
SENATE BILL 5656

State of Washington

66th Legislature

2019 Regular Session

By Senator Frockt

1 AN ACT Relating to public works contracting procedures; amending
2 RCW 39.10.250, 39.10.270, 39.10.300, 39.10.320, 39.10.330, 39.10.420,
3 39.10.430, 39.10.440, 39.10.450, and 39.10.470; and reenacting and
4 amending RCW 39.10.210, 42.56.270, and 43.131.408.

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

6 **Sec. 1.** RCW 39.10.210 and 2014 c 42 s 1 are each reenacted and
7 amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Alternative public works contracting procedure" means the
11 design-build, general contractor/construction manager, and job order
12 contracting procedures authorized in RCW 39.10.300, 39.10.340, and
13 39.10.420, respectively.

14 (2) "Board" means the capital projects advisory review board.

15 (3) "Certified public body" means a public body certified to use
16 design-build or general contractor/construction manager contracting
17 procedures, or both, under RCW 39.10.270.

18 (4) "Committee," unless otherwise noted, means the project review
19 committee.

20 (5) "Design-build procedure" means a contract between a public
21 body and another party in which the party agrees to both design and

1 build the facility, portion of the facility, or other item specified
2 in the contract.

3 (6) "Disadvantaged business enterprise" means any business entity
4 certified with the office of minority and women's business
5 enterprises under chapter 39.19 RCW.

6 (7) "General contractor/construction manager" means a firm with
7 which a public body has selected to provide services during the
8 design phase and negotiated a maximum allowable construction cost to
9 act as construction manager and general contractor during the
10 construction phase.

11 (8) "Heavy civil construction project" means a civil engineering
12 project, the predominant features of which are infrastructure
13 improvements.

14 (9) "Job order contract" means a contract in which the contractor
15 agrees to a fixed period, indefinite quantity delivery order contract
16 which provides for the use of negotiated, definitive work orders for
17 public works as defined in RCW 39.04.010.

18 (10) "Job order contractor" means a registered or licensed
19 contractor awarded a job order contract.

20 (11) "Maximum allowable construction cost" means the maximum cost
21 of the work to construct the project including a percentage for risk
22 contingency, negotiated support services, and approved change orders.

23 (12) "Negotiated support services" means items a general
24 contractor would normally manage or perform on a construction project
25 including, but not limited to surveying, hoisting, safety
26 enforcement, provision of toilet facilities, temporary heat, cleanup,
27 and trash removal, and that are negotiated as part of the maximum
28 allowable construction cost.

29 (13) "Percent fee" means the percentage amount to be earned by
30 the general contractor/construction manager as overhead and profit.

31 (14) "Price-related factor" means an evaluation factor that
32 impacts costs which may include, but is not limited to overhead and
33 profit, lump sum or guaranteed maximum price for the entire or a
34 portion of the project, operating costs, or other similar factors
35 that may apply to the project.

36 (15) "Public body" means any general or special purpose
37 government in the state of Washington, including but not limited to
38 state agencies, institutions of higher education, counties, cities,
39 towns, ports, school districts, and special purpose districts.

1 ((~~15~~)) (16) "Public works project" means any work for a public
2 body within the definition of "public work" in RCW 39.04.010.

3 ((~~16~~)) (17) "Small business entity" means a small business as
4 defined in RCW 39.26.010.

5 ((~~17~~)) (18) "Total contract cost" means the fixed amount for
6 the detailed specified general conditions work, the negotiated
7 maximum allowable construction cost, and the percent fee on the
8 negotiated maximum allowable construction cost.

9 ((~~18~~)) (19) "Total project cost" means the cost of the project
10 less financing and land acquisition costs.

11 ((~~19~~)) (20) "Unit price book" means a book containing specific
12 prices, based on generally accepted industry standards and
13 information, where available, for various items of work to be
14 performed by the job order contractor. The prices may include: All
15 the costs of materials; labor; equipment; overhead, including bonding
16 costs; and profit for performing the items of work. The unit prices
17 for labor must be at the rates in effect at the time the individual
18 work order is issued.

19 ((~~20~~)) (21) "Work order" means an order issued for a definite
20 scope of work to be performed pursuant to a job order contract.

21 **Sec. 2.** RCW 39.10.250 and 2013 c 222 s 5 are each amended to
22 read as follows:

23 The committee shall:

24 (1) Certify, or renew certification for, public bodies to use
25 design-build or general contractor/construction manager contracting
26 procedures, or both;

27 (2) Review and approve the use of the design-build or general
28 contractor/construction manager contracting procedures on a project
29 by project basis for public bodies that are not certified under RCW
30 39.10.270;

31 (3) ~~((Review and approve not more than fifteen projects using the
32 design-build contracting procedure by noncertified public bodies for
33 projects that have a total project cost between two million and ten
34 million dollars. Projects must meet the criteria in RCW 39.10.300(1).
35 Where possible, the committee shall approve projects among multiple
36 public bodies. At least annually, the committee shall report to the
37 board regarding the committee's review procedure of these projects
38 and its recommendations for further use; and~~

1 ~~(4))~~) Review and approve not more than two design-build
2 demonstration projects that include procurement of operations and
3 maintenance services for a period longer than three years.

