

**Chapter 39.04 RCW
PUBLIC WORKS**

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RCW 39.04.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorized local government" means a political subdivision of the state, school district, or special purpose district with public works authority.

(2) "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.

(3) "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 39.04.151 through 39.04.154.

(4) "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.

(5) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, 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).

(6) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(7) "Small business" means a business meeting certification criteria for size, ownership, control, and personal net worth adopted by the office of minority and women's business enterprises in accordance with RCW 39.19.030.

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

(9) "State agency" means the department of enterprise services, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of enterprise services to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2023 c 395 s 2; 2008 c 130 s 16; 2007 c 133 s 1; 2000 c 138 s 102; 1997 c 220 s 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 s 1; 1989 c 363 s 5; 1986 c 282 s 1; 1982 c 98 s 1; 1977 ex.s. c 177 s 1; 1923 c 183 s 1; RRS s 10322-1.]

Findings—Intent—2023 c 395: "The legislature finds the need to increase equity and efficiencies in public works procurement. The legislature further finds that small, minority, women, and veteran-owned businesses are essential to a robust and high-functioning economy, which provides high quality living wage jobs throughout the state. The legislature further finds that public works contracting agencies need a streamlined and effective method for delivering small public works projects while protecting worker rights. Therefore, the legislature intends to provide a small business definition, best practices to be included in inclusion plans, and to update and revise the small and limited works roster process to increase administrative efficiency, to encourage greater participation and utilization by small, minority, women, and veteran-owned businesses, and continue to protect the rights of workers engaging in public works projects." [2023 c 395 s 1.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: "Sections 1 through 30, 32 through 34, 36, and 37 of this act take effect July 1, 2024." [2023 c 395 s 39.]

Purpose—2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 s 1.]

Part headings not law—2000 c 138: "Part headings used in this act are not any part of the law." [2000 c 138 s 302.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Municipalities—Energy audits and efficiency: RCW 43.19.691.

RCW 39.04.015 Adjustment to bid price—Conditions.
Notwithstanding the provisions of RCW 39.04.010, a state contracting authority is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract plans and specifications, with a low responsive bidder under the following conditions:

(1) All bids for a state public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;

(2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and

(3) The negotiated adjustment will bring the bid price within the amount of available funds. [1989 c 59 s 1.]

RCW 39.04.020 Plans and specifications—Estimates—Publication—Emergencies. Whenever the state or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the original draft or a certified copy filed in such office before further action is taken.

If the state or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of twenty-five thousand dollars, then the state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done. When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. [1994 c 243 s 1; 1993 c 379 s 111; 1986 c 282 s 2; 1982 c 98 s 4; 1975 1st ex.s. c 230 s 2; 1967 c 70 s 1; 1923 c 183 s 2; RRS s 10322-2. Formerly RCW 39.04.020 and 39.04.030.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

RCW 39.04.040 Work to be executed according to plans—Supplemental plans. Whenever plans and specifications shall have been filed the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.

In the event that the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the

original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed in the office where the original estimate is filed. [1923 c 183 s 3; RRS s 10322-3.]

RCW 39.04.050 Contents of original estimates. Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion. [1986 c 282 s 3; 1923 c 183 s 4; RRS s 10322-4.]

RCW 39.04.060 Supplemental estimates. Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work. [1923 c 183 s 5; RRS s 10322-5.]

RCW 39.04.070 Account and record of cost. Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality. [1986 c 282 s 4; 1923 c 183 s 6; RRS s 10322-6.]

State auditor to prescribe standard form for costs of public works:
RCW 43.09.205.

RCW 39.04.080 Certified copy to be filed—Engineers' certificate. A true copy of such account or record, duly certified by the officer or officers having by law authority to direct such work to be done, to be a full, true, and accurate account of the costs of executing such work shall be filed in the office where the original plans and specifications are filed within sixty days after the completion of the work.

The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified copy, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications he or she shall set forth the manner and extent of the variance therefrom. [2011 c 336 s 802; 1923 c 183 s 7; RRS s 10322-7.]

RCW 39.04.100 Records open to public inspection—Certified copies. All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection.

Certified copies of any estimate, account or record shall be furnished by the officer having the custody thereof to any person on demand and the payment of the legal fees for making and certifying the same. [1923 c 183 s 9; RRS s 10322-9.]

RCW 39.04.105 Competitive bidding—Written protests—Notice of contract execution. (1) Within two business days of the bid opening on a public works project that is the subject of competitive bids, the municipality must provide, if requested by a bidder, copies of the bids the municipality received for the project. The municipality shall then allow at least two full business days after providing bidders with copies of all bids before executing a contract for the project. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(2) When a municipality receives a written protest from a bidder for a public works project that is the subject of competitive bids, the municipality must not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute a contract for the project; provided that the protesting bidder submits notice in writing of its protest no later than:

(a) Two full business days following bid opening, if no bidder requested copies of the bids received for the project under subsection (1) of this section; or

(b) Two full business days following when the municipality provided copies of the bids to those bidders requesting bids under subsection (1) of this section. Intermediate Saturdays, Sundays, and legal holidays are not counted. [2019 c 434 s 13; 2003 c 300 s 1.]

Finding—Intent—2019 c 434: See note following RCW 35.23.352.

RCW 39.04.107 Competitive bidding—Bidder claiming error. A low bidder on a public works project who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [2003 c 300 s 2.]

RCW 39.04.110 Penalty for false entries. Any director, supervisor, officer or employee of the state and any commissioner, trustee, supervisor, officer or employee of any municipality who shall knowingly make any false entry in any account or record required by this chapter or who shall knowingly certify to any false statement in any certificate required by this chapter, shall be guilty of a misdemeanor. [1923 c 183 s 10; RRS s 10322-10.]

Falsifying accounts: RCW 42.20.070.

Misconduct of public officers: Chapter 42.20 RCW.

RCW 39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution. If the successful bidder must undertake additional work for public construction projects issued by the state of Washington, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit. However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his or her undertaking such additional activity. In the event of a dispute between the awarding agency and the contractor, dispute resolution procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for dispute resolution, the then obtaining rules of the American arbitration association. [2011 c 336 s 803; 1998 c 196 s 1; 1973 1st ex.s. c 62 s 1.]

