 Notice is hereby given that the undersigned (here insert the name
2 of the laborer, mechanic or subcontractor, or materialman, or person
3 claiming to have furnished labor, materials or provisions for or upon
4 such contract or work) has a claim in the sum of dollars
5 (here insert the amount) against the bond taken from (here
6 insert the name of the principal and surety or sureties upon such bond)
7 for the work of (here insert a brief mention or description
8 of the work concerning which said bond was taken).
9 (here to be signed)

10 Such notice shall be signed by the person or corporation making the
11 claim or giving the notice, and said notice, after being presented and
12 filed, shall be a public record open to inspection by any person, and
13 in any suit or action brought against such surety or sureties by any
14 such person or corporation to recover for any of the items hereinbefore
15 specified, the claimant shall be entitled to recover in addition to all
16 other costs, attorney's fees in such sum as the court shall adjudge
17 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
18 allowed in any suit or action brought or instituted before the
19 expiration of thirty days following the date of filing of the notice
20 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
21 itself of the provisions of RCW 39.08.010 through 39.08.030,
22 notwithstanding any charter provisions in conflict herewith: AND
23 PROVIDED FURTHER, That any city or town may impose any other or further
24 conditions and obligations in such bond as may be deemed necessary for
25 its proper protection in the fulfillment of the terms of the contract
26 secured thereby, and not in conflict herewith. However, the bond for
27 job order contracts authorized in section 1 of this act must be in an
28 amount not less than the dollar value of all open work orders.

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

31 Every invitation to bid on a contract that is expected to cost in
32 excess of one hundred thousand dollars for the construction,
33 alteration, or repair of any public building or public work of the
34 state or a state agency or municipality as defined under RCW 39.04.010,
35 an institution of higher education as defined under RCW 28B.10.016, or
36 a school district shall require each bidder to submit as part of the
37 bid, or within one hour after the published bid submittal time, the
38 names of the subcontractors whose subcontract amount is more than ten

1 percent of the bid price with whom the bidder, if awarded the contract,
2 will subcontract for performance of the work designated on the list to
3 be submitted with the bid. Failure to name such subcontractors shall
4 render the bidder's bid nonresponsive and, therefore, void. This
5 section does not apply to job order contract requests for proposals
6 under section 1 of this act.

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

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

14 **Sec. 6.** RCW 60.28.011 and 1994 c 101 s 1 are each amended to read
15 as follows:

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

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

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

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

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

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

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

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

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

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

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

1 like bonds from any subcontractors or suppliers from which the
2 contractor has retained funds. The contractor shall then release the
3 funds retained from the subcontractor or supplier to the subcontractor
4 or supplier within thirty days of accepting the bond from the
5 subcontractor or supplier.

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

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

38 (9) Except as provided in subsection (1) of this section,
39 reservation by a public body for any purpose from the moneys earned by

1 a contractor by fulfilling its responsibilities under public
2 improvement contracts is prohibited.

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

7 (11) Unless the context clearly requires otherwise, the definitions
8 in this subsection apply throughout this section.

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

11 (b) "Person" means a person or persons, mechanic, subcontractor, or
12 materialperson who performs labor or provides materials for a public
13 improvement contract, and any other person who supplies the person with
14 provisions or supplies for the carrying on of a public improvement
15 contract.

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

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

21 **Sec. 7.** RCW 39.10.902 and 1997 c 376 s 8 are each amended to read
22 as follows:

23 The following acts or parts of acts, as now existing or hereafter
24 amended, are each repealed, effective July 1, 2001:

25 (1) RCW 39.10.010 and 1994 c 132 s 1;

26 (2) (~~RCW 39.10.020 and 1994 c 132 s 2;~~

27 ~~(3))~~ RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;

28 ~~((4))~~ (3) RCW 39.10.040 and 1994 c 132 s 4;

29 ~~((5))~~ (4) RCW 39.10.050 and 1997 c 376 s 3 & 1994 c 132 s 5;

30 ~~((6))~~ (5) RCW 39.10.060 and 1997 c 376 s 4, 1996 c 18 s 6, & 1994
31 c 132 s 6;

32 ~~((7))~~ (6) RCW 39.10.065 and 1997 c 376 s 5;

33 ~~((8))~~ (7) RCW 39.10.070 and 1994 c 132 s 7;

34 ~~((9))~~ (8) RCW 39.10.080 and 1994 c 132 s 8;

35 ~~((10))~~ (9) RCW 39.10.090 and 1994 c 132 s 9;

36 ~~((11))~~ (10) RCW 39.10.100 and 1994 c 132 s 10;

37 ~~((12))~~ (11) RCW 39.10.110 and 1997 c 376 s 6 & 1994 c 132 s 11;

38 ~~((13))~~ (12) RCW 39.10.900 and 1994 c 132 s 13; and

1 (~~(14)~~) (13) RCW 39.10.901 and 1994 c 132 s 14(~~(; and~~
2 ~~(15) RCW 39.10.902 and 1994 c 132 s 15)~~)).

3 NEW SECTION. **Sec. 8.** The following acts or parts of acts, as now
4 existing or hereafter amended, are each repealed, effective July 1,
5 2003:

6 (1) RCW 39.10.020 and 1998 c . . . s 2 (section 2 of this act),
7 1997 c 376 s 1, & 1994 c 132 s 2; and

8 (2) RCW 39.10.-- and 1998 c . . . s 1 (section 1 of this act).

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