4 **Sec. 3.** RCW 39.10.270 and 2017 c 211 s 1 are each amended to
5 read as follows:

6 (1) A public body may apply for certification to use the design-
7 build or general contractor/construction manager contracting
8 procedure, or both. Once certified, a public body may use the
9 contracting procedure for which it is certified on individual
10 projects without seeking committee approval for a period of three
11 years. (~~Public bodies certified to use the design-build procedure~~
12 ~~are limited to no more than five projects with a total project cost~~
13 ~~between two and ten million dollars during the certification~~
14 ~~period.)) A public body seeking certification must submit to the
15 committee an application in a format and manner as prescribed by the
16 committee. The application must include a description of the public
17 body's qualifications, its capital plan during the certification
18 period, and its intended use of alternative contracting procedures.~~

19 (2) A public body seeking certification for the design-build
20 procedure must demonstrate successful management of at least one
21 design-build project within the previous five years. A public body
22 seeking certification for the general contractor/construction manager
23 procedure must demonstrate successful management of at least one
24 general contractor/construction manager project within the previous
25 five years.

26 (3) To certify a public body, the committee shall determine that
27 the public body:

28 (a) Has the necessary experience and qualifications to determine
29 which projects are appropriate for using alternative contracting
30 procedures;

31 (b) Has the necessary experience and qualifications to carry out
32 the alternative contracting procedure including, but not limited to:
33 (i) Project delivery knowledge and experience; (ii) personnel with
34 appropriate construction experience; (iii) a management plan and
35 rationale for its alternative public works projects; (iv)
36 demonstrated success in managing public works projects; (v) the
37 ability to properly manage its capital facilities plan including, but
38 not limited to, appropriate project planning and budgeting

1 experience; and (vi) the ability to meet requirements of this
2 chapter; and

3 (c) Has resolved any audit findings on previous public works
4 projects in a manner satisfactory to the committee.

5 (4) The committee shall (~~(, if practicable,)~~) make its
6 determination at the public meeting during which an application for
7 certification is reviewed. Public comments must be considered before
8 a determination is made. Within ten business days of the public
9 meeting, the committee shall provide a written determination to the
10 public body, and make its determination available to the public on
11 the committee's web site.

12 (5) The committee may revoke any public body's certification upon
13 a finding, after a public hearing, that its use of design-build or
14 general contractor/construction manager contracting procedures no
15 longer serves the public interest.

16 (6) The committee may renew the certification of a public body
17 for additional three-year periods. The public body must submit an
18 application for recertification at least three months before the
19 initial certification expires. The committee may accept late
20 applications, if administratively feasible, to avoid expiration of
21 certification on a case-by-case basis. The application shall include
22 updated information on the public body's experience and current
23 staffing with the procedure it is applying to renew, and any other
24 information requested in advance by the committee. The committee must
25 review the application for recertification at a meeting held before
26 expiration of the applicant's initial certification period. A public
27 body must reapply for certification under the process described in
28 subsection (1) of this section once the period of recertification
29 expires.

30 (7) Certified public bodies must submit project data information
31 as required in RCW 39.10.320 and 39.10.350.

32 **Sec. 4.** RCW 39.10.300 and 2013 c 222 s 9 are each amended to
33 read as follows:

34 (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or
35 39.10.280, public bodies may utilize the design-build procedure,
36 including progressive design-build, for public works projects in
37 which the total project cost is over (~~(ten)~~) two million dollars and
38 where:

1 (a) The construction activities are highly specialized and a
2 design-build approach is critical in developing the construction
3 methodology; or

4 (b) The projects selected provide opportunity for greater
5 innovation or efficiencies between the designer and the builder; or

6 (c) Significant savings in project delivery time would be
7 realized.

8 (2) Subject to the process in RCW 39.10.270 or 39.10.280, public
9 bodies may use the design-build procedure for parking garages,
10 regardless of cost.

11 (3) The design-build procedure may be used for the construction
12 or erection of portable facilities as defined in WAC 392-343-018,
13 preengineered metal buildings, or not more than ten prefabricated
14 modular buildings per installation site, regardless of cost and is
15 not subject to approval by the committee.

16 (4) Except for utility projects and approved demonstration
17 projects, the design-build procedure may not be used to procure
18 operations and maintenance services for a period longer than three
19 years. State agency projects that propose to use the design-build-
20 operate-maintain procedure shall submit cost estimates for the
21 construction portion of the project consistent with the office of
22 financial management's capital budget requirements. Operations and
23 maintenance costs must be shown separately and must not be included
24 as part of the capital budget request.