Severability—1973 1st ex.s. c 62: "If any provision or part of this 1973 act shall be judged to be invalid or unconstitutional, such adjudication shall not affect the validity of any provision or part of this 1973 act not adjudged invalid or unconstitutional." [1973 1st ex.s. c 62 s 4.]

Delay due to litigation, change orders, costs, arbitration, termination: RCW 60.28.080.

RCW 39.04.130 Application of RCW 39.04.120. RCW 39.04.120 shall take effect in ninety days but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract. [1973 1st ex.s. c 62 s 2.]

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

RCW 39.04.133 State capital improvement or construction projects—Product standards. (1) The state's preferences for the purchase and use of recycled content products shall be included as a factor in the design and development of state capital improvement projects.

(2) If a construction project receives state public funding, the product standards, as provided in RCW 43.19A.020, shall apply to the materials used in the project, whenever the administering agency and project owner determine that such products would be cost-effective and are readily available.

(3) This section does not apply to contracts entered into by a municipality. [2002 c 299 s 2; 1996 c 198 s 5.]

RCW 39.04.135 Demolition projects—Recycling or reuse of materials. Material from demolition projects shall be recycled or reused whenever practicable. [1996 c 198 s 6.]

RCW 39.04.151 Small works roster—State agencies, authorized local governments may establish—Municipal research and services center—Rules. (1) A state agency or an authorized local government may utilize a statewide small works roster in accordance with subsection (2) of this section or create and maintain one or more small works rosters for different specialties, categories of anticipated work, or geographic areas served by contractors on the roster that have registered for inclusion on that particular roster.

(a) The small works roster shall consist of all responsible contractors who have requested to be on the list, and where required by law, are properly licensed or registered to perform such work in this state in accordance with RCW 39.04.350.

(b) A state agency or authorized local government establishing a small works roster must require contractors desiring to be placed on the roster to indicate if they meet the definition of women and minority-owned business as described in RCW 39.19.030(7)(b), veteran-owned business as defined in RCW 43.60A.010, or small business as defined in RCW 39.04.010, and to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the appropriate agency as a condition of being placed on the roster and award of contract.

(c) At least once a year, the state agency or local government must publish in a newspaper of general circulation and provide the office of minority and women's business enterprises' directory of certified firms a notice of the existence of the roster and solicit contractors for the roster.

(d) Responsible contractors must be added to an appropriate roster at any time they submit a written request and the necessary records.

(e) The contractor must agree and be able to receive notifications and other communications via email.

(f) State agencies or authorized local governments using a small works roster may not break a project into units or construct a project by phases if done for the purposes of avoiding maximum dollar amounts set by chapter 395, Laws of 2023.

(2) The department of commerce through [through] the municipal research and services center shall develop a statewide small works roster in compliance with subsection (1) of this section by June 30, 2024. The municipal research and services center must develop criteria for the statewide roster with collaboration from affected state and local agencies. The statewide roster must have features to filter the roster by different specialties, categories of anticipated work, or geographic areas served by contractors. The roster must also indicate if the contractor is designated as a small business as defined in RCW 39.04.010.

(3) The department of commerce shall provide funding to the municipal research and services center as appropriated to maintain and publicize a small works roster and work with the municipal research and services center to notify state and local governments authorized to use small works rosters of the statewide roster authority and to provide guidance on how to use the authority. The guidance may take the form of a manual provided to local governments.

(4) A state agency establishing a small works roster shall adopt rules implementing this section. A local government establishing a small works roster shall adopt an ordinance or resolution implementing this section. Procedures included in rules adopted by the department of enterprise services in implementing this section must be included in any rules providing for a small works roster that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection. [2023 c 395 s 14.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

RCW 39.04.152 Uniform small works roster provisions—Invitations for bids—Retainage, performance bonds—Bid quotations—List of small works contracts awarded. (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of \$350,000 or less excluding state sales tax. The small works roster process includes the direct contract provisions authorized under this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the direct contract provisions of this section. State agencies and authorized local governments using small works rosters must establish procedures for implementing chapter 395, Laws of 2023.

(2) State agencies and authorized local governments must document good faith efforts annually implementing subsections (6) and (7) of this section.

(3) Invitations for bids or direct contract negotiation must include, at a minimum, an estimate for the scope of work including the nature of the work to be performed as well as the materials and equipment to be furnished. Detailed plans and specifications need not be included.

(4) The department of enterprise services must develop and make available on its public-facing website templates for bid invitations, bidding, and contracting that may be used by state agencies, authorized local governments, and contractors.

(a)(i) For small works roster projects with an estimated cost less than \$350,000, not including sales tax, state agencies and authorized local governments may contract by securing written or electronic quotations to assure that a competitive price is established and to award contracts to the responsible bidder with the lowest responsive bid.

(ii) A state agency or authorized local government contracting through a small works roster shall invite bids notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographical area.

(b) For small public works projects with an estimated cost less than \$150,000, not including sales tax, to increase the utilization of small businesses, state agencies and local governments are encouraged to and may direct contract with small businesses as defined in chapter 395, Laws of 2023, before direct contracting with other contractors on the appropriate small works roster without a competitive process as follows:

(i) If there are six or more contractors meeting the definition of small business on the applicable roster, the state agency or authorized local government must direct contract with one of those small businesses on the applicable roster that have indicated interest in performing work in the applicable geographical area. A state agency or authorized local government utilizing direct contracting pursuant to this subsection must rotate through the contractors on the appropriate small works roster and must, when qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals, utilize different contractors on different projects.

(ii) If there are five or less contractors meeting the definition of small business on the applicable roster, the state agency or authorized local government may direct contract with any contractor on the applicable roster.

(iii) The state agency or authorized local government must notify small, minority, women, or veteran-owned businesses on the applicable roster when direct contracting is utilized.

