
SUBSTITUTE SENATE BILL 5062

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on State & Local Government (originally sponsored by Senators Patterson and Winsley)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to job order contracting for public works; amending
2 RCW 39.10.020, 39.08.030, 39.30.060, and 60.28.011; adding new sections
3 to chapter 39.10 RCW; and adding new sections to chapter 39.12 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.10 RCW
6 to read 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.

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

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

17 (14) Job order contractors shall pay prevailing wages for all work
18 that would otherwise be subject to the requirements of chapter 39.12
19 RCW. Prevailing wages for a job order contract must be determined as
20 of the time of the execution of the job order contract and any
21 extension or renewal.

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

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

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

35 **Sec. 2.** RCW 39.10.020 and 2000 c 209 s 1 are each amended to read
36 as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter.

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

5 (2) "Public body" means the state department of general
6 administration; the University of Washington; Washington State
7 University; every city with a population greater than one hundred fifty
8 thousand; every city authorized to use the design-build procedure for
9 a water system demonstration project under RCW 39.10.065(3); every
10 county with a population greater than four hundred fifty thousand;
11 every port district with a population greater than five hundred
12 thousand; and those school districts proposing projects that are
13 considered and approved by the school district project review board
14 under RCW 39.10.115.

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

17 (4) "Job order contract" means a contract between a public body or
18 any school district and a registered or licensed contractor in which
19 the contractor agrees to a fixed period, indefinite quantity delivery
20 order contract which provides for the use of negotiated, definitive
21 work orders for public works as defined in RCW 39.04.010.

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

24 (6) "Unit price book" means a book containing specific prices,
25 based on generally accepted industry standards and information, where
26 available, for various items of work to be performed by the job order
27 contractor. The prices may include: All the costs of materials;
28 labor; equipment; overhead, including bonding costs; and profit for
29 performing the items of work.

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

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

34 The bond mentioned in RCW 39.08.010 shall be in an amount equal to
35 the full contract price agreed to be paid for such work or improvement,
36 except for job order contracts authorized in section 1 of this act, and
37 shall be to the state of Washington, except as otherwise provided in
38 RCW 39.08.100, and except in cases of cities and towns, in which cases

1 such municipalities may by general ordinance fix and determine the
2 amount of such bond and to whom such bond shall run: PROVIDED, The
3 same shall not be for a less amount than twenty-five percent of the
4 contract price of any such improvement, and may designate that the same
5 shall be payable to such city, and not to the state of Washington, and
6 all such persons mentioned in RCW 39.08.010 shall have a right of
7 action in his, her, or their own name or names on such bond for work
8 done by such laborers or mechanics, and for materials furnished or
9 provisions and goods supplied and furnished in the prosecution of such
10 work, or the making of such improvements: PROVIDED, That such persons
11 shall not have any right of action on such bond for any sum whatever,
12 unless within thirty days from and after the completion of the contract
13 with an acceptance of the work by the affirmative action of the board,
14 council, commission, trustees, officer, or body acting for the state,
15 county or municipality, or other public body, city, town or district,
16 the laborer, mechanic or subcontractor, or materialman, or person
17 claiming to have supplied materials, provisions or goods for the
18 prosecution of such work, or the making of such improvement, shall
19 present to and file with such board, council, commission, trustees or
20 body acting for the state, county or municipality, or other public
21 body, city, town or district, a notice in writing in substance as
22 follows:

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

25 Notice is hereby given that the undersigned (here insert the name
26 of the laborer, mechanic or subcontractor, or materialman, or person
27 claiming to have furnished labor, materials or provisions for or upon
28 such contract or work) has a claim in the sum of dollars
29 (here insert the amount) against the bond taken from (here
30 insert the name of the principal and surety or sureties upon such bond)
31 for the work of (here insert a brief mention or description
32 of the work concerning which said bond was taken).

33 (here to be signed)

34 Such notice shall be signed by the person or corporation making the
35 claim or giving the notice, and said notice, after being presented and
36 filed, shall be a public record open to inspection by any person, and
37 in any suit or action brought against such surety or sureties by any
38 such person or corporation to recover for any of the items hereinbefore

1 specified, the claimant shall be entitled to recover in addition to all
2 other costs, attorney's fees in such sum as the court shall adjudge
3 reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be
4 allowed in any suit or action brought or instituted before the
5 expiration of thirty days following the date of filing of the notice
6 hereinbefore mentioned: PROVIDED FURTHER, That any city may avail
7 itself of the provisions of RCW 39.08.010 through 39.08.030,
8 notwithstanding any charter provisions in conflict herewith: AND
9 PROVIDED FURTHER, That any city or town may impose any other or further
10 conditions and obligations in such bond as may be deemed necessary for
11 its proper protection in the fulfillment of the terms of the contract
12 secured thereby, and not in conflict herewith. However, the bond for
13 job order contracts authorized in section 1 of this act must be in an
14 amount not less than the dollar value of all open work orders.