25 ~~(5) ((Subject to the process in RCW 39.10.280, public bodies may
26 use the design-build procedure for public works projects in which the
27 total project cost is between two million and ten million dollars and
28 that meet one of the criteria in subsection (1)(a), (b), or (c) of
29 this section.~~

30 ~~(6))~~ Subject to the process in RCW 39.10.280, a public body may
31 seek committee approval for a design-build demonstration project that
32 includes procurement of operations and maintenance services for a
33 period longer than three years.

34 **Sec. 5.** RCW 39.10.320 and 2013 c 222 s 10 are each amended to
35 read as follows:

36 (1) A public body utilizing the design-build contracting
37 procedure shall provide:

38 (a) Reasonable budget contingencies totaling not less than five
39 percent of the anticipated contract value;

1 (b) Staff or consultants with expertise and prior experience in
2 the management of comparable projects;

3 (c) Contract documents that include alternative dispute
4 resolution procedures to be attempted prior to the initiation of
5 litigation;

6 (d) Submission of project information, as required by the board;
7 (~~and~~)

8 (e) Contract documents that require the contractor,
9 subcontractors, and designers to submit project information required
10 by the board; and

11 (f) Contract documents that require the design builder to submit
12 plans for inclusion of underutilized firms as subcontractors and
13 suppliers including, but not limited to, the office of minority and
14 women's business enterprises certified businesses, veteran certified
15 businesses, and small businesses as allowed by law.

16 (2) A public body utilizing the design-build contracting
17 procedure may provide incentive payments to contractors for early
18 completion, cost savings, or other goals if such payments are
19 identified in the request for proposals.

20 **Sec. 6.** RCW 39.10.330 and 2014 c 19 s 1 are each amended to read
21 as follows:

22 (1) Contracts for design-build services shall be awarded through
23 a competitive process using public solicitation of proposals for
24 design-build services. The public body shall publish at least once in
25 a legal newspaper of general circulation published in, or as near as
26 possible to, that part of the county in which the public work will be
27 done, a notice of its request for qualifications from proposers for
28 design-build services, and the availability and location of the
29 request for proposal documents. The request for qualifications
30 documents shall include:

31 (a) A (~~general~~) description of the project (~~that provides~~
32 ~~sufficient information for proposers to submit qualifications~~)
33 including the estimated design-build contract value and the intended
34 use of the project;

35 (b) The reasons for using the design-build procedure;

36 (c) A description of the qualifications to be required of the
37 proposer (~~including, but not limited to, submission of the~~
38 ~~proposer's accident prevention program~~);

1 (d) A description of the process the public body will use to
2 evaluate qualifications and finalists' proposals, including
3 evaluation factors and the relative weight of factors and any
4 specific forms to be used by the proposers;

5 (i) Evaluation factors for (~~request for~~) qualifications shall
6 include(~~(, but not be limited to,)~~) technical qualifications, such as
7 specialized experience and technical competence of the firms and the
8 key design and construction personnel; (~~capability~~) capacity to
9 perform; the proposer's past performance (~~of the proposers' team,~~
10 ~~including the architect-engineer and construction members~~) in
11 utilization of the office of minority and women's business
12 enterprises certified businesses, to the extent permitted by law;
13 ability to provide a performance and payment bond for the project;
14 and other appropriate factors. Evaluation factors may also include(~~(-~~
15 ~~A))~~), but are not limited to, the proposer's past performance in
16 utilization of small business entities(~~(; and (B) disadvantaged~~
17 ~~business enterprises)~~). Cost or price-related factors are not
18 permitted in the request for qualifications phase;

19 (ii) Evaluation factors for finalists' proposals shall include
20 the management plan to meet time and budget requirements and one or
21 more price-related factors. Evaluation factors may also include, but
22 not be limited to, (~~the factors listed in (d)(i) of this subsection,~~
23 ~~as well as technical approach design concept; ability of professional~~
24 ~~personnel; past performance on similar projects; ability to meet time~~
25 ~~and budget requirements; ability to provide a performance and payment~~
26 ~~bond for the project; recent, current, and projected workloads of the~~
27 ~~firm; location; and cost or price-related factors that may include~~
28 ~~operating costs. The public body may also consider a proposer's)~~) the
29 technical approach, design concept, and the outreach plan to include
30 small business entities and disadvantaged business enterprises as
31 subconsultants, subcontractors, and suppliers for the project(~~(-~~
32 ~~Alternatively, if the public body determines that all finalists will~~
33 ~~be capable of producing a design that adequately meets project~~
34 ~~requirements, the public body may award the contract to the firm that~~
35 ~~submits the responsive proposal with the lowest price))~~);

36 (e) Protest procedures including time limits for filing a
37 protest, which in no event may limit the time to file a protest to
38 fewer than four business days from the date the proposer was notified
39 of the selection decision;

40 (f) The (~~form of the~~) proposed contract (~~to be awarded~~);

1 (g) The honorarium to be paid to finalists submitting responsive
2 proposals and who are not awarded a design-build contract;

3 (h) The schedule for the procurement process and the project; and

4 (i) Other information relevant to the project.