(iv) It is the intent of the legislature to increase utilization of small, minority, women, and veteran-owned businesses. Each state agency and authorized local government shall establish a small, minority, women, and veteran-owned business utilization plan. A state agency or authorized local government engaging in direct contracting may not favor certain contractors on the appropriate small works roster by repeatedly awarding contracts without documented attempts to direct contract with other contractors on the appropriate small works roster.

(v) If the state agency or authorized local government elects not to use the methods outlined in this subsection, it may not use direct contracting and must invite bids by electronically notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographical area as described in this section.

(5) For small public works contracts under \$5,000, there is no requirement for retainage or performance bonds. Small public works contracts valued at more than \$5,000 shall be subject to performance bond requirements set forth in chapter 39.08 RCW and retainage requirements set forth in chapter 60.28 RCW, provided, however, that the awarding state agency or authorized local government may reduce or waive retainage requirements set forth in RCW 60.28.011(1)(a), thereby

assuming the liability for the contractor's nonpayment of: (a) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (b) taxes, increases, and penalties pursuant to Titles 50, 51, and 82 RCW that may be due from the contractor for the project. Any such waiver will not affect the rights of the state agency or local government to recover against the contractor for any payments made on the contractor's behalf. For small public works contracts awarded through a bid solicitation, notice of any retainage reduction or waiver must be provided in bid solicitations.

(6) After an award is made, the bid quotations obtained shall be recorded, publicly available, and available by request.

(7) Annually, a state agency or authorized local government must publish a list of small works contracts awarded and contractors contacted for direct negotiation pursuant to RCW 39.04.200. [2023 c 395 s 15.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

RCW 39.04.154 Capital projects advisory review board—Review—Recommendations. Beginning in 2025 and every five years thereafter, the capital projects advisory review board must review construction cost escalation data for Washington state, readily available in industry publications, roster utilization, and other appropriate data and metrics, and make recommendations to the appropriate committees of the legislature on adjustments to the contracting thresholds described in RCW 39.04.152. [2023 c 395 s 16.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

RCW 39.04.160 Contracts subject to requirements established under office of minority and women's business enterprises. (1) All contracts entered into under this chapter by the state on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW.

(2) All contracts entered into under this chapter by the state on or after January 1, 2024, are subject to the requirements established under RCW 49.60.530. [2023 c 468 s 3; 1983 c 120 s 11.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

RCW 39.04.162 Awards of procurement contracts to veteran-owned businesses. All procurement contracts entered into under this chapter on or after June 10, 2010, are subject to the requirements established under RCW 43.60A.200. [2010 c 5 s 8.]

Purpose—Construction—2010 c 5: See notes following RCW 43.60A.010.

RCW 39.04.170 Application of chapter to performance-based contracts for energy equipment. This chapter shall not apply to performance-based contracts, as defined in *RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW. [1985 c 169 s 5.]

***Reviser's note:** RCW 39.35A.020 was amended by 2001 c 214 s 18, changing subsection (3) to subsection (4). RCW 39.35A.020 was amended by 2022 c 128 s 2, changing subsection (4) to subsection (6).

RCW 39.04.175 Application of chapter to certain agreements relating to water pollution control, solid waste handling facilities. This chapter does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70A.140.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156 or under RCW 36.58.090. [2021 c 65 s 26; 1989 c 399 s 11; 1986 c 244 s 13.]

Explanatory statement—2021 c 65: See note following RCW 53.54.030.

RCW 39.04.180 Trench excavations—Safety systems required. On public works projects in which trench excavation will exceed a depth of four feet, any contract therefor shall require adequate safety systems for the trench excavation that meet the requirements of the Washington industrial safety and health act, chapter 49.17 RCW. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item and any attempt to include the trench safety systems as an incidental cost is prohibited. [1988 c 180 s 1.]

RCW 39.04.190 Purchase contract process—Other than formal sealed bidding. (1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible

bidder as defined in chapter 39.26 RCW. Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised. [2015 c 79 s 4; 1993 c 198 s 2; 1991 c 363 s 110.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

RCW 39.04.200 Small works roster or purchase contracts—Listing of contracts awarded required. Any local government using the uniform process established in RCW 39.04.190 to award contracts for purchases must post a list of the contracts awarded under that process at least once every two months. Any state agency or local government using the small works roster process established in RCW 39.04.151 through 39.04.154 to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property must make available a list of the contracts awarded under that process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection. [2023 c 395 s 27; 2000 c 138 s 103; 1993 c 198 s 3; 1991 c 363 s 111.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.010.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

RCW 39.04.210 Correctional facilities construction and repair—Findings. The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance of and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and that effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there will continue to exist a need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the predicted growth of offender populations and that it is necessary to provide public works contract options for the effective construction and repair of additional department of corrections facilities. [1994 c 80 s 1; 1991 c 130 s 1.]

Severability—1994 c 80: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 80 s 4.]

Effective date—1994 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 80 s 5.]

Severability—1991 c 130: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 130 s 4.]

RCW 39.04.220 Correctional facilities construction and repair—Use of general contractor/construction manager method for awarding contracts—Demonstration projects. (1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars authorized by the legislature for the department of corrections to construct or repair facilities may be accomplished under contract using the general contractor/construction manager method described in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The department of enterprise services shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the department of enterprise services has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The department of enterprise services shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to projects authorized on or before July 1, 1997.

(3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall

be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of enterprise services is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of enterprise services or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected workloads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of enterprise services and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the department of enterprise services is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of enterprise services determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of enterprise services shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state.

If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this section may be construed as limiting any other powers or authority of the department of enterprise services. However, all actions taken pursuant to the powers and authority granted to the director or the department of enterprise services under this section may only be taken with the concurrence of the department of corrections. [2015 c 225 s 34; 1996 c 18 s 5; 1994 c 80 s 2; 1991 c 130 s 2.]

Severability—Effective date—1994 c 80: See notes following RCW 39.04.210.

Severability—1991 c 130: See note following RCW 39.04.210.

