

State Government Committee

HB 1153

Brief Description: *Regulating job order contracting for public works.*

Sponsors: *Representatives D. Schmidt, Miloscia and Romero.*

Brief Summary of Bill

- *Allows public bodies authorized to use alternative public works contracting procedures to award contracts using a new process called the job order contract process where a contract is awarded for an indefinite quantity of work over a fixed time period on the basis of definite work orders, with charges being paid based upon prices in a unit price book.*

Hearing Date: *2/12/01*

Staff: *Steve Lundin (786-7127).*

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" (GCCM) procedure.

The Department of General Administration, University of Washington, Washington State University, every county with a population of greater than 450,000 (King, Pierce, and Snohomish counties), every city with a population in excess of 150,000 (Seattle, Tacoma, and Spokane), and any port district with a population in excess of 500,000 (Port of Seattle, and Port of Tacoma) may use the alternative public works contracting procedures.

Summary of Bill:

Public bodies authorized to use the alternative public works contracting procedures may award contracts for public works using a new procedure called job order contracts. The authority to use job order contracts terminates on July 1, 2007.

A job order contract is a competitive bidding process for awarding contracts to perform an indefinite quantity of work over a fixed time period on the basis of definite work orders, with charges being paid based upon prices in a unit price book. A unit price book contains specific prices for various items of work based on generally accepted industry standards and information, including costs of materials, labor, equipment, and overhead, as well as profit to be paid for work that is performed.

A. 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.

Work orders under a job order contract may not be made until the public body, in consultation with the Minority and Women's Business Enterprises, has approved a plan by the contractor to equitably spread subcontracting opportunities among certified women and minority businesses, to the extent permitted by Initiative Measure No. 200.

A new permanent, enclosed building space that is constructed under this process may not exceed 2000 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 Washington State facility construction.

Requirements for performance bonds and interest that is paid on public contracts apply to each work order rather than the job order contract. Retainage requirements do not apply to either the job order contract or a work order made under a job order contract.

The requirement that subcontractors for heating, ventilation and air conditioning, plumbing, and electrical be listed by a general contractor on a public works project costing \$1 million or more within one hour of the published bid submittal time does not apply to a job order contract.

Job order contractors are required to pay prevailing wages for all work that otherwise would be subject to those requirements.

B. 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, and the minimum contracted amount committed to the selected job order contractor. An effort must be made to solicit proposals from a certified minority or woman-owned contractor to the extent permitted by Initiative Measure No. 200.

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.

Rulemaking Authority: *No express authority.*

Appropriation: *None.*

Fiscal Note: *Not Requested.*

Effective Date: *Ninety days after adjournment of session in which bill is passed.*