5 (2) The public body shall establish an evaluation committee to
6 evaluate the responses to the request for qualifications based solely
7 on the factors, weighting, and process identified in the request for
8 qualifications and any addenda issued by the public body. Based on
9 the evaluation committee's findings, the public body shall select not
10 more than five responsive and responsible finalists to submit
11 proposals. The public body may, in its sole discretion, reject all
12 proposals and shall provide its reasons for rejection in writing to
13 all proposers.

14 (3) The public body must notify all proposers of the finalists
15 selected to move to the next phase of the selection process. The
16 process may not proceed to the next phase until two business days
17 after all proposers are notified of the committee's selection
18 decision. At the request of a proposer not selected as a finalist,
19 the public body must provide the requesting proposer with a scoring
20 summary of the evaluation factors for its proposal. Proposers filing
21 a protest on the selection of the finalists must file the protest in
22 accordance with the published protest procedures. The selection
23 process may not advance to the next phase of selection until two
24 business days after the final protest decision is transmitted to the
25 protestor.

26 (4) Upon selection of the finalists, the public body shall issue
27 a request for proposals to the finalists(~~(, which shall provide the~~
28 ~~following information)~~). The request for proposal documents shall
29 include:

30 (a) (~~(A detailed description of the project including~~
31 ~~programmatic, performance, and technical requirements and~~
32 ~~specifications; functional and operational elements; building~~
33 ~~performance goals and validation requirements; minimum and maximum~~
34 ~~net and gross areas of any building; and, at the discretion of the~~
35 ~~public body, preliminary engineering and architectural drawings; and~~

36 ~~(b) The target budget for the design-build portion of the~~
37 ~~project)) Any specific forms to be used by the finalists; and~~

38 (b) Submission of a summary of the finalist's accident prevention
39 program and an overview of its implementation.

1 (5) The public body shall establish an evaluation committee to
2 evaluate the proposals submitted by the finalists. (~~Design-build~~
3 ~~contracts shall be awarded using the procedures in (a) or (b) of this~~
4 ~~subsection. The public body must identify in the request for~~
5 ~~qualifications which procedure will be used.~~

6 ~~(a))~~ The finalists' proposals shall be evaluated and scored
7 based solely on the factors, weighting, and process identified in the
8 (~~initial~~) request for qualifications, the request for proposals,
9 and in any addenda published by the public body. Public bodies may
10 request best and final proposals from finalists. The public body may
11 initiate negotiations with the (~~firm~~) finalist submitting the
12 highest scored proposal. If the public body is unable to execute a
13 contract with the (~~firm~~) finalist submitting the highest scored
14 proposal, negotiations with that (~~firm~~) finalist may be suspended
15 or terminated and the public body may proceed to negotiate with the
16 next highest scored (~~firm~~) finalist. Public bodies shall continue
17 in accordance with this procedure until a contract agreement is
18 reached or the selection process is terminated.

19 (~~(b) If the public body determines that all finalists are~~
20 ~~capable of producing a design that adequately meets project~~
21 ~~requirements, the public body may award the contract to the firm that~~
22 ~~submits the responsive proposal with the lowest price.))~~

23 (6) The public body shall notify all finalists of the selection
24 decision and make a selection summary of the final proposals
25 available to all proposers within two business days of such
26 notification. If the public body receives a timely written protest
27 from a finalist firm, the public body may not execute a contract
28 until two business days after the final protest decision is
29 transmitted to the protestor. The protestor must submit its protest
30 in accordance with the published protest procedures.

31 (7) The firm awarded the contract shall provide a performance and
32 payment bond for the contracted amount.

33 (8) Any contract must require the firm awarded the contract to
34 track and report to the public body its utilization of the office of
35 minority and women's business enterprises certified businesses and
36 veteran certified businesses.

37 (9) The public body shall provide appropriate honorarium payments
38 to finalists submitting responsive proposals that are not awarded a
39 design-build contract. Honorarium payments shall be sufficient to
40 generate meaningful competition among potential proposers on design-

1 build projects. In determining the amount of the honorarium, the
2 public body shall ~~((consider))~~ recognize the level of effort required
3 to meet the selection criteria.

4 **Sec. 7.** RCW 39.10.420 and 2017 c 136 s 1 are each amended to
5 read as follows:

6 (1) ~~((The following))~~ All public bodies of the state of
7 Washington are authorized to award job order contracts and use the
8 job order contracting procedure ~~((:~~

9 ~~(a) The department of enterprise services;~~

10 ~~(b) The state universities, regional universities, and The~~
11 ~~Evergreen State College;~~

12 ~~(c) Sound transit (central Puget Sound regional transit~~
13 ~~authority);~~

14 ~~(d) Every city with a population greater than seventy thousand~~
15 ~~and any public authority chartered by such city under RCW 35.21.730~~
16 ~~through 35.21.755;~~

17 ~~(e) Every county with a population greater than four hundred~~
18 ~~fifty thousand;~~

19 ~~(f) Every port district with total revenues greater than fifteen~~
20 ~~million dollars per year;~~

21 ~~(g) Every public utility district with revenues from energy sales~~
22 ~~greater than twenty-three million dollars per year;~~

23 ~~(h) Every school district;~~

24 ~~(i) The state ferry system;~~

25 ~~(j) The Washington state department of transportation, for the~~
26 ~~administration of building improvement, replacement, and renovation~~
27 ~~projects only;~~

28 ~~(k) Every public hospital district with total revenues greater~~
29 ~~than fifteen million dollars per year; and~~

30 ~~(l) Every public transportation benefit area authority as defined~~
31 ~~under RCW 36.57A.010)).~~

32 (2) (a) The department of enterprise services may issue job order
33 contract work orders for Washington state parks department projects
34 and public hospital districts.

