
SENATE BILL 5186

State of Washington 63rd Legislature 2013 Regular Session

By Senators Roach, Conway, Benton, Chase, and Shin

Read first time 01/23/13. Referred to Committee on Governmental Operations.

1 AN ACT Relating to contractor's bond; amending RCW 39.08.030 and
2 39.08.030; providing an effective date; and providing an expiration
3 date.

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

5 **Sec. 1.** RCW 39.08.030 and 2009 c 473 s 1 are each amended to read
6 as follows:

7 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal
8 to the full contract price agreed to be paid for such work or
9 improvement, except under subsections (2) and (3) of this section, and
10 shall be to the state of Washington, except as otherwise provided in
11 RCW 39.08.100, and except in cases of cities (~~and~~), towns, and water-
12 sewer districts, in which cases such municipalities may by general
13 ordinance fix and determine the amount of such bond and to whom such
14 bond shall run: PROVIDED, The same shall not be for a less amount than
15 twenty-five percent of the contract price of any such improvement for
16 cities and towns, and not less than the full contract price of any such
17 improvement for water-sewer districts, and may designate that the same
18 shall be payable to such city, town, or water-sewer district and not to
19 the state of Washington, and all such persons mentioned in RCW

1 shall adjudge reasonable: PROVIDED, HOWEVER, That no (~~attorney's~~)
2 attorneys' fees shall be allowed in any suit or action brought or
3 instituted before the expiration of thirty days following the date of
4 filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That
5 any city may avail itself of the provisions of RCW 39.08.010 through
6 39.08.030, notwithstanding any charter provisions in conflict herewith:
7 AND PROVIDED FURTHER, That any city or town may impose any other or
8 further conditions and obligations in such bond as may be deemed
9 necessary for its proper protection in the fulfillment of the terms of
10 the contract secured thereby, and not in conflict herewith.

11 (2) Under the job order contracting procedure described in RCW
12 39.10.420, bonds will be in an amount not less than the dollar value of
13 all open work orders.

14 (3)(a) On highway construction contracts administered by the
15 department of transportation with an estimated contract price of two
16 hundred fifty million dollars or more, the department may authorize
17 bonds in an amount less than the full contract price of the project.
18 If a bond less than the full contract price is authorized by the
19 department, the bond must be in the form of a performance bond and a
20 separate payment bond. The department shall fix the amount of the
21 performance bond on a contract-by-contract basis to adequately protect
22 one hundred percent of the state's exposure to loss. The amount of the
23 performance bond must not be less than two hundred fifty million
24 dollars. The payment bond must be in an amount fixed by the department
25 but must not be less than the amount of the performance bond. The
26 secretary of transportation must approve each performance bond and
27 payment bond authorized to be less than the full contract price of a
28 project. Before the secretary may approve any bond authorized to be
29 less than the full contract price of a project, the office of financial
30 management shall review and approve the analysis supporting the amount
31 of the bond set by the department to ensure that one hundred percent of
32 the state's exposure to loss is adequately protected. All the
33 requirements of this chapter apply respectively to the individual
34 performance and payment bonds. The performance bond is solely for the
35 protection of the department. The payment bond is solely for the
36 protection of laborers, mechanics, subcontractors, and suppliers
37 mentioned in RCW 39.08.010.

1 (b) The department shall develop risk assessment guidelines and
2 gain approval of these guidelines from the office of financial
3 management before implementing (a) of this subsection. The guidelines
4 must include a clear process for how the department measures the
5 state's exposure to loss and how the performance bond amount,
6 determined under (a) of this subsection, adequately protects one
7 hundred percent of the state's exposure to loss.

8 ~~((c) The department shall report to the house of representatives
9 and senate transportation committees by December 1, 2012: Each project
10 where the department authorized bonds that were less than the full
11 contract price; the difference between the project amount and the bond
12 requirements; the number of bidders on the project; and other
13 information that documents the effects of the reduced bond amounts on
14 the project.))~~

15 **Sec. 2.** RCW 39.08.030 and 2007 c 218 s 89 are each amended to read
16 as follows:

17 (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal
18 to the full contract price agreed to be paid for such work or
19 improvement, except under subsection (2) of this section, and shall be
20 to the state of Washington, except as otherwise provided in RCW
21 39.08.100, and except in cases of cities ~~((and))~~, towns, and water-
22 sewer districts, in which cases such municipalities may by general
23 ordinance fix and determine the amount of such bond and to whom such
24 bond shall run: PROVIDED, The same shall not be for a less amount than
25 twenty-five percent of the contract price of any such improvement for
26 cities and towns, and not less than the full contract price of any such
27 improvement for water-sewer districts, and may designate that the same
28 shall be payable to such city, town, or water-sewer district and not to
29 the state of Washington, and all such persons mentioned in RCW
30 39.08.010 shall have a right of action in his, her, or their own name
31 or names on such bond for work done by such laborers or mechanics, and
32 for materials furnished or provisions and goods supplied and furnished
33 in the prosecution of such work, or the making of such improvements:
34 PROVIDED, That such persons shall not have any right of action on such
35 bond for any sum whatever, unless within thirty days from and after the
36 completion of the contract with an acceptance of the work by the
37 affirmative action of the board, council, commission, trustees,

1 officer, or body acting for the state, county or municipality, or other
2 public body, city, town or district, the laborer, mechanic or
3 subcontractor, or material supplier, or person claiming to have
4 supplied materials, provisions or goods for the prosecution of such
5 work, or the making of such improvement, shall present to and file with
6 such board, council, commission, trustees or body acting for the state,
7 county or municipality, or other public body, city, town or district,
8 a notice in writing in substance as follows:

9 To (here insert the name of the state, county or
10 municipality or other public body, city, town or district):

11 Notice is hereby given that the undersigned (here insert
12 the name of the laborer, mechanic or subcontractor, or
13 material supplier, or person claiming to have furnished
14 labor, materials or provisions for or upon such contract or
15 work) has a claim in the sum of dollars (here insert
16 the amount) against the bond taken from (here insert
17 the name of the principal and surety or sureties upon such
18 bond) for the work of (here insert a brief mention or
19 description of the work concerning which said bond was
20 taken).

21 (here to be signed)

22 Such notice shall be signed by the person or corporation making the
23 claim or giving the notice, and said notice, after being presented and
24 filed, shall be a public record open to inspection by any person, and
25 in any suit or action brought against such surety or sureties by any
26 such person or corporation to recover for any of the items hereinbefore
27 specified, the claimant shall be entitled to recover in addition to all
28 other costs, (~~attorney's~~) attorneys' fees in such sum as the court
29 shall adjudge reasonable: PROVIDED, HOWEVER, That no (~~attorney's~~)
30 attorneys' fees shall be allowed in any suit or action brought or
31 instituted before the expiration of thirty days following the date of
32 filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That
33 any city may avail itself of the provisions of RCW 39.08.010 through
34 39.08.030, notwithstanding any charter provisions in conflict herewith:
35 AND PROVIDED FURTHER, That any city or town may impose any other or

1 further conditions and obligations in such bond as may be deemed
2 necessary for its proper protection in the fulfillment of the terms of
3 the contract secured thereby, and not in conflict herewith.

4 (2) Under the job order contracting procedure described in RCW
5 (~~39.10.130~~) 39.10.420, bonds will be in an amount not less than the
6 dollar value of all open work orders.

7 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30, 2016.

8 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June 30,
9 2016.

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