
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0539.1/19

ATTY/TYPIST: AI:lcl

BRIEF DESCRIPTION: Modifying the job order contracting procedure.

1 AN ACT Relating to job order contracting procedure; amending RCW
2 39.10.420, 39.10.430, 39.10.440, and 39.10.450; and reenacting and
3 amending RCW 43.131.408.

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~(j) The Washington state department of transportation, for the~~
6 ~~administration of building improvement, replacement, and renovation~~
7 ~~projects only;~~

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

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

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

15 (b) The department of enterprise services, the University of
16 Washington, and Washington State University may issue job order
17 contract work orders for the state regional universities and The
18 Evergreen State College.

19 (3) Public bodies may use a job order contract for public works
20 projects when a determination is made that the use of job order
21 contracts will benefit the public by providing an effective means of
22 reducing the total lead-time and cost for the construction of public
23 works projects for repair and renovation required at public
24 facilities through the use of unit price books and work orders by
25 eliminating time-consuming, costly aspects of the traditional public
26 works process, which require separate contracting actions for each
27 small project.

28 **Sec. 2.** RCW 39.10.430 and 2007 c 494 s 402 are each amended to
29 read as follows:

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

32 (2) The public body shall make an effort to solicit proposals
33 from certified minority or certified woman-owned contractors to the
34 extent permitted by the Washington state civil rights act, RCW
35 49.60.400.

36 (3) The public body shall publish, at least once in a statewide
37 publication and legal newspaper of general circulation published in
38 every county in which the public works project is anticipated, a
39 request for proposals for job order contracts and the availability

1 and location of the request for proposal documents. The public body
2 shall ensure that the request for proposal documents at a minimum
3 includes:

4 (a) A detailed description of the scope of the job order contract
5 including performance, technical requirements and specifications,
6 functional and operational elements, minimum and maximum work order
7 amounts, duration of the contract, and options to extend the job
8 order contract;

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

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

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

12 (e) The minimum contracted amount committed to the selected job
13 order contractor;

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

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

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

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

31 (j) Other information relevant to the project.

32 (4) A public body shall establish a committee to evaluate the
33 proposals. After the committee has selected the most qualified
34 finalists, the finalists shall submit final proposals, including
35 sealed bids based upon the identified unit price book. Such bids may
36 be in the form of coefficient markups from listed price book costs.
37 The public body shall award the contract to the firm submitting the
38 highest scored final proposal using the evaluation factors and the
39 relative weight of factors published in the public request for
40 proposals and will notify the board of the award of the contract.

1 (5) The public body shall provide a protest period of at least
2 ten business days following the day of the announcement of the
3 apparent successful proposal to allow a protester to file a detailed
4 statement of the grounds of the protest. The public body shall
5 promptly make a determination on the merits of the protest and
6 provide to all proposers a written decision of denial or acceptance
7 of the protest. The public body shall not execute the contract until
8 two business days following the public body's decision on the
9 protest.

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

12 **Sec. 3.** RCW 39.10.440 and 2015 c 173 s 1 are each amended to
13 read as follows:

14 (1) The maximum total dollar amount that may be awarded under a
15 job order contract is four million dollars per year for a maximum of
16 three years. Any unused capacity from the previous year may be
17 carried over for one year and added to the immediate following year's
18 limit. The maximum annual volume including unused capacity shall not
19 exceed the limit of two years. The maximum total dollar amount that
20 may be awarded under a job order contract for the department of
21 enterprise services, counties with a population of more than one
22 million, and cities with a population of more than four hundred
23 thousand is six million dollars per year for a maximum of three
24 years. The maximum total dollar amounts are exclusive of Washington
25 state sales and use tax.

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

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

36 (4) At least ninety percent of work contained in a job order
37 contract must be subcontracted to entities other than the job order
38 contractor. The job order contractor must distribute contracts as
39 equitably as possible among qualified and available subcontractors

1 including certified minority and woman-owned subcontractors to the
2 extent permitted by law as demonstrated on the subcontractor and
3 supplier project submission, and shall limit subcontractor bonding
4 requirements to the greatest extent possible.