RCW 39.04.230 Correctional facilities construction and repair—Alternative contracting method to remain in force until contracts completed. Methods of public works contracting authorized by RCW 39.04.210 and 39.04.220 shall remain in full force and effect until completion of projects authorized on or before July 1, 1997. [1994 c 80 s 3; 1991 c 130 s 3.]

Severability—Effective date—1994 c 80: See notes following RCW 39.04.210.

Severability—1991 c 130: See note following RCW 39.04.210.

RCW 39.04.235 Public works contracts—Unit priced contracts—When authorized—Bidding requirements. (1) The following public bodies of the state of Washington are authorized to procure public works contracts under this chapter for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades:

(a) Every county public transportation authority as defined under RCW 36.57.010;

(b) Every public transportation benefit area as defined under RCW 36.57A.010; and

(c) Every regional transit authority as defined under RCW 81.112.020.

(2) A public body may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(3) Unit priced contracts must be executed for an initial contract term not to exceed one year, with the public body having the option of extending or renewing the unit priced contract for one additional year.

(4) Invitations for unit price bids must include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the public body will issue or release

work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as provided in RCW 39.04.010. Whenever possible, the public body must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(5) Unit priced 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 prevailing wage rates in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wage rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous twelve-month period of the unit priced contract.

(6) All public works procured with a unit priced contract under this section must comply with all other applicable bid requirements.

(7) For the purposes of this section, "unit priced contract" means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the public body, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work. [2019 c 434 s 9.]

Finding—Intent—2019 c 434: See note following RCW 35.23.352.

RCW 39.04.240 Public works contracts—Awarding of attorneys' fees. (1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum dollar limitation in RCW 4.84.250 shall not apply; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void as against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration. [1999 c 107 s 1; 1992 c 171 s 1.]

RCW 39.04.250 Payments received on account of work performed by subcontractor—Disputed amounts—Remedies. (1) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein.

(2) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than one hundred fifty percent of the disputed amount. Those not a party to a dispute are entitled to full and prompt payment of their portion of a draw, progress payment, final payment, or released retainage.

(3) In addition to all other remedies, any person from whom funds have been withheld in violation of this section shall be entitled to receive from the person wrongfully withholding the funds, for every month and portion thereof that payment including retainage is not made, interest at the highest rate allowed under RCW 19.52.025. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to costs of suit and reasonable attorneys' fees. [1992 c 223 s 5.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law. Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW. [1993 c 110 s 1.]

Application—1993 c 110: "Section 1 of this act shall not apply to any project for which a call for competitive bids was made before July 25, 1993." [1993 c 110 s 2.]

RCW 39.04.270 Electronic data processing and telecommunications systems—Municipalities—Acquisition method—Competitive negotiation—Findings, intent. (1) The legislature finds that the unique aspects of electronic data processing and telecommunications systems and the importance of these systems for effective administration warrant separate acquisition authority for electronic data processing and telecommunication systems. It is the intent of the legislature that municipalities utilize an acquisition method for electronic data processing and telecommunication systems that is both competitive and compatible with the needs of the municipalities.

(2) A municipality may acquire electronic data processing or telecommunication equipment, software, or services through competitive negotiation rather than through competitive bidding.

(3) "Competitive negotiation," for the purposes of this section, shall include, as a minimum, the following requirements:

(a) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the municipality in its discretion, to permit reasonable competition consistent with the requirements of the procurement. Notice of the

request for the proposal must be published in a newspaper of general circulation in the municipality at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.

(b) The municipality shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

(c) The award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered. The municipality may reject any and all proposals for good cause and request new proposals. [1996 c 257 s 1.]

RCW 39.04.280 Competitive bidding requirements—Exemptions.

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2) (a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or

damage to property, bodily injury, or loss of life if immediate action is not taken. [1998 c 278 s 1.]

RCW 39.04.290 Contracts for building engineering systems. (1) A state agency or local government may award contracts of any value for the design, fabrication, and installation of building engineering systems by: (a) Using a competitive bidding process or request for proposals process where bidders are required to provide final specifications and a bid price for the design, fabrication, and installation of building engineering systems, with the final specifications being approved by an appropriate design, engineering, and/or public regulatory body; or (b) using a competitive bidding process where bidders are required to provide final specifications for the final design, fabrication, and installation of building engineering systems as part of a larger project with the final specifications for the building engineering systems portion of the project being approved by an appropriate design, engineering, and/or public regulatory body. The provisions of chapter 39.80 RCW do not apply to the design of building engineering systems that are included as part of a contract described under this section.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Building engineering systems" means those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems.

(b) "Local government" means any county, city, town, school district, or other special district, municipal corporation, or quasi-municipal corporation.

(c) "State agency" means the department of enterprise services, the state parks and recreation commission, the department of fish and wildlife, the department of natural resources, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of enterprise services to engage in building, renovation, remodeling, alteration, improvement, or repair activities. [2015 c 225 s 35; 2001 c 34 s 1.]

RCW 39.04.300 Apprenticeship training programs—Purpose. A well-trained construction trades workforce is critical to the ability of the state of Washington to construct public works. Studies of the state's workforce highlight population trends that, without a concerted effort to offset them, will lead to an inadequate supply of skilled workers in the construction industry. State government regularly constructs public works. The efficient and economical construction of public works projects will be harmed if there is not an ample supply of trained construction workers. Apprenticeship training programs are particularly effective in providing training and experience to individuals seeking to enter or advance in the workforce. By providing for apprenticeship utilization on public works projects, state government can create opportunities for training and

experience that will help assure that a trained workforce will be available, including returning veterans, in sufficient numbers in the future for the construction of public works. Furthermore, the state of Washington hereby establishes its intent to assist returning veterans through programs such as the "helmets to hardhats" program, which is administered by the center for military recruitment, assessment, and veterans employment. It is the state's intent to assist returning veterans with apprenticeship placement career opportunities, in order to expedite the transition from military service to the construction workforce. [2006 c 321 s 1; 2005 c 3 s 1.]

Effective date—2005 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 24, 2005]." [2005 c 3 s 5.]

RCW 39.04.310 Apprenticeship training programs—Definitions.

