

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices.

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CHAPTER 282

[Engrossed Substitute House Bill No. 1447]

PUBLIC WORKS CONTRACTS—SMALL WORKS ROSTER—ESTIMATES—
BUDGETING, ACCOUNTING, AND REPORTING—TAX ON REFUSE
COLLECTION BUSINESSES—SOLID WASTE HANDLING

AN ACT Relating to public works contracts; amending RCW 39.04.010, 39.04.020, 39.04.050, 39.04.070, 82.16.020, 35.21.120, and 36.58.040; adding a new section to chapter 35.92 RCW; adding a new section to chapter 36.58 RCW; adding a new chapter to Title 82 RCW; creating new sections; repealing RCW 39.04.090; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 183, Laws of 1923 as last amended by section 1, chapter 98, Laws of 1982 and RCW 39.04.010 are each amended to read as follows:

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is 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 any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include 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, but nothing herein shall apply to the construction, alteration, repair, or improvement of any municipal street railway system. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020.

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a

small works roster under the authority of RCW 39.04.150, 35.22.620, 28B-.10.355, and 57.08.050 need not be advertised.

~~((Cost of superintendence, engineering, clerical and accounting service shall include all expenditures specially incurred for such service, and shall include a proportionate charge for the time of all salaried officers, engineers, clerks, accountants and employees of the state or municipality while engaged in such work or in keeping or preparing the estimates, accounts and records thereof:))~~

Sec. 2. Section 2, chapter 183, Laws of 1923 as last amended by section 4, chapter 98, Laws of 1982 and RCW 39.04.020 are each amended to read as follows:

Whenever the state, or any municipality shall determine that any public work is necessary to be done it shall cause plans ~~((and/or))~~, 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 hundred dollars, or twenty-five thousand dollars if such work is let from a small works roster created pursuant to RCW 39-04.150))~~ fifteen 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: PROVIDED, That 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.

Sec. 3. Section 4, chapter 183, Laws of 1923 and RCW 39.04.050 are each amended to read as follows:

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. ~~((Such estimates shall show in detail the estimated total cost of~~

~~labor, material, provisions, supplies, equipment rentals, equipment purchases, industrial insurance and medical aid, superintendence, engineering, clerical and accounting service, the value of the use of equipment owned by the state or such municipality and other estimated expenses in the execution of such work:))~~

Sec. 4. Section 6, chapter 183, Laws of 1923 and RCW 39.04.070 are each amended to read as follows:

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.

~~((Such account and record shall show in accurately tabulated form and under appropriate headings the totals of all classes and kinds of work performed, the total cost and unit cost of each class, together with the costs of executing such work, including, under separate headings, the costs of labor; material; equipment purchased; provisions and supplies; rental of equipment; industrial insurance and medical aid; superintendence; engineering; clerical and accounting service; the reasonable value, including depreciation, of the use of equipment owned by the state or municipality; and all other expenses incurred therein.))~~

NEW SECTION. Sec. 5. Section 8, chapter 183, Laws of 1923 and RCW 39.04.090 are each repealed.

NEW SECTION. Sec. 6. For purposes of this chapter:

(1) "Refuse collection business" means every person who receives waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(2) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(3) "Waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(4) "Taxpayer" means that person upon whom the refuse collection tax is imposed.

NEW SECTION. Sec. 7. There is imposed on each person using the services of a refuse collection business a refuse collection tax equal to three and six-tenths percent of the consideration charged for the services.

NEW SECTION. Sec. 8. The person collecting the charges made for using the refuse collection business shall collect the tax imposed in section 6 of this act. If any person charged with collecting the tax fails to bill the

taxpayer for the tax, or in the alternative has not notified the taxpayer in writing of the imposition of the tax, or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax.

NEW SECTION. Sec. 9. Taxes collected under this chapter shall be held in trust until paid to the state. Taxes so received by the state shall be deposited in the public works assistance account created in RCW 43.155-.050. Any person collecting the tax who appropriates or converts the tax collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

The tax shall be due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

The tax shall be due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted shall be applied first to payment of the refuse collection tax and this tax shall have priority over all other claims to the amount remitted.

NEW SECTION. Sec. 10. The refuse collection tax shall not apply to any agency, division, or branch of the federal government or to services rendered under a contract therewith.

NEW SECTION. Sec. 11. To prevent pyramiding and multiple taxation of a single transaction, this tax shall not apply to any refuse collection business using the services of another refuse collection business for the transfer, storage, or disposal of the waste collected during the transaction.

To be eligible for this exemption, a person first must be certified by the department of revenue as a refuse collection business.

NEW SECTION. Sec. 12. Chapter 82.32 RCW applies to the tax imposed under this chapter.

NEW SECTION. Sec. 13. The department of revenue shall have the power to enforce the tax imposed in this chapter through appropriate rules.

