
HOUSE BILL 1967

State of Washington

69th Legislature

2025 Regular Session

By Representatives Zahn, Griffey, and Nance

Read first time 02/13/25. Referred to Committee on Capital Budget.

1 AN ACT Relating to modifying bonding requirements in the design
2 portion of design-build public works projects; and amending RCW
3 39.10.330 and 39.08.030.

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

5 **Sec. 1.** RCW 39.10.330 and 2023 c 395 s 9 are each amended to
6 read as follows:

7 (1) Contracts for design-build services shall be awarded through
8 a competitive process using public solicitation of proposals for
9 design-build services. At a minimum, the public body shall publish at
10 least once in a legal newspaper of general circulation published in,
11 or as near as possible to, that part of the county in which the
12 public work will be done, a notice of its request for qualifications
13 from proposers for design-build services, and the availability and
14 location of the request for proposal documents. The public body is
15 encouraged to post the design-build opportunity in additional areas,
16 such as websites for business associations or the office of minority
17 and women's business enterprises, to further publicize the
18 opportunity for qualified design-build teams. The request for
19 qualifications documents shall include:

20 (a) A description of the project including the estimated design-
21 build contract value and the intended use of the project;

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

2 (c) A description of the qualifications to be required of the
3 proposer;

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

8 (i) Evaluation factors for qualifications shall include technical
9 qualifications, such as specialized experience and technical
10 competence of the firms and the key design and construction
11 personnel; capacity to perform; the proposer's past performance in
12 utilization of business entities certified with the office of
13 minority and women's business enterprises, including small businesses
14 and business entities certified with the department of veterans
15 affairs, to the extent permitted by law; ability to provide a
16 performance and payment bond for the project; and other appropriate
17 factors. Cost or price-related factors are not permitted in the
18 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 must include a
22 proposer's inclusion plan for business entities certified with the
23 office of minority and women's business enterprises, including small
24 businesses and business entities certified with the department of
25 veterans affairs as subconsultants, subcontractors, and suppliers for
26 the project, to the extent permitted by law. Evaluation factors may
27 also include, but not be limited to, the technical approach or the
28 design concept;

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

33 (f) The proposed contract;

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

36 (h) The schedule for the procurement process and the project; and
37 (i) Other information relevant to the project.

38 (2) The public body shall establish an evaluation committee to
39 evaluate the responses to the request for qualifications based solely
40 on the factors, weighting, and process identified in the request for

1 qualifications and any addenda issued by the public body. Based on
2 the evaluation committee's findings, the public body shall select not
3 more than five responsive and responsible finalists to submit
4 proposals. The public body may, in its sole discretion, reject all
5 proposals and shall provide its reasons for rejection in writing to
6 all proposers.

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

19 (4) Upon selection of the finalists, the public body shall issue
20 a request for proposals to the finalists. The request for proposal
21 documents shall include:

22 (a) Any specific forms to be used by the finalists; and

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

25 (5) The public body shall establish an evaluation committee to
26 evaluate the proposals submitted by the finalists. The finalists'
27 proposals shall be evaluated and scored based solely on the factors,
28 weighting, and process identified in the request for qualifications,
29 the request for proposals, and in any addenda published by the public
30 body. Public bodies may request best and final proposals from
31 finalists. The public body may initiate negotiations with the
32 finalist submitting the highest scored proposal. If the public body
33 is unable to execute a contract with the finalist submitting the
34 highest scored proposal, negotiations with that finalist may be
35 suspended or terminated and the public body may proceed to negotiate
36 with the next highest scored finalist. Public bodies shall continue
37 in accordance with this procedure until a contract agreement is
38 reached or the selection process is terminated.

39 (6) The public body shall notify all finalists of the selection
40 decision and make a selection summary of the final proposals

1 available to all proposers within two business days of such
2 notification. If the public body receives a timely written protest
3 from a finalist firm, the public body may not execute a contract
4 until two business days after the final protest decision is
5 transmitted to the protestor. The protestor must submit its protest
6 in accordance with the published protest procedures.

7 (7) The firm awarded the contract shall provide a performance and
8 payment bond for the contracted amount before the start of
9 construction and no later than 10 days upon request from the public
10 body. A performance and payment bond is not required for the portion
11 of the design-build contract that includes design services,
12 preconstruction services, finance services, maintenance services,
13 operations services, or any other related services included in the
14 contract.

15 (8) Any contract must require the firm awarded the contract to
16 track and report to the public body and to the office of minority and
17 women's business enterprises its utilization of the office of
18 minority and women's business enterprises certified businesses and
19 veteran certified businesses.

