
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0539.1/19

ATTY/TYPIST: AI:lcl

BRIEF DESCRIPTION: Modifying the job order contracting procedure.

1/11/19

Section 5, language previously added for apprenticeship requirements
moved to new subparagraph(8)

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

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

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

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

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

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

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

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

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

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

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

~~(h) Every school district;~~

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

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

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

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

(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.

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

(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;

(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 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.

(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 final proposals, including sealed bids based upon the identified unit price book. Such bids may be in the form of coefficient markups from listed 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.

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

(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 (~~two~~) 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.

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

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

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

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

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

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

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

(6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 204;

(14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c 494 s 301;

- (15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;
- (16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;
- (17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;
- (18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;
- (19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;
- (20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;
- (21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;
- (22) RCW 39.10.410 and 2007 c 494 s 308;
- (23) RCW 39.10.420 and 2019 c . . . s 1 (section 1 of this act), 2017 c 136 s 1, & 2016 c 52 s 1;
- (24) RCW 39.10.430 and 2019 c . . . s 2 (section 2 of this act) & 2007 c 494 s 402;
- (25) RCW 39.10.440 and 2019 c . . . s 3 (section 3 of this act), 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;
- (26) RCW 39.10.450 and 2019 c . . . s 5 (section 5 of this act), 2012 c 102 s 2, & 2007 c 494 s 404;
- (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
- (28) RCW 39.10.470 and 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c 132 s 10;
- (29) RCW 39.10.480 and 1994 c 132 s 9;
- (30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;
- (31) RCW 39.10.900 and 1994 c 132 s 13;
- (32) RCW 39.10.901 and 1994 c 132 s 14;
- (33) RCW 39.10.903 and 2007 c 494 s 510;
- (34) RCW 39.10.904 and 2007 c 494 s 512; and
- (35) RCW 39.10.905 and 2007 c 494 s 513.

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

(1) The maximum dollar amount for a work order is ~~((three))~~ five hundred ~~((fifty))~~ 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 ~~((, enclosed building space))~~ structure constructed under a work order shall not exceed ~~((two))~~ 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.

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