Sec. 14. Section 82.16.020, chapter 15, Laws of 1961 as last amended by section 10, chapter 471, Laws of 1985 and RCW 82.16.020 are each amended to read as follows:

(1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of

the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Railroad, express, railroad car, sewerage collection, light and power, and telegraph businesses: Three and six-tenths percent;

(b) Gas distribution business: Three and six-tenths percent;

(c) Urban transportation business: Six-tenths of one percent;

(d) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(e) Motor transportation and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(f) Water distribution ((and refuse collection)) business((es)): Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses(~~(, seventy percent of the moneys collected under subsection (1) of this section on refuse collection businesses,))~~) and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050.

NEW SECTION. Sec. 15. Sections 6 through 13 of this act shall constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 16. The legislature finds that the regulation, management, and disposal of solid waste through waste reduction, recycling, and the use of resource recovery facilities of the kind described in RCW 35.92.022 and 36.58.040 should be conducted in a manner substantially consistent with the priorities and policies of the Solid Waste Management Act, chapter 70.95 RCW. Nothing contained in sections 17 through 20 of this act shall detract from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW.

NEW SECTION. Sec. 17. A new section is added to chapter 35.92 RCW to read as follows:

(1) Notwithstanding the charter of any city, the legislative authority of a city or town may contract with one or more private vendors for one or more of the design, construction, or operation function of systems and plants for solid waste handling, as defined in RCW 70.95.030 and in accordance with the procedures set forth in subsections (2) and (3) of this section. Contracts shall be for facilities that are in substantial compliance with the solid waste management plans prepared pursuant to chapter 70.95 RCW. Such systems and plants may be owned, leased, and/or operated in whole or in part by the city or town, or owned, leased, and/or operated in whole or in part by the private vendor.

(2) The legislative authority shall publish notice of its requirements and request submission of qualifications for the design, construction, and operation of solid waste handling systems and plants. The notice shall be published in the official newspaper of the city or town at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications. The notice shall (a) state in summary form, the general scope and nature of the system and plant or work for which the services are required, (b) the name and address of a representative of the city or town who can provide further details, and (c) the final date for the submission of qualifications.

(3) If the legislative authority of the city or town decides to proceed with the construction of a resource recovery facility or one or more of the services to be provided for such a facility, it may designate a representative to evaluate the vendors who submitted qualifications and conduct discussions regarding proposals with one or more vendors. The representative of the legislative authority shall recommend to the legislative authority a vendor, based upon criteria established by the city or town, which shall not be determined solely by price but by all terms of the contract, who is initially determined to be the best qualified to provide one or more of the services required for the proposed project. If two or more vendors submit qualifications, at least two vendors shall be interviewed. One or more vendors may be selected to provide services. The legislative authority or its representative shall attempt to negotiate a contract with the first vendor selected for one or more of the construction, design, or operation portions of the proposed project at a price and on other terms that the legislative authority determines to be fair and reasonable and in the best interest of the city or town. Only the legislative authority may approve and sign the contract: **PROVIDED**, That where a contract for design is entered into separately from other services permitted under this act, procurement shall be in accord with chapter 39.80 RCW. If the legislative authority or its representative is unable to negotiate such a contract with the first vendor selected on terms that it determines to be fair and reasonable and in the best interest of the city or town, negotiations with that vendor shall be formally terminated and other vendors may be selected in accordance with the procedures set forth in subsections (2) and (3) of this section. If the legislative authority decides to continue the process of selection, negotiations shall continue in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(4) Prior to entering into such a contract with a vendor, the legislative authority of the city or town must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into

the contract and that the contract is financially sound and advantageous compared to other methods.

(5) Each contract shall include project performance bonds or other security by the vendor which in the judgment of the legislative authority of the city or town is sufficient to secure adequate performance by the vendor.

(6) The provisions of chapters 39.12, 39.19, and 39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

Sec. 18. Section 35.21.120, chapter 7, Laws of 1965 and RCW 35.21.120 are each amended to read as follows:

Every city (~~and~~) or town may by ordinance provide for the establishment of a system of garbage collection and disposal for the entire city or town or for portions thereof, and award contracts for garbage collection and disposal or provide for it under the direction of officials and employees of the city or town. Contracts for solid waste handling may provide that a city or town pay a minimum periodic fee in consideration of the operational availability of a solid waste handling system or plant, without regard to the ownership of the system or plant or the amount of solid waste actually handled during all or any part of the contract period. There shall be included in the contract specific allocation of financial responsibility in cases where the amount of solid waste handled during the contract period falls below the minimum level provided in the contract.

NEW SECTION. Sec. 19. A new section is added to chapter 36.58 RCW to read as follows:

(1) Notwithstanding the charter of any county, the legislative authority of a county may contract with one or more private vendors for one or more of the design, construction, or operation function of systems and plants for solid waste handling, as defined in RCW 70.95.030 and in accordance with the procedures set forth in subsections (2) and (3) of this section. Such systems and plants may be owned, leased, and/or operated in whole or in part by the county, or owned, leased, and/or operated in whole or in part by the private vendor.

(2) The legislative authority shall publish notice of its requirements and request submission of qualifications for the design, construction, and operation of solid waste handling systems and plants. The notice shall be published in the official newspaper of the county at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications. The notice shall state in summary form (a) the general scope and nature of the system and plant or work for which the services are required, (b) the name and address of a representative of the county who can provide further details, and (c) the final date for the submission of qualifications.