15 **Sec. 4.** RCW 39.30.060 and 1999 c 109 s 1 are each amended to read
16 as follows:

17 Every invitation to bid on a contract that is expected to cost one
18 million dollars or more for the construction, alteration, or repair of
19 any public building or public work of the state or a state agency or
20 municipality as defined under RCW 39.04.010 or an institution of higher
21 education as defined under RCW 28B.10.016 shall require each bidder to
22 submit as part of the bid, or within one hour after the published bid
23 submittal time, the names of the subcontractors with whom the bidder,
24 if awarded the contract, will subcontract for performance of the work
25 of heating, ventilation and air conditioning, plumbing as described in
26 chapter 18.106 RCW, and electrical as described in chapter 19.28 RCW,
27 or to name itself for the work. The bidder shall not list more than
28 one subcontractor for each category of work identified, unless
29 subcontractors vary with bid alternates, in which case the bidder must
30 indicate which subcontractor will be used for which alternate. Failure
31 of the bidder to submit as part of the bid the names of such
32 subcontractors or to name itself to perform such work or the naming of
33 two or more subcontractors to perform the same work shall render the
34 bidder's bid nonresponsive and, therefore, void. The requirement of
35 this section to name the bidder's proposed heating, ventilation and air
36 conditioning, plumbing, and electrical subcontractors applies only to
37 proposed heating, ventilation and air conditioning, plumbing, and

1 electrical subcontractors who will contract directly with the general
2 contractor submitting the bid to the public entity.

3 This section does not apply to job order contract requests for
4 proposals under section 1 of this act.

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

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

12 **Sec. 6.** RCW 60.28.011 and 2000 c 185 s 1 are each amended to read
13 as follows:

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

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

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

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

36 (b) Sixty days after completion of all contract work the public
37 body must release and pay in full the amounts retained during the

1 performance of the contract subject to the provisions of chapters 39.12
2 and 60.28 RCW.

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

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

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

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

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

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

1 funds retained from the subcontractor or supplier to the subcontractor
2 or supplier within thirty days of accepting the bond from the
3 subcontractor or supplier.

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

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

36 (9) Except as provided in subsection (1) of this section,
37 reservation by a public body for any purpose from the moneys earned by
38 a contractor by fulfilling its responsibilities under public
39 improvement contracts is prohibited.

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

5 (11) This subsection applies only to a public body that has
6 contracted for the construction of a facility using the general
7 contractor/construction manager procedure, as defined under RCW
8 39.10.060. If the work performed by a subcontractor on the project has
9 been completed within the first half of the time provided in the
10 general contractor/construction manager contract for completing the
11 work, the public body may accept the completion of the subcontract.
12 The public body must give public notice of this acceptance. After a
13 forty-five day period for giving notice of liens, and compliance with
14 the retainage release procedures in RCW 60.28.021, the public body may
15 release that portion of the retained funds associated with the
16 subcontract. Claims against the retained funds after the forty-five
17 day period are not valid.

18 (12) Unless the context clearly requires otherwise, the definitions
19 in this subsection apply throughout this section.

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

22 (b) "Person" means a person or persons, mechanic, subcontractor, or
23 materialperson who performs labor or provides materials for a public
24 improvement contract, and any other person who supplies the person with
25 provisions or supplies for the carrying on of a public improvement
26 contract.

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

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

32 NEW SECTION. Sec. 7. A new section is added to chapter 39.10 RCW
33 to read as follows:

34 The following acts or parts of acts, as now existing or hereafter
35 amended, are each repealed, effective July 1, 2007:

36 RCW 39.10.-- and 2001 c . . . s 1 (section 1 of this act).

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

3 The following acts or parts of acts, as now existing or hereafter
4 amended, are each repealed, effective July 1, 2007:

5 RCW 39.12.-- and 2001 c . . . s 5 (section 5 of this act).

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