35 (b) The department of enterprise services, the University of
36 Washington, and Washington State University may issue job order
37 contract work orders for the state regional universities and The
38 Evergreen State College.

1 (3) Public bodies may use a job order contract for public works
2 projects when a determination is made that the use of job order
3 contracts will benefit the public by providing an effective means of
4 reducing the total lead-time and cost for the construction of public
5 works projects for repair and renovation required at public
6 facilities through the use of unit price books and work orders by
7 eliminating time-consuming, costly aspects of the traditional public
8 works process, which require separate contracting actions for each
9 small project.

10 **Sec. 8.** RCW 39.10.430 and 2007 c 494 s 402 are each amended to
11 read as follows:

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

14 (2) The public body shall make an effort to solicit proposals
15 from certified minority or certified woman-owned contractors to the
16 extent permitted by the Washington state civil rights act, RCW
17 49.60.400.

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

25 (a) A detailed description of the scope of the job order contract
26 including performance, technical requirements and specifications,
27 functional and operational elements, minimum and maximum work order
28 amounts, duration of the contract, and options to extend the job
29 order contract;

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

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

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

33 (e) The minimum contracted amount committed to the selected job
34 order contractor;

35 (f) A description of the process the public body will use to
36 evaluate qualifications and proposals, including evaluation factors
37 and the relative weight of factors. The public body shall ensure that
38 evaluation factors include, but are not limited to, proposal price
39 and the ability of the proposer to perform the job order contract. In

1 evaluating the ability of the proposer to perform the job order
2 contract, the public body may consider: The ability of the
3 professional personnel who will work on the job order contract; past
4 performance on similar contracts; ability to meet time and budget
5 requirements; past performance on approved subcontractor inclusion
6 plans; ability to provide a performance and payment bond for the job
7 order contract; recent, current, and projected workloads of the
8 proposer; location; and the concept of the proposal;

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

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

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

13 (j) Other information relevant to the project.

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

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

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

34 **Sec. 9.** RCW 39.10.440 and 2015 c 173 s 1 are each amended to
35 read as follows:

36 (1) The maximum total dollar amount that may be awarded under a
37 job order contract is four million dollars per year for a maximum of
38 three years. Any unused capacity from the previous year may be
39 carried over for one year and added to the immediate following year's

1 limit. The maximum annual volume including unused capacity shall not
2 exceed the limit of two years. The maximum total dollar amount that
3 may be awarded under a job order contract for the department of
4 enterprise services, counties with a population of more than one
5 million, and cities with a population of more than four hundred
6 thousand is six million dollars per year for a maximum of three
7 years. The maximum total dollar amounts are exclusive of Washington
8 state sales and use tax.

9 (2) Job order contracts may be executed for an initial contract
10 term of not to exceed two years, with the option of extending or
11 renewing the job order contract for one year. All extensions or
12 renewals must be priced as provided in the request for proposals. The
13 extension or renewal must be mutually agreed to by the public body
14 and the job order contractor.

15 (3) A public body may have no more than (~~two~~) three job order
16 contracts in effect at any one time, with the exception of the
17 department of enterprise services, which may have six job order
18 contracts in effect at any one time.

19 (4) At least ninety percent of work contained in a job order
20 contract must be subcontracted to entities other than the job order
21 contractor. The job order contractor must distribute contracts as
22 equitably as possible among qualified and available subcontractors
23 including certified minority and woman-owned subcontractors to the
24 extent permitted by law as demonstrated on the subcontractor and
25 supplier project submission, and shall limit subcontractor bonding
26 requirements to the greatest extent possible.

27 (5) The job order contractor shall publish notification of intent
28 to perform public works projects at the beginning of each contract
29 year in a statewide publication and in a legal newspaper of general
30 circulation in every county in which the public works projects are
31 anticipated.

32 (6) Job order contractors shall pay prevailing wages for all work
33 that would otherwise be subject to the requirements of chapter 39.12
34 RCW. Prevailing wages for all work performed pursuant to each work
35 order must be the rates in effect at the time the individual work
36 order is issued.

37 (7) If, in the initial contract term, the public body, at no
38 fault of the job order contractor, fails to issue the minimum amount
39 of work orders stated in the public request for proposals, the public
40 body shall pay the contractor an amount equal to the difference

1 between the minimum work order amount and the actual total of the
2 work orders issued multiplied by an appropriate percentage for
3 overhead and profit contained in the contract award coefficient for
4 services as specified in the request for proposals. This is the
5 contractor's sole remedy.