The definitions in this section apply throughout this section and RCW 39.04.300 and 39.04.320 unless the context clearly requires otherwise.

(1) "Apprentice" means an apprentice enrolled in a state-approved apprenticeship training program.

(2) "Apprenticeship utilization plan" means a plan submitted by a prospective bidder specifically detailing verifiable efforts to meet the apprenticeship utilization requirements.

(3) "Apprentice utilization requirement" means the requirement that the appropriate percentage of labor hours be performed by apprentices.

(4) "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed upon the public works project. "Labor hours" includes hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements.

(5) "School district" has the same meaning as in RCW 28A.315.025.

(6) "State-approved apprenticeship training program" means an apprenticeship training program approved by the Washington state apprenticeship council. [2020 c 255 s 1; 2015 c 48 s 1; 2007 c 437 s 1; 2005 c 3 s 2.]

Effective date—2005 c 3: See note following RCW 39.04.300.

RCW 39.04.320 Apprenticeship training programs—Public works contracts—Adjustment of specific projects—Report and collection of agency data—Apprenticeship utilization advisory committee created.

(1)(a)(i) Except as provided in (b) through (d) of this subsection, from January 1, 2005, and thereafter, for all public works estimated to cost \$1,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

(ii) As of July 1, 2024, for all public works contracts awarded by a municipality estimated to cost \$2,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices. For contracts advertised for bid on or after July 1, 2026, for all public works contracts awarded by a

municipality estimated to cost \$1,500,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices. For contracts advertised for bid on or after July 1, 2028, for all public works contracts awarded by a municipality estimated to cost \$1,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

(b) For contracts advertised for bid on or after July 1, 2020, for all public works by the department of transportation estimated to cost \$2,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

(c) For contracts advertised for bid on or after January 1, 2010, for all public works by a school district estimated to cost \$1,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

(d) For contracts advertised for bid on or after January 1, 2012, for all public works by a four-year institution of higher education estimated to cost \$1,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

(2) Awarding entities may adjust the requirements of this section for a specific project 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 this section; or

(d) Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor or the municipality's legislative authority if the awarding entity is a municipality.

(3) The secretary of the department of transportation shall adjust the requirements of this section for a specific project for the following reasons:

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

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

(4) (a) This section applies to public works contracts awarded by the state, to public works contracts awarded by school districts, to public works contracts awarded by state four-year institutions of higher education, and to public works contracts awarded by a municipality. However, this section does not apply to contracts awarded by state agencies headed by a separately elected public official or housing authorities as defined in RCW 35.82.020.

(b) Within existing resources, awarding agencies and municipalities are responsible for monitoring apprenticeship utilization hours by contractor. There must be a specific line item in the contract specifying that apprenticeship utilization goals should be met, monetary incentives for meeting the goals, monetary penalties for not meeting the goals, and an expected cost value to be included in the bid associated with meeting the goals. The awarding agency and municipality must report the apprenticeship utilization by contractor and subcontractor to the supervisor of apprenticeship at the

department of labor and industries by final project acceptance. The electronic reporting system that is being developed by the department of labor and industries may be used for either or both monitoring and reporting apprenticeship utilization hours.

(c) In lieu of the monetary penalty and incentive requirements specified in (b) of this subsection, the Washington state department of transportation may use its three strike system for ensuring compliance including the allowance for a good faith effort.

(5) (a) The department of labor and industries must provide information and technical assistance to affected agencies and municipalities, and collect the following data from affected agencies and municipalities for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries and the municipal research and services center shall provide training, information, and ongoing technical assistance to municipalities in order to comply with apprenticeship utilization requirements. Training must include, but not be limited to, department of labor and industries reporting requirements, contract administration including sample contract language, and best practices on how a municipality's governing authority must adopt apprenticeship guidelines, including procedures, rules, and instructions to ensure compliance relating to a contractor that seeks a good faith waiver of apprenticeship utilization requirements.

(c) The department of labor and industries shall provide information and technical assistance with apprenticeship utilization reporting. The department of enterprise services shall make available sample contract language and provide contract administration advice pertaining to apprenticeship requirements.

(6) The secretary of transportation shall establish an apprenticeship utilization advisory committee, which must include statewide geographic representation and consist of equal numbers of representatives of contractors and labor. The committee must include at least one member representing contractor businesses with less than 35 employees. The advisory committee shall meet regularly with the secretary of transportation to discuss implementation of this section by the department of transportation, including development of the process to be used to adjust the requirements of this section for a specific project.

(7) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of enterprise services and the department of labor and industries shall compile and summarize the agency and municipality data and provide a joint report to both committees. The report must include recommendations on modifications or improvements to the

apprentice utilization program and information on skill shortages in each trade or craft.

(8) All contracts subject to this section must include specifications that a contractor or subcontractor may not be required to exceed the apprenticeship utilization requirements of this section.

(9) This section establishes the minimum apprenticeship utilization requirements on public works contracts awarded by a municipality. Any standards or requirements relating to apprenticeship utilization established by any applicable local law or ordinance that are more favorable to apprentices than the minimum requirements under this section are not affected by this section and those more favorable laws apply and may be enforced as provided by law. [2023 c 342 s 1; 2018 c 244 s 1; 2015 3rd sp.s. c 40 s 1; 2015 c 225 s 36; 2009 c 197 s 1; 2007 c 437 s 2; 2006 c 321 s 2; 2005 c 3 s 3.]

Effective date—2023 c 342 s 1: "Section 1 of this act takes effect July 1, 2024." [2023 c 342 s 3.]

Effective date—2018 c 244: "This act takes effect January 1, 2020." [2018 c 244 s 3.]

Effective date—2015 3rd sp.s. c 40: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 14, 2015]." [2015 3rd sp.s. c 40 s 3.]

Rules—Implementation—2009 c 197: "The Washington state apprenticeship and training council shall adopt rules necessary to implement sections 2 and 3 of this act. Rules shall address due process protections for all parties and shall strengthen the accountability for apprenticeship committees approved under chapter 49.04 RCW in enforcing the apprenticeship program standards adopted by the council." [2009 c 197 s 4.]