(3) If the legislative authority of the county decides to proceed with the construction of a resource recovery facility or one or more of the services to be provided for such a facility, it may designate a representative to evaluate the vendors who submitted qualifications and conduct discussions regarding proposals with one or more vendors. The representative of the legislative authority shall recommend to the legislative authority a vendor, based upon criteria established by the county, which shall not be determined solely by price but by all terms of the contract, who is initially determined to be the best qualified to provide one or more of the services required for the proposed project. If two or more vendors submit qualifications, at least two vendors shall be interviewed. One or more vendors may be interviewed and selected to provide services. The legislative authority or its representative shall attempt to negotiate a contract with the first vendor selected for one or more of the construction, design, or operation portions of the proposed project at a price and on other terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. Only the legislative authority may approve and sign the contract: PROVIDED, That where a contract for design is entered into separately from other services permitted under this act, procurement shall be in accord with chapter 39.80 RCW. If the legislative authority or its representative is unable to negotiate such a contract with the first vendor selected on terms that it determines to be fair and reasonable and in the best interest of the county, negotiations with that vendor shall be formally terminated and other vendors may be selected in accordance with the procedures set forth above. If the legislative authority decides to continue the process of selection, negotiations shall continue in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(4) Prior to entering into such a contract with a vendor, the legislative authority of the county must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract and that the contract is financially sound and advantageous compared to other methods.

(5) Each contract shall include project performance bonds or other security by the vendor which in the judgment of the legislative authority of the county is sufficient to secure adequate performance by the vendor.

(6) The provisions of chapters 39.12, 39.19, and 39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

Sec. 20. Section 2, chapter 58, Laws of 1975-'76 2nd ex. sess. and RCW 36.58.040 are each amended to read as follows:

The legislative authority of each county may by ordinance provide for the establishment of a system of solid waste disposal for all the unincorporated areas of the county or for portions thereof. Each county may designate disposal sites for all solid waste collected in the unincorporated areas pursuant to the provisions of a comprehensive solid waste plan adopted pursuant to chapter 70.95 RCW: PROVIDED, That for any solid waste collected by a private hauler operating pursuant to a certificate granted by the Washington utilities and transportation commission under the provisions of chapter 81.77 RCW and which certificate is for collection in a geographic area lying in more than one county, such designation of disposal sites shall be pursuant to an interlocal agreement between the involved counties.

Such systems may also provide for the processing and conversion of solid wastes into other valuable or useful products with full jurisdiction and authority to construct, lease, purchase, acquire, manage, regulate, maintain, operate, and control such system and plants, and to enter into agreements with public or private parties providing for the construction, purchase, acquisition, lease, maintenance, and operation of systems and plants for the processing and conversion of solid wastes and for the sale of said products. Contracts shall be for facilities that are in substantial compliance with the solid waste management plans prepared pursuant to chapter 70.95 RCW.

The legislative authority of a county may award contracts for solid waste handling, and such contracts may provide that a county pay a minimum periodic fee in consideration of the operational availability of a solid waste handling system or plant, without regard to the ownership of the system or plant or the amount of solid waste actually handled during all or any part of the contractual period. There shall be included in the contract specific allocation of financial responsibility in cases where the amount of solid waste handled during the contract period falls below the minimum level provided in the contract.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties.

NEW SECTION. Sec. 21. Sections 16 through 20 of this act, being necessary for the health and welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Sections 16 through 20 of this act shall be deemed to provide an alternative method for the performance of those subjects authorized by these sections and shall be regarded as supplemental and additional to powers conferred by the Washington state Constitution, other state laws, and the charter of any city or county.

NEW SECTION. Sec. 22. 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.

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CHAPTER 283

[Engrossed Substitute House Bill No. 1870]

CHARTER AND TOUR OPERATORS

AN ACT Relating to charter and tour operators; adding a new chapter to Title 19 RCW; providing an effective date; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that advertising, sales, and business practices of certain travel charter or tour operators have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen regarding certain segments of the travel charter or tour operator business; and that the public welfare requires regulation of travel charter or tour operators in order to eliminate unfair advertising, sales and business practices. The legislature further finds it necessary to establish standards that will safeguard the people against financial hardship and to encourage fair dealing and prosperity in the travel business.

NEW SECTION. Sec. 2. (1) "Travel charter or tour operator" means a person who sells, provides, furnishes, contracts for, arranges, or advertises in this state that he or she can or may arrange, or has arranged air, sea, or land transportation either separately or in conjunction with other services. "Travel charter or tour operator" does not include:

- (a) An air carrier;
- (b) An ocean carrier;
- (c) A motor carrier;
- (d) A rail carrier;
- (e) A charter party carrier;
- (f) An auto transportation carrier;
- (g) A person who operates a travel agency business and meets standards no less than those required on the effective date of this act for authorized agents of the airline reporting corporation;
- (h) A person who:
 - (i) Has operated a travel tour or charter business for at least three years under the same ownership or management;