6 (8) All job order contracts awarded under this section must be
7 signed before July 1, 2021; however the job order contract may be
8 extended or renewed as provided for in this section.

9 (9) Public bodies may amend job order contracts awarded prior to
10 July 1, 2007, in accordance with this chapter.

11 **Sec. 10.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to
12 read as follows:

13 (1) The maximum dollar amount for a work order is ~~((three))~~ five
14 hundred ~~((fifty))~~ thousand dollars, excluding Washington state sales
15 and use tax.

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

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

22 (4) Any new stand-alone permanent ~~((, enclosed building space))~~
23 structure constructed under a work order shall not exceed ~~((two))~~
24 three thousand gross square feet.

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

33 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
34 each work order issued shall be treated as a separate contract. The
35 alternate filing provisions of RCW 39.12.040(2) apply to each work
36 order that otherwise meets the eligibility requirements of RCW
37 39.12.040(2).

38 (7) The job order contract shall not be used for the procurement
39 of architectural or engineering services not associated with specific

1 work orders. Architectural and engineering services shall be procured
2 in accordance with RCW 39.80.040.

3 (8) Any work order over three hundred fifty thousand dollars,
4 excluding Washington state sales and use tax, and including over six
5 hundred single trade hours shall utilize a state registered
6 apprenticeship program for that single trade in accordance with RCW
7 39.04.320. Awarding entities may adjust this requirement for a
8 specific work order for the following reasons:

9 (a) The demonstrated lack of availability of apprentices in
10 specific geographic areas;

11 (b) A disproportionately high ratio of material costs to labor
12 hours, which does not make feasible the required minimum levels of
13 apprentice participation;

14 (c) Participating contractors have demonstrated a good faith
15 effort to comply with the requirements of RCW 39.04.300 and
16 39.04.310; or

17 (d) Other criteria the awarding entity deems appropriate.

18 **Sec. 11.** RCW 39.10.470 and 2014 c 19 s 2 are each amended to
19 read as follows:

20 (1) Except as provided in subsections (2) and (3) of this
21 section, all proceedings, records, contracts, and other public
22 records relating to alternative public works transactions under this
23 chapter shall be open to the inspection of any interested person,
24 firm, or corporation in accordance with chapter 42.56 RCW.

25 (2) Trade secrets, as defined in RCW 19.108.010, or other
26 proprietary information submitted by a bidder, offeror, or contractor
27 in connection with an alternative public works transaction under this
28 chapter shall not be subject to chapter 42.56 RCW if the bidder,
29 offeror, or contractor specifically states in writing the reasons why
30 protection is necessary, and identifies the data or materials to be
31 protected.

32 ~~((Proposals submitted by design-build finalists))~~ All
33 documents related to a procurement under RCW 39.10.330 are exempt
34 from disclosure until the notification of the highest scoring
35 finalist is made in accordance with RCW 39.10.330(~~(+5)~~) (6) or the
36 selection process is terminated, except as expressly required under
37 RCW 39.10.330(3).

1 **Sec. 12.** RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21,
2 and 2018 c 4 s 9 are each reenacted and amended to read as follows:

3 The following financial, commercial, and proprietary information
4 is exempt from disclosure under this chapter:

5 (1) Valuable formulae, designs, drawings, computer source code or
6 object code, and research data obtained by any agency within five
7 years of the request for disclosure when disclosure would produce
8 private gain and public loss;

9 (2) Financial information supplied by or on behalf of a person,
10 firm, or corporation for the purpose of qualifying to submit a bid or
11 proposal for (a) a ferry system construction or repair contract as
12 required by RCW 47.60.680 through 47.60.750 (~~(e)~~); (b) highway
13 construction or improvement as required by RCW 47.28.070; or (c)
14 alternative public works contracting procedures as required by RCW
15 39.10.200 through 39.10.905;

16 (3) Financial and commercial information and records supplied by
17 private persons pertaining to export services provided under chapters
18 43.163 and 53.31 RCW, and by persons pertaining to export projects
19 under RCW 43.23.035;

20 (4) Financial and commercial information and records supplied by
21 businesses or individuals during application for loans or program
22 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
23 43.168 RCW, or during application for economic development loans or
24 program services provided by any local agency;

25 (5) Financial information, business plans, examination reports,
26 and any information produced or obtained in evaluating or examining a
27 business and industrial development corporation organized or seeking
28 certification under chapter 31.24 RCW;

29 (6) Financial and commercial information supplied to the state
30 investment board by any person when the information relates to the
31 investment of public trust or retirement funds and when disclosure
32 would result in loss to such funds or in private loss to the
33 providers of this information;

34 (7) Financial and valuable trade information under RCW 51.36.120;

35 (8) Financial, commercial, operations, and technical and research
36 information and data submitted to or obtained by the clean Washington
37 center in applications for, or delivery of, program services under
38 chapter 70.95H RCW;

