
HOUSE BILL 1288

State of Washington

67th Legislature

2021 Regular Session

By Representatives Santos and Hackney

1 AN ACT Relating to restoring the fair treatment of underserved
2 groups in public employment, education, and contracting; amending RCW
3 28B.20.744, 39.10.430, 39.10.450, and 49.04.100; and repealing RCW
4 49.60.400 and 49.60.401.

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

6 NEW SECTION. **Sec. 1.** The following acts or parts of acts are
7 each repealed:

8 (1) RCW 49.60.400 (Discrimination, preferential treatment
9 prohibited) and 2013 c 242 s 7, (2019 c 160 s 3, Referendum Measure
10 No. 88 failed to become law), & 1999 c 3 s 1; and

11 (2) RCW 49.60.401 (Short title—1999 c 3) and 1999 c 3 s 2.

12 **Sec. 2.** RCW 28B.20.744 and 2017 c 124 s 1 are each amended to
13 read as follows:

14 (1) This section provides an alternative process for awarding
15 contracts for construction, building, renovation, remodeling,
16 alteration, repair, or improvement of university buildings and
17 facilities in which critical patient care or highly specialized
18 medical research is located. These provisions may be used, in lieu of
19 other procedures to award contracts for such work, when the estimated
20 cost of the work is equal to or less than five million dollars and

1 the project involves construction, renovation, remodeling, or
2 alteration of improvements within a building that is used directly
3 for critical patient care or highly specialized medical research.

4 (2) The university may create a single critical patient care or
5 specialized medical research facilities roster or may create multiple
6 critical patient care or specialized medical research facilities
7 rosters for different trade specialties or categories of anticipated
8 work. At least once a year, the university shall publish in a
9 newspaper of general circulation and with the office of minority and
10 women's business enterprises, a notice of the existence of the roster
11 or rosters and solicit a statement of qualifications from contractors
12 who wish to be on the roster or rosters of prime contractors. In
13 addition, qualified contractors shall be added to the roster or
14 rosters at any time they submit a written request, necessary records,
15 and meet the qualifications established by the university. The
16 university may require eligible contractors desiring to be placed on
17 a roster to keep current records of any applicable licenses,
18 certifications, registrations, bonding, insurance, or other
19 appropriate matters on file with the university with input from the
20 women-owned and minority-owned business community as a condition of
21 being placed on a roster or rosters. Placement on a roster shall be
22 on the basis of qualifications.

23 (3) The public solicitation of qualifications shall include but
24 not be limited to:

25 (a) A description of the types of projects to be completed and
26 where possible may include programmatic, performance, and technical
27 requirements and specifications;

28 (b) The reasons for using the critical patient care and
29 specialized medical research roster process;

30 (c) A description of the qualifications to be required of a
31 contractor, including submission of an accident prevention program;

32 (d) A description of the process the university will use to
33 evaluate qualifications, including evaluation factors and the
34 relative weight of factors;

35 (e) The form of the contract to be awarded;

36 (f) A description of the administrative process by which the
37 required qualifications, evaluation process, and project types may be
38 appealed; and

39 (g) A description of the administrative process by which
40 decisions of the university may be appealed.

1 (4) The university shall establish a committee that includes one
2 representative from the minority-owned business community and one
3 representative from the women-owned business community to evaluate
4 the contractors submitting qualifications. Evaluation criteria for
5 selection of the contractor or contractors to be included on a roster
6 shall include, but not be limited to:

7 (a) Ability of a contractor's professional personnel;

8 (b) A contractor's past performance on similar projects,
9 including but not limited to medical facilities, and involving either
10 negotiated work or other public works contracts;

11 (c) The contractor's ability to meet time and budget
12 requirements;

13 (d) The contractor's ability to provide preconstruction services,
14 as appropriate;

15 (e) The contractor's capacity to successfully complete the
16 project;

17 (f) The contractor's approach to executing projects;

18 (g) The contractor's approach to safety and the contractor's
19 safety history;

20 (h) The contractor's record of performance, integrity, judgment,
21 and skills;

22 (i) The contractor's record of including office of minority and
23 women's business enterprises-certified, minority, women, veteran, and
24 small businesses; and

25 (j) The contractor's past history of use of small business
26 entities, disadvantaged business enterprises, minority business
27 enterprises, women business enterprises, and minority women business
28 enterprises over the last five years on projects of five million
29 dollars or less and the contractor's proposed outreach plan and
30 commitment to include such firms.