Effective date—2005 c 3: See note following RCW 39.04.300.

RCW 39.04.330 Use of wood products—Compliance with chapter 39.35D RCW. For purposes of determining compliance with chapter 39.35D RCW, the department of enterprise services shall credit the project for using wood products with a credible third party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. [2015 c 225 s 37; 2005 c 12 s 11.]

RCW 39.04.340 Apprenticeship and training council outreach effort. The Washington state apprenticeship and training council shall lead and coordinate an outreach effort to educate returning veterans about apprenticeship and career opportunities in the construction industry. The outreach effort shall include information about the "helmets to hardhats" program and other paths for making the transition from military service to the construction workforce. The outreach effort shall be developed and coordinated with apprenticeship

programs, other state agencies involved in workforce training, and representatives of contractors and labor. [2006 c 321 s 3.]

RCW 39.04.350 Bidder responsibility criteria—Sworn statement—Supplemental criteria. (Effective until July 1, 2026.)

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW, a plumbing contractor license in compliance with chapter 18.106 RCW, an elevator contractor license in compliance with chapter 70.87 RCW, or an electrical contractor license in compliance with chapter 19.28 RCW, as required under the provisions of those chapters;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of

subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(e) If the bidder has a history of receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten business days immediately following the notice to proceed date.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's website. [2023 c 88 s 1; 2020 c 255 s 2; 2019 c 232 s 15; 2018 c 243 s 1; 2017 c 258 s 2; 2010 c 276 s 2; 2009 c 197 s 2; 2007 c 133 s 2.]

Effective date—2018 c 243: "This act takes effect July 1, 2019." [2018 c 243 s 2.]

Findings—2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid

taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 s 1.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

RCW 39.04.350 Bidder responsibility criteria—Sworn statement—Apprentice utilization plan—Supplemental criteria. (Effective July 1, 2026, until July 1, 2027.) (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW, a plumbing contractor license in compliance with chapter 18.106 RCW, an elevator contractor license in compliance with chapter 70.87 RCW, or an electrical contractor license in compliance with chapter 19.28 RCW, as required under the provisions of those chapters;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption;

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of

labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and

(h) At the time of bid submittal, not be subject to a revocation of a minor work permit under RCW 49.12.390(4).

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) and (h) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3)(a) In addition to the bidder responsibility criteria in subsection (1) of this section, for a project subject to apprentice utilization requirements under RCW 39.04.320, the bidder shall submit an apprentice utilization plan to the awarding agency before receiving the notice to proceed. A contracting agency may exempt a bidder from the requirements of this subsection if the bidder met or exceeded apprentice utilization requirements on the last public works project the bidder completed. Contracting agencies may rely on records made available by the department of labor and industries to determine whether a bidder is eligible for the exemption in this subsection.

(b) The department of labor and industries shall develop an apprentice utilization plan template and make the template available to awarding agencies and bidders. The plan template must include, at minimum: The projected start and end dates of the project; estimated total work hours; estimated apprentice hours by apprenticeable occupation; list of state registered apprenticeship programs to be contacted; and list of estimated apprenticeship training agents or sponsors on the project. The plan template must also include educational material on apprentice utilization requirements, including how to access apprentices and contact apprenticeship programs and where to find additional and relevant resources. The department may approve the use of a template developed by an awarding agency if it meets the minimum requirements of this subsection.

(c) The department of labor and industries shall publish completed apprentice utilization plans on its website.

(4) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(e) If the bidder has a history of receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten business days immediately following the notice to proceed date.

(5) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's website. [2025 c 173 s 1; 2025 c 63 s 1; 2023 c 88 s 1; 2020 c 255 s 2; 2019 c 232 s 15; 2018 c 243 s 1; 2017 c 258 s 2; 2010 c 276 s 2; 2009 c 197 s 2; 2007 c 133 s 2.]

Reviser's note: This section was amended by 2025 c 63 s 1 and by 2025 c 173 s 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2025 c 173: See note following RCW 49.30.060.

Effective date—2025 c 63 s 1: "Section 1 of this act takes effect July 1, 2026." [2025 c 63 s 3.]

Expiration date—2025 c 63 s 1: "Section 1 of this act expires July 1, 2027." [2025 c 63 s 4.]

Effective date—2018 c 243: "This act takes effect July 1, 2019." [2018 c 243 s 2.]

Findings—2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 s 1.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

RCW 39.04.350 Bidder responsibility criteria—Verification of compliance—Sworn statement—Apprentice utilization plan—Supplemental criteria. (Effective July 1, 2027.)

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW, a plumbing contractor license in compliance with chapter 18.106 RCW, an elevator contractor license in compliance with chapter 70.87 RCW, or an electrical contractor license in compliance with chapter 19.28 RCW, as required under the provisions of those chapters;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprentice utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) (i) Have completed at least one public works project within the previous three years and have not received a citation for a violation of this chapter, chapter 39.12 RCW, or those provided in RCW 39.12.055 (1) through (3) during that same time period; or (ii) have at least one designated person who is a current employee or officer and who has received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW within the previous three years. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. The department of labor and industries must keep records of persons that have completed the training in the previous three years and make the records available on its website. Responsible parties may rely on the records made available by the department;

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and

(h) At the time of bid submittal, not be subject to a revocation of a minor work permit under RCW 49.12.390(4).

(2) (a) The department of labor and industries shall publish on its website available information in order for contracting agencies to

verify the status of a bidder's compliance with each of the criteria under subsection (1)(a) through (f) of this section.

(b) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) and (h) of this section. A contracting agency may reasonably rely upon such a sworn statement. The contracting agency shall verify that the bidder meets the remaining criteria in subsection (1) of this section through publicly available information on the department of labor and industries' website.

(3)(a) In addition to the bidder responsibility criteria in subsection (1) of this section, for a project subject to apprentice utilization requirements under RCW 39.04.320, the bidder shall submit an apprentice utilization plan to the awarding agency before receiving the notice to proceed. A contracting agency may exempt a bidder from the requirements of this subsection if the bidder met or exceeded apprentice utilization requirements on the last public works project the bidder completed. Contracting agencies may rely on records made available by the department of labor and industries to determine whether a bidder is eligible for the exemption in this subsection.