1 (9) Financial and commercial information requested by the public
2 stadium authority from any person or organization that leases or uses
3 the stadium and exhibition center as defined in RCW 36.102.010;

4 (10)(a) Financial information, including but not limited to
5 account numbers and values, and other identification numbers supplied
6 by or on behalf of a person, firm, corporation, limited liability
7 company, partnership, or other entity related to an application for a
8 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
9 marijuana producer, processor, or retailer license, liquor license,
10 gambling license, or lottery retail license;

11 (b) Internal control documents, independent auditors' reports and
12 financial statements, and supporting documents: (i) Of house-banked
13 social card game licensees required by the gambling commission
14 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
15 by tribes with an approved tribal/state compact for class III gaming;

16 (11) Proprietary data, trade secrets, or other information that
17 relates to: (a) A vendor's unique methods of conducting business; (b)
18 data unique to the product or services of the vendor; or (c)
19 determining prices or rates to be charged for services, submitted by
20 any vendor to the department of social and health services or the
21 health care authority for purposes of the development, acquisition,
22 or implementation of state purchased health care as defined in RCW
23 41.05.011;

24 (12)(a) When supplied to and in the records of the department of
25 commerce:

26 (i) Financial and proprietary information collected from any
27 person and provided to the department of commerce pursuant to RCW
28 43.330.050(8); and

29 (ii) Financial or proprietary information collected from any
30 person and provided to the department of commerce or the office of
31 the governor in connection with the siting, recruitment, expansion,
32 retention, or relocation of that person's business and until a siting
33 decision is made, identifying information of any person supplying
34 information under this subsection and the locations being considered
35 for siting, relocation, or expansion of a business;

36 (b) When developed by the department of commerce based on
37 information as described in (a)(i) of this subsection, any work
38 product is not exempt from disclosure;

39 (c) For the purposes of this subsection, "siting decision" means
40 the decision to acquire or not to acquire a site;

1 (d) If there is no written contact for a period of sixty days to
2 the department of commerce from a person connected with siting,
3 recruitment, expansion, retention, or relocation of that person's
4 business, information described in (a)(ii) of this subsection will be
5 available to the public under this chapter;

6 (13) Financial and proprietary information submitted to or
7 obtained by the department of ecology or the authority created under
8 chapter 70.95N RCW to implement chapter 70.95N RCW;

9 (14) Financial, commercial, operations, and technical and
10 research information and data submitted to or obtained by the life
11 sciences discovery fund authority in applications for, or delivery
12 of, grants under chapter 43.350 RCW, to the extent that such
13 information, if revealed, would reasonably be expected to result in
14 private loss to the providers of this information;

15 (15) Financial and commercial information provided as evidence to
16 the department of licensing as required by RCW 19.112.110 or
17 19.112.120, except information disclosed in aggregate form that does
18 not permit the identification of information related to individual
19 fuel licensees;

20 (16) Any production records, mineral assessments, and trade
21 secrets submitted by a permit holder, mine operator, or landowner to
22 the department of natural resources under RCW 78.44.085;

23 (17)(a) Farm plans developed by conservation districts, unless
24 permission to release the farm plan is granted by the landowner or
25 operator who requested the plan, or the farm plan is used for the
26 application or issuance of a permit;

27 (b) Farm plans developed under chapter 90.48 RCW and not under
28 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
29 to RCW 42.56.610 and 90.64.190;

30 (18) Financial, commercial, operations, and technical and
31 research information and data submitted to or obtained by a health
32 sciences and services authority in applications for, or delivery of,
33 grants under RCW 35.104.010 through 35.104.060, to the extent that
34 such information, if revealed, would reasonably be expected to result
35 in private loss to providers of this information;

36 (19) Information gathered under chapter 19.85 RCW or RCW
37 34.05.328 that can be identified to a particular business;

38 (20) Financial and commercial information submitted to or
39 obtained by the University of Washington, other than information the
40 university is required to disclose under RCW 28B.20.150, when the

1 information relates to investments in private funds, to the extent
2 that such information, if revealed, would reasonably be expected to
3 result in loss to the University of Washington consolidated endowment
4 fund or to result in private loss to the providers of this
5 information;

6 (21) Market share data submitted by a manufacturer under RCW
7 70.95N.190(4);

8 (22) Financial information supplied to the department of
9 financial institutions or to a portal under RCW 21.20.883, when filed
10 by or on behalf of an issuer of securities for the purpose of
11 obtaining the exemption from state securities registration for small
12 securities offerings provided under RCW 21.20.880 or when filed by or
13 on behalf of an investor for the purpose of purchasing such
14 securities;

15 (23) Unaggregated or individual notices of a transfer of crude
16 oil that is financial, proprietary, or commercial information,
17 submitted to the department of ecology pursuant to RCW
18 90.56.565(1)(a), and that is in the possession of the department of
19 ecology or any entity with which the department of ecology has shared
20 the notice pursuant to RCW 90.56.565;