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

10 (6) Job order contractors shall pay prevailing wages for all work
11 that would otherwise be subject to the requirements of chapter 39.12
12 RCW. Prevailing wages for all work performed pursuant to each work
13 order must be the rates in effect at the time the individual work
14 order is issued.

15 (7) If, in the initial contract term, the public body, at no
16 fault of the job order contractor, fails to issue the minimum amount
17 of work orders stated in the public request for proposals, the public
18 body shall pay the contractor an amount equal to the difference
19 between the minimum work order amount and the actual total of the
20 work orders issued multiplied by an appropriate percentage for
21 overhead and profit contained in the contract award coefficient for
22 services as specified in the request for proposals. This is the
23 contractor's sole remedy.

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

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

29 **Sec. 4.** RCW 43.131.408 and 2017 c 211 s 2 and 2017 c 136 s 2 are
30 each reenacted and amended to read as follows:

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

33 (1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, &
34 1994 c 132 s 1;

35 (2) RCW 39.10.210 and 2014 c 42 s 1 & 2013 c 222 s 1;

36 (3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c
37 377 s 1;

38 (4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3,
39 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

- 1 (5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;
- 2 (6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494
- 3 s 105;
- 4 (7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;
- 5 (8) RCW 39.10.270 and 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s
- 6 3, & 2007 c 494 s 107;
- 7 (9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494
- 8 s 108;
- 9 (10) RCW 39.10.290 and 2007 c 494 s 109;
- 10 (11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c
- 11 494 s 201;
- 12 (12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994
- 13 c 132 s 7;
- 14 (13) RCW 39.10.330 and 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75
- 15 s 5, & 2007 c 494 s 204;
- 16 (14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c
- 17 494 s 301;
- 18 (15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;
- 19 (16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75
- 20 s 6, & 2007 c 494 s 303;
- 21 (17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;
- 22 (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;
- 23 (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;
- 24 (20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c
- 25 494 s 306;
- 26 (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
- 27 (22) RCW 39.10.410 and 2007 c 494 s 308;
- 28 (23) RCW 39.10.420 and 2019 c . . . s 1 (section 1 of this act),
- 29 2017 c 136 s 1, & 2016 c 52 s 1;
- 30 (24) RCW 39.10.430 and 2019 c . . . s 2 (section 2 of this act) &
- 31 2007 c 494 s 402;
- 32 (25) RCW 39.10.440 and 2019 c . . . s 3 (section 3 of this act),
- 33 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;
- 34 (26) RCW 39.10.450 and 2019 c . . . s 5 (section 5 of this act),
- 35 2012 c 102 s 2, & 2007 c 494 s 404;
- 36 (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
- 37 (28) RCW 39.10.470 and 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c
- 38 132 s 10;
- 39 (29) RCW 39.10.480 and 1994 c 132 s 9;

- 1 (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001
2 c 328 s 5;
- 3 (31) RCW 39.10.900 and 1994 c 132 s 13;
- 4 (32) RCW 39.10.901 and 1994 c 132 s 14;
- 5 (33) RCW 39.10.903 and 2007 c 494 s 510;
- 6 (34) RCW 39.10.904 and 2007 c 494 s 512; and
- 7 (35) RCW 39.10.905 and 2007 c 494 s 513.

8 **Sec. 5.** RCW 39.10.450 and 2012 c 102 s 2 are each amended to
9 read as follows:

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

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

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

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

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

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

35 (7) The job order contract shall not be used for the procurement
36 of architectural or engineering services not associated with specific
37 work orders. Architectural and engineering services shall be procured
38 in accordance with RCW 39.80.040. Any work order over three hundred
39 fifty thousand dollars, excluding Washington state sales and use tax,

1 and including over six hundred single trade hours shall utilize a
2 state registered apprenticeship program for that single trade in
3 accordance with RCW 39.04.320. Awarding entities may adjust this
4 requirement for a specific work order for the following reasons:

5 (a) The demonstrated lack of availability of apprentices in
6 specific geographic areas;

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

10 (c) Participating contractors have demonstrated a good faith
11 effort to comply with the requirements of RCW 39.04.300 and
12 39.04.310; or

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

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