20 (9) The public body shall provide appropriate honorarium payments
21 to finalists submitting responsive proposals that are not awarded a
22 design-build contract. Honorarium payments shall be sufficient to
23 generate meaningful competition among potential proposers on design-
24 build projects. In determining the amount of the honorarium, the
25 public body shall recognize the level of effort required to meet the
26 selection criteria.

27 **Sec. 2.** RCW 39.08.030 and 2018 c 89 s 1 are each amended to read
28 as follows:

29 (1)(a) The bond mentioned in RCW 39.08.010 must be in an amount
30 equal to the full contract price agreed to be paid for such work or
31 improvement, except under subsection (2) of this section, and must be
32 to the state of Washington, except as otherwise provided in RCW
33 39.08.100, and except in cases of cities, towns, public
34 transportation benefit areas, passenger-only ferry service districts,
35 and water-sewer districts, in which cases such municipalities may by
36 general ordinance or resolution fix and determine the amount of such
37 bond and to whom such bond runs. However, the same may not be for a
38 less amount than (~~twenty-five~~) 25 percent of the contract price of
39 any such improvement for cities, towns, public transportation benefit

1 areas, and passenger-only ferry service districts, and not less than
2 the full contract price of any such improvement for water-sewer
3 districts, and may designate that the same must be payable to such
4 city, town, water-sewer district, public transportation benefit area,
5 or passenger-only ferry service district, and not to the state of
6 Washington, and all such persons mentioned in RCW 39.08.010 have a
7 right of action in his, her, or their own name or names on such bond
8 for work done by such laborers or mechanics, and for materials
9 furnished or provisions and goods supplied and furnished in the
10 prosecution of such work, or the making of such improvements, and the
11 state has a right of action for the collection of taxes, increases,
12 and penalties specified in RCW 39.08.010: PROVIDED, That, except for
13 the state with respect to claims for taxes, increases, and penalties
14 specified in RCW 39.08.010, such persons do not have any right of
15 action on such bond for any sum whatever, unless within (~~thirty~~) 30
16 days from and after the completion of the contract with an acceptance
17 of the work by the affirmative action of the board, council,
18 commission, trustees, officer, or body acting for the state, county
19 or municipality, or other public body, city, town or district, the
20 laborer, mechanic or subcontractor, or material supplier, or person
21 claiming to have supplied materials, provisions or goods for the
22 prosecution of such work, or the making of such improvement, must
23 present to and file with such board, council, commission, trustees or
24 body acting for the state, county or municipality, or other public
25 body, city, town or district, a notice in writing in substance as
26 follows:

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

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

39 (here to be signed)

1 (b) Such notice must be signed by the person or corporation
2 making the claim or giving the notice, and the notice, after being
3 presented and filed, is a public record open to inspection by any
4 person, and in any suit or action brought against such surety or
5 sureties by any such person or corporation to recover for any of the
6 items specified in this section, the claimant is entitled to recover
7 in addition to all other costs, attorneys' fees in such sum as the
8 court adjudges reasonable. However, attorneys' fees are not allowed
9 in any suit or action brought or instituted before the expiration of
10 thirty days following the date of filing of the notice as provided in
11 this section. However, any city may avail itself of the provisions of
12 RCW 39.08.010 (~~through~~), 39.08.015, and 39.08.030, notwithstanding
13 any charter provisions in conflict with this section. Moreover, any
14 city or town may impose any other or further conditions and
15 obligations in such bond as may be deemed necessary for its proper
16 protection in the fulfillment of the terms of the contract secured
17 thereby, and not in conflict with this section. The (~~thirty~~) 30-day
18 notice requirement under this subsection does not apply to claims
19 made by the state for taxes, increases, and penalties specified in
20 RCW 39.08.010.

21 (2) Under the job order contracting procedure described in RCW
22 39.10.420, bonds will be in an amount not less than the dollar value
23 of all open work orders. Under the design-build procedure described
24 in RCW 39.10.330, bonds will be in an amount not less than the dollar
25 value of the contracted amount of the construction portion of the
26 contract. A performance and payment bond is not required for the
27 portion of the design-build contract that includes design services,
28 preconstruction services, finance services, maintenance services,
29 operations services, or any other related services included in the
30 contract.

31 (3) Where retainage is not withheld pursuant to RCW
32 60.28.011(1)(b), upon final acceptance of the public works project,
33 the state, county, municipality, or other public body must within
34 thirty days notify the department of revenue, the employment security
35 department, and the department of labor and industries of the
36 completion of contracts over (~~thirty-five thousand dollars~~)
37 \$35,000.

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