31 (5) Contractors meeting the evaluation committee's criteria for
32 selection must be placed on the applicable roster or rosters.

33 (6) When a project is selected for delivery through this roster
34 process, the university must establish a procedure for securing
35 written quotations from all contractors on a roster to assure that a
36 competitive price is established. Invitations for quotations shall
37 include an estimate of the scope and nature of the work to be
38 performed as well as materials and equipment to be furnished. Plans
39 and specifications must be included in the invitation but may not be

1 detailed. Award of a project must be made to the responsible bidder
2 submitting the lowest responsive bid.

3 (7) The university shall make an effort to solicit proposals from
4 certified minority or certified woman-owned contractors. The
5 university business diversity program shall establish aspirational
6 goals for small business entities, disadvantaged business
7 enterprises, minority business enterprises, women business
8 enterprises, and minority women business enterprises for each roster
9 based on the projected subcontracting opportunities ~~((and to the~~
10 ~~extent permitted by the Washington state civil rights act, RCW~~
11 ~~49.60.400))~~).

12 (8) Beginning in September 2010 and every other September
13 thereafter, the university shall provide a report to the capital
14 projects advisory review board which must, at a minimum, include a
15 list of rosters used, contracts awarded, office of minority and
16 women's business enterprises-certified small business entities,
17 disadvantaged business enterprises, veterans, and women and minority-
18 owned business use rates on the projects.

19 (9) Beginning in September 2015 and every September thereafter,
20 the university shall report to the office of minority and women's
21 business enterprises and to the appropriate legislative fiscal
22 committees the number of qualified women and minority-owned business
23 contractors on the roster or rosters and the number of contracts
24 awarded to women and minority-owned businesses.

25 (10) The university shall require contractors to solicit
26 proposals from office of minority and women's business enterprises-
27 certified firms.

28 **Sec. 3.** RCW 39.10.430 and 2019 c 212 s 8 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. 4.** RCW 39.10.450 and 2019 c 212 s 10 are each amended to
13 read as follows:

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

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

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

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

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

32 (6) For purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW,
33 each work order issued shall be treated as a separate contract. The
34 alternate filing provisions of RCW 39.12.040(2) apply to each work
35 order that otherwise meets the eligibility requirements of RCW
36 39.12.040(2).

37 (7) The job order contract shall not be used for the procurement
38 of architectural or engineering services not associated with specific

1 work orders. Architectural and engineering services shall be procured
2 in accordance with RCW 39.80.040.

3 (8) Any work order over three hundred fifty thousand dollars,
4 excluding Washington state sales and use tax, and including over six
5 hundred single trade hours shall utilize a state registered
6 apprenticeship program for that single trade in accordance with RCW
7 39.04.320. Awarding entities may adjust this requirement for a
8 specific work order for the following reasons:

9 (a) The demonstrated lack of availability of apprentices in
10 specific geographic areas;

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

14 (c) Participating contractors have demonstrated a good faith
15 effort to comply with the requirements of RCW 39.04.300 and
16 39.04.310; or

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

18 **Sec. 5.** RCW 49.04.100 and 2001 c 204 s 7 are each amended to
19 read as follows:

20 As provided by the rules adopted by the apprenticeship council,
21 apprenticeship programs entered into under authority of this chapter
22 with five or more apprentices shall conform with 29 C.F.R. Part 30 to
23 the extent required by federal law (~~while advancing the~~
24 ~~nondiscriminatory principles of the Washington state civil rights~~
25 ~~act, RCW 49.60.400)).~~

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