(b) The department of labor and industries shall develop an apprentice utilization plan template and make the template available to awarding agencies and bidders. The plan template must include, at minimum: The projected start and end dates of the project; estimated total work hours; estimated apprentice hours by apprenticeable occupation; list of state registered apprenticeship programs to be contacted; and list of estimated apprenticeship training agents or sponsors on the project. The plan template must also include educational material on apprentice utilization requirements, including how to access apprentices and contact apprenticeship programs and where to find additional and relevant resources. The department may approve the use of a template developed by an awarding agency if it meets the minimum requirements of this subsection.

(c) The department of labor and industries shall publish completed apprentice utilization plans on its website.

(4) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(5) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's website. [2025 c 173 s 1; 2025 c 63 s 2; 2023 c 88 s 1; 2020 c 255 s 2; 2019 c 232 s 15; 2018 c 243 s 1; 2017 c 258 s 2; 2010 c 276 s 2; 2009 c 197 s 2; 2007 c 133 s 2.]

Reviser's note: This section was amended by 2025 c 63 s 2 and by 2025 c 173 s 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2025 c 173: See note following RCW 49.30.060.

Effective date—2025 c 63 s 2: "Section 2 of this act takes effect July 1, 2027." [2025 c 63 s 5.]

Effective date—2018 c 243: "This act takes effect July 1, 2019." [2018 c 243 s 2.]

Findings—2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 s 1.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

RCW 39.04.360 Payment of undisputed claims—Change orders—Civil actions for violations. (1) No later than 30 days after satisfactory completion of any additional work or portion of any additional work by a contractor, subcontractor, or supplier on a public works project or private construction project, except private residential projects of 12 units or less, and receipt by the owner, state, or municipality of a request from the contractor for issuance of a change order to the contract, the owner, state, or municipality shall issue a change order

to the contract for the full dollar amount of the work not in dispute to the contractor. Within 10 days of receipt of a change order from the owner, state, municipality, or upper-tier contractor, the contractor or subcontractor must issue change orders to lower-tier subcontractors impacted by the change. If the owner, state, or municipality does not issue such a change order within the 30 days, or the contractor or upper-tier subcontractor does not issue a change order to lower-tier subcontractors within 10 days after receipt of the approved change order, interest must accrue on the dollar amount of the additional work satisfactorily completed and not in dispute until a change order is issued. The owner, contractor, subcontractor, state, or municipality shall pay their proportionate share of the interest at a rate of one percent per month. For the purposes of this section, as it pertains to obligations of an owner, state, or municipality, additional work is work beyond the scope defined in the contract between the contractor and the owner, state, or municipality.

(2) No later than 30 days after satisfactory completion of any additional work or portion of any additional work authorized by the owner, state, or municipality and a request by a subcontractor or supplier, the contractor must request a change order from the owner, state, or municipality. A lower-tier subcontractor or supplier must request a change order from the upper-tier contractor 30 days after the completion of the additional work and a request from the lower-tier subcontractor. If a contractor or subcontractor has requested the change order from the owner, upper-tier contractor, state, or municipality within 30 days of the request from the subcontractor or supplier, the contractor or subcontractor is not liable for any interest on the unpaid dollar amount for any additional work satisfactorily completed and not in dispute if the owner, upper-tier contractor, state, or municipality has not issued the requested change order. This section does not provide any rights to a contractor, subcontractor, or supplier against a party with whom they are not a party to a written contract.

(3) An aggrieved party may bring a civil action for violations of this section in a court of competent jurisdiction for appropriate relief, including interest and reasonable attorneys' fees and costs. [2024 c 199 s 1; 2009 c 193 s 1.]

RCW 39.04.370 Contract requirements—Off-site prefabricated items—Submission of information. (1) For any public work estimated to cost over one million dollars, the contract must contain a provision requiring the submission of certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington. The information must be submitted to the department of labor and industries under subsection (2) of this section. The information that must be provided is:

- (a) The estimated cost of the public works project;
- (b) The name of the awarding agency and the title of the public works project;
- (c) The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington, including labor and materials; and

(d) The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

(2) (a) The required information under this section must be submitted by the contractor or subcontractor as a part of the affidavit of wages paid form filed with the department of labor and industries under RCW 39.12.040. This information is only required to be submitted by the contractor or subcontractor who directly contracted for the off-site, prefabricated, nonstandard, project specific items produced outside Washington.

(b) The department of labor and industries shall include requests for the information about off-site, prefabricated, nonstandard, project specific items produced outside Washington on the affidavit of wages paid form required under RCW 39.12.040.

(c) The department of enterprise services shall develop standard contract language to meet the requirements of subsection (1) of this section and make the language available on its website.

(d) Failure to submit the information required in subsection (1) of this section as part of the affidavit of wages paid form does not constitute a violation of RCW 39.12.050.

(3) For the purposes of this section, "off-site, prefabricated, nonstandard, project specific items" means products or items that are:

(a) Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (b) produced specifically for the public work and not considered to be regularly available shelf items; (c) produced or manufactured by labor expended to assemble or modify standard items; and (d) produced at an off-site location.

(4) The department of labor and industries shall transmit information collected under this section to the capital projects advisory review board created in RCW 39.10.220 for review.

(5) This section applies to contracts entered into between September 1, 2010, and December 31, 2013.

(6) This section does not apply to department of transportation public works projects.

(7) This section does not apply to local transportation public works projects. [2015 c 225 s 38; 2010 c 276 s 1.]

RCW 39.04.380 Nonresident contractors. (1) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor.

(2) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(3) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(4) This section does not apply to public works procured pursuant to RCW 39.04.280, RCW 39.04.151 through 39.04.154, or any other

procurement exempt from competitive bidding. [2023 c 395 s 28; 2015 c 225 s 39; 2011 c 345 s 1.]

