

CAPITAL PROJECTS ADVISORY REVIEW BOARD
REAUTHORIZATION COMMITTEE MINUTES
JUNE 11, 2020
ATTACHMENT 1

RCW [39.10.210](#)

Definitions.

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

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

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

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

"Coefficient" means the job order contractor's competitively bid numerical factor applied to the public body's prices as published in the unit price book.

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

(5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

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

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

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

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

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

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

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

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

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

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

(16) "Public works project" means any work for a public body within the definition of

"public work" in RCW [39.04.010](#).

(17) "Small business entity" means a small business as defined in RCW [39.26.010](#).

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

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

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

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

RCW [39.10.420](#)

Job order procedure—Public bodies may authorize and use.

(1) All public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure.

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

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

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

RCW [39.10.430](#)

Job order procedure—Contract award process.

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

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

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

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

(b) The reasons for using job order contracts;
(c) A description of the qualifications required of the proposer;
(d) The identity of the specific unit price book to be used; and a description of which elements shall be included in the coefficient as necessary to establish a firm fixed price on work orders to be awarded under the job order contract.

(e) The minimum contracted amount committed to the selected job order contractor;
(f) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. The public body shall ensure that evaluation factors include, but are not limited to, proposal price coefficient and the ability of the proposer to perform the job order contract. In evaluating the ability of the proposer to perform the job order contract, the public body may consider: The ability of the professional personnel who will work on the job order contract; past performance on similar contracts; ability to meet time and budget requirements; past performance on approved subcontractor inclusion plans; ability to provide a performance and payment bond for the job order contract; recent, current, and projected workloads of the proposer; location; and the concept of the proposal;

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

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

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

(j) Other information relevant to the project contract.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, the finalists shall submit sealed bid including but not limited to coefficient(s) final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from adjustments to the listed unit price book costs. The public body shall award the contract to the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public request for proposals and will notify the board of the award of the contract.

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

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

RCW 39.10.440

Job order procedure—Contract requirements.

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

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All

extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

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

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

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

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

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

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

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

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

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

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

RCW [39.10.450](#)

Job order procedure—Work orders.

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

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

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

(4) Any new stand-alone permanent structure constructed under a work order shall not exceed three thousand gross square feet.

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

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

(7) The job order contract shall not be used for the procurement of architectural or engineering services not associated with specific work orders. Architectural and engineering services shall be procured in accordance with RCW [39.80.040](#).

(8) Any work order over three hundred fifty thousand dollars, excluding Washington state sales and use tax, and including over six hundred single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW [39.04.320](#).

Awarding entities may adjust this requirement for a specific work order for the following reasons:

- (a) The demonstrated lack of availability of apprentices in specific geographic areas;
- (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW [39.04.300](#) and [39.04.310](#); or
- (d) Other criteria the awarding entity deems appropriate.

RCW [39.10.460](#)

Job order procedure—Required information to board.

Each year, a public body shall provide to the board the following information for each job order contract for the period July 1st through June 30th:

- (1) A list of work orders issued;
- (2) The cost of each work order;
- (3) A list of subcontractors hired under each work order;
- (4) If requested by the board, a copy of the intent to pay prevailing wage and the affidavit of wages paid for each work order subcontract; and
- (5) Any other information requested by the board.