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Summary

RCW 39.04.010

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW [39.04.155](#).

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, which is executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter [39.12](#) RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW [36.102.060](#)(4) or under development agreements entered into under RCW [36.102.060](#)(7) or leases entered into under RCW [36.102.060](#)(8).

~~(5) "Maintenance" means keeping existing infrastructure in good usable, operational condition.~~

~~(6) "Ordinary maintenance" means work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, annually, biennially, but not less frequently than once every two years), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to keep existing infrastructure in good usable, operational condition.~~

~~(5) "Public works project" means a project that meets the definition of "public work" as defined in RCW 39.04.010, and that is either:~~

- ~~a. An identified and discreet project, or~~
- ~~b. A project based on anticipated but unidentified work that is structured around specific types of work, trades, or similar methods that meet the business or operational needs of a municipality.~~

~~(5)(7) "Responsible bidder" means a contractor who meets the criteria in RCW [39.04.350](#).~~

~~(6) (8) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.~~

Commented [MP1]: Already in the WAC for prevailing wage purposes. No need to add here. It's important to keep the legislative fix very simple.

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~~(9) "On-Call Contracts" or "Work Order Contracts" are contracts for alteration, repair, renovation, and maintenance of public infrastructure that are bid and awarded without a specific scope of work, but rather are categorized around types of anticipated work or trades. When a specific scope of work is identified under the contract, individual work orders are authorized based on unit price bids, on a negotiated lump sum amount, or on a not to exceed time and materials basis, or, and the contractor proceeds to complete the work. These are not job order contracts as defined in chapter 39.10 RCW.~~

[2008 c 130 § 16; 2007 c 133 § 1; 2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

NEW SECTION

A new section is added to RCW _____ as follows: (3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing best practices for public works projects that are for anticipated but unidentified work. The guidelines must be posted on the board's web site.

RCW 39.04.390 On-Call Contracts

~~(1) "On-Call Contracts" or "Work Order Contracts" may be awarded with a maximum not to exceed contract amount either after advertisement and competitive bids, or under a small works roster procedure. In either event, contracts are to be for a maximum of two years with no extensions.~~

~~(3) "On-Call Contracts" or "Work Order Contracts" must be structured so that awards are made on the basis of the total unit price or lump sum bid extensions for work estimated to realistically occur under the contract. At least 80 percent of all work under the contract must be based on unit price and lump sum bids, while the remainder can be on a not to exceed time and materials basis.~~

~~(4) If a surety bond under chapter 39.08 RCW is required, the bond amount must be for 50 percent of the maximum contract amount.~~

RCW 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts — Posting of statement of intent — Exception.

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works ~~projects and all on-call or work order contracts~~ and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

- (1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW [39.12.040](#); and
- (2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

Commented [MP2]: Legislation should not be so prescriptive like this that may cause both operational problems as well as problems with getting such a bill passed.

Commented [MP3]: Details like this belong in suggested guidelines and each agency should be free to implement projects in order to meet their business needs.

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This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

RCW 39.12.040

Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.

(1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works ~~project or on-call or work order contract~~, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

(a) The contractor's registration certificate number; and

(b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW [39.12.020](#) and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works ~~project or on-call or work order contract project~~, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW [60.28.011](#) are released to the contractor. If a subcontractor performing work on a public works project fails to submit an "affidavit of wages paid" form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. Filings made on behalf of a subcontractor may not be accepted sooner than thirty-one days after the acceptance date of the public works project and the contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW [39.12.020](#) and [39.12.065](#). Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW [39.12.050](#). Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

~~(2) For on-call or work order contracts an affidavit of wages paid is required at the end of each contract year. The contractor must file a new intent to pay prevailing wages at the beginning of a new contract year. No additional compensation for changes in prevailing wages shall be due. Retainage under RCW 60.28.011 shall be withheld from each works order and released at the end of a contract or of a contract year.~~

Commented [MP4]: Too much detail for legislation.

~~(2)~~ (3) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW [39.04.155](#)(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay

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prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW [60.28.011](#). Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23