21 (24) Financial institution and retirement account information,
22 and building security plan information, supplied to the liquor and
23 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and
24 69.50.345, when filed by or on behalf of a licensee or prospective
25 licensee for the purpose of obtaining, maintaining, or renewing a
26 license to produce, process, transport, or sell marijuana as allowed
27 under chapter 69.50 RCW;

28 (25) Marijuana transport information, vehicle and driver
29 identification data, and account numbers or unique access identifiers
30 issued to private entities for traceability system access, submitted
31 by an individual or business to the liquor and cannabis board under
32 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
33 69.50.345 for the purpose of marijuana product traceability.
34 Disclosure to local, state, and federal officials is not considered
35 public disclosure for purposes of this section;

36 (26) Financial and commercial information submitted to or
37 obtained by the retirement board of any city that is responsible for
38 the management of an employees' retirement system pursuant to the
39 authority of chapter 35.39 RCW, when the information relates to
40 investments in private funds, to the extent that such information, if

1 revealed, would reasonably be expected to result in loss to the
2 retirement fund or to result in private loss to the providers of this
3 information except that (a) the names and commitment amounts of the
4 private funds in which retirement funds are invested and (b) the
5 aggregate quarterly performance results for a retirement fund's
6 portfolio of investments in such funds are subject to disclosure;

7 (27) Proprietary financial, commercial, operations, and technical
8 and research information and data submitted to or obtained by the
9 liquor and cannabis board in applications for marijuana research
10 licenses under RCW 69.50.372, or in reports submitted by marijuana
11 research licensees in accordance with rules adopted by the liquor and
12 cannabis board under RCW 69.50.372;

13 (28) Trade secrets, technology, proprietary information, and
14 financial considerations contained in any agreements or contracts,
15 entered into by a licensed marijuana business under RCW 69.50.395,
16 which may be submitted to or obtained by the state liquor and
17 cannabis board; (~~and~~)

18 (29) Financial, commercial, operations, and technical and
19 research information and data submitted to or obtained by the Andy
20 Hill cancer research endowment program in applications for, or
21 delivery of, grants under chapter 43.348 RCW, to the extent that such
22 information, if revealed, would reasonably be expected to result in
23 private loss to providers of this information; and

24 (30) Proprietary information filed with the department of health
25 under chapter 69.48 RCW.

26 **Sec. 13.** RCW 43.131.408 and 2017 c 211 s 2 and 2017 c 136 s 2
27 are each reenacted and amended to read as follows:

28 The following acts or parts of acts, as now existing or hereafter
29 amended, are each repealed, effective June 30, 2022:

30 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
31 1994 c 132 s 1;

32 (2) RCW 39.10.210 and 2019 c . . . s 1 (section 1 of this act),
33 2014 c 42 s 1, & 2013 c 222 s 1;

34 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c
35 377 s 1;

36 (4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3,
37 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

38 (5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

1 (6) RCW 39.10.250 and 2019 c . . . s 2 (section 2 of this act),
2 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;
3 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;
4 (8) RCW 39.10.270 and 2019 c . . . s 3 (section 3 of this act),
5 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;
6 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494
7 s 108;
8 (10) RCW 39.10.290 and 2007 c 494 s 109;
9 (11) RCW 39.10.300 and 2019 c . . . s 4 (section 4 of this act),
10 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;
11 (12) RCW 39.10.320 and 2019 c . . . s 5 (section 5 of this act),
12 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;
13 (13) RCW 39.10.330 and 2019 c . . . s 6 (section 6 of this act),
14 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;
15 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c
16 494 s 301;
17 (15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;
18 (16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75
19 s 6, & 2007 c 494 s 303;
20 (17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;
21 (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;
22 (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;
23 (20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c
24 494 s 306;
25 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
26 (22) RCW 39.10.410 and 2007 c 494 s 308;
27 (23) RCW 39.10.420 and 2019 c . . . s 7 (section 7 of this act),
28 2017 c 136 s 1, & 2016 c 52 s 1;
29 (24) RCW 39.10.430 and 2019 c . . . s 8 (section 8 of this act) &
30 2007 c 494 s 402;
31 (25) RCW 39.10.440 and 2019 c . . . s 9 (section 9 of this act),
32 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;
33 (26) RCW 39.10.450 and 2019 c . . . s 10 (section 10 of this
34 act), 2012 c 102 s 2, & 2007 c 494 s 404;
35 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
36 (28) RCW 39.10.470 and 2019 c . . . s 11 (section 11 of this
37 act), 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c 132 s 10;
38 (29) RCW 39.10.480 and 1994 c 132 s 9;
39 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001
40 c 328 s 5;

- 1 (31) RCW 39.10.900 and 1994 c 132 s 13;
- 2 (32) RCW 39.10.901 and 1994 c 132 s 14;
- 3 (33) RCW 39.10.903 and 2007 c 494 s 510;
- 4 (34) RCW 39.10.904 and 2007 c 494 s 512; and
- 5 (35) RCW 39.10.905 and 2007 c 494 s 513.

--- **END** ---