Effective date—2023 c 395 ss 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

Conflict with federal requirements—2011 c 345: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." [2011 c 345 s 2.]

RCW 39.04.400 Repair or replacement of structurally deficient bridges. The repair or replacement of a city, town, or county bridge deemed structurally deficient, as defined in RCW 43.21C.470, may use the contracting process available under RCW 47.28.170. [2015 c 144 s 3.]

RCW 39.04.410 Public works projects—Pollinator habitat. If a public works project includes landscaping, at least 25 percent of the planted area must be pollinator habitat to the extent practicable. For purposes of this section, "pollinator habitat" means an area of land that is or may be developed as habitat beneficial for the feeding, nesting, and reproduction of all pollinators, including honey bees. The department of agriculture, in consultation with the conservation commission and the department of fish and wildlife, must develop a list of native forage plants that are pollen-rich or nectar-rich and beneficial for all pollinators, including honey bees. [2021 c 278 s 7.]

Purpose—Intent—2021 c 278: See note following RCW 43.23.300.

RCW 39.04.420 Signage for 988 national suicide prevention and mental health crisis hotline. (1)(a) For any building, bridge, ferry, or park being constructed or replaced after July 1, 2024, as a public works project, there must be installed in appropriate locations signs displaying the 988 national suicide prevention and mental health crisis hotline.

(b) The public body as defined in RCW 39.10.210 in control of a public works project in this subsection must decide where signs under this section would be physically feasible and appropriate. The following facilities are recommended to have such signs:

(i) Bridges where suicides by jumping have occurred or are likely to occur; and

(ii) Locations that provide services to people that have high incidence of suicide or mental health conditions that would benefit from knowing about the hotline.

(c) The signs must be designed to communicate that dialing 988 on a telephone will connect callers to behavioral health and suicide prevention services as provided in accordance with state and federal laws governing the 988 number.

(d) If a sign is located along a state highway or the interstate system, the department of transportation must approve the location prior to erecting the sign, but no permit is necessary.

(e) Signs created under this section may not conflict with provisions of the manual of uniform traffic control devices or existing state laws related to placement and design of signs.

(2) This section does not create a private right of action by, or a legal duty to, any party, and may not be used to impose liability on the public body if a sign has or has not been erected on its property. The state of Washington, including all of its agencies, subdivisions, employees, and agents, shall not be liable in tort for any violation of this section, notwithstanding any other provision of law.

(3) The public body may accept gifts or donations to pay for the creation, installation, or maintenance of signs under this section. [2022 c 191 s 11.]

Effective date—2022 c 191 s 11: "Section 11 of this act takes effect July 1, 2024." [2022 c 191 s 14.]

Findings—Intent—2022 c 191: See note following RCW 43.60A.260.

RCW 39.04.430 Prompt payment—Capital projects advisory review board—Review—Recommendations. (1)(a) The capital projects advisory review board created in chapter 39.10 RCW shall review the extent to which prompt pay statutes meet the needs of small businesses, as defined in RCW 39.26.010, particularly women and minority-owned businesses as certified under chapter 39.19 RCW or as officially recognized as such by a local public entity. These statutes include RCW 39.04.250, 39.76.011, and 39.76.020.

(b) The capital projects advisory review board must present findings and any recommendations the board develops to the appropriate committees of the legislature on or before November 1, 2024.

(2) In carrying out the review and considering possible recommendations under subsection (1) of this section, the board shall engage with a broad range of stakeholders. [2024 c 276 s 2.]

Finding—Intent—Effective date—2024 c 276: See notes following RCW 39.04.440.

RCW 39.04.440 Prompt payment—Capital projects advisory review board—Considerations. In considering possible recommendations under RCW 39.04.430(1)(b), at a minimum the capital projects advisory review board shall consider:

(1) Requiring the state and local entities to pay the prime contractor within 30 days for work satisfactorily completed or materials delivered by a subcontractor of any tier that is a small business certified with the office of minority and women's business

enterprises under chapter 39.19 RCW, or is recognized as a women or minority-owned business enterprise in a state of Washington port, county, or municipal small business or women or minority-owned business enterprise program;

(2) Requiring that, within 10 days of receipt of payment, the prime contractor and each higher tier subcontractor must make payment to its subcontractor until the subcontractor that is a certified small business or recognized women or minority-owned business has received payment. [2024 c 276 s 3.]

Finding—Intent—2024 c 276: "(1) The legislature finds that prompt pay requirements address the acceptable amount of time that payments must be made to contractors and subcontractors, and under what circumstances exceptions can be made. Washington state has prompt pay statutes that apply to public works commissioned by the state or local public entities such as counties, cities, towns, port districts, school districts, and other public entities in the state. These statutes intend to promote efficient implementation of public works projects by, among other things, requiring timely payment to assist contractors and subcontractors in operating their businesses and meet working capital and cash flow needs, while enabling public entities to address such things as disagreements over amounts owed, unsatisfactory performance, and noncompliance with the terms of the contract.

(2) The legislature intends to review how well prompt pay provisions are working for small businesses, particularly women and minority-owned businesses, potential improvements that could be considered, and the potential impacts on the industry any recommendations might have." [2024 c 276 s 1.]

Effective date—2024 c 276: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2024]." [2024 c 276 s 4.]

RCW 39.04.900 Rights may not be waived—Construction—1992 c 223.

(1) The rights provided in chapter 223, Laws of 1992 may not be waived by the parties and a contract provision that provides for waiver of the rights provided in chapter 223, Laws of 1992 is void as against public policy.

(2) Chapter 223, Laws of 1992 is to be liberally construed to provide security for all parties intended to be protected by its provisions. [1992 c 223 s 6.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Application—1992 c 223: See RCW 39.04.901.

RCW 39.04.901 Application—1992 c 223. RCW 39.76.011, 60.28.011, 60.28.021, 60.28.051, 39.04.250, and 39.04.900 are applicable to all public works contracts entered into on or after September 1, 1992, relating to the construction of any work of improvement. [2009 c 219 s 1; 1992 c 223 s 7.]

Effective date—1992 c 223: See note following RCW 39.76.011.