

Public Construction/Public Bidding: Legislative Update; Key Concepts and Cases; AIA

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I. 2019 LEGISLATIVE SESSION

A. ESSB 1673 (eff. 07/01/2019):

- (Section 1) Adds new bidder responsibility criteria (RCW 39.04.350(f)) *requiring* contractor to receive prevailing wage and public works “training”
 - Bidder must certify this training to be considered responsible
 - Training provided by L&I
 - Exception:
 - Contractor has completed three or more public works projects, and
 - Had valid business license for at least three years
 - L&I to keep record of contractors that have met training requirement

B. ESSB 5418 (eff. 07/28/2019):

- (Section 5) Amends Small Works Roster (RCW 39.04.155) category limits—
 - Limited Public Works contract limit raised from \$40,000 to \$50,000
 - “Tier 1” small works raised from \$150,000 to \$250,000
 - “Tier 2” small works raised from \$300,000 to \$350,000
- (Section 5) Allows for waiver of retainage *on small works roster projects only*
 - *BUT*, county then assumes responsibility/liability for claims from
 - Laborers, suppliers (including subcontractors) *and*
 - For all state taxes that may be due on this *or other* jobs
- (Section 8) RCW 36.32.235 amended to apply to all counties
 - Not just counties with a population of 400,000 or more
 - Still only applies to counties that have a “purchasing department.”
 - Allows for unit priced contracting
- (Section 13) Requires county to supply copies of bids received within two business days of bid opening, and
 - If no bidder requests copies of bids, then county can award bid after two business days; or

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- If a bidder requests copies of bids, county can award bid only after two business days from the date bids provided to bidder.

C. **ESSB 5035** (eff. 01/01/2020)

- (Section 4) Changes time for filing a prevailing wage violation claim with L&I from 30 days to 60 days (RCW 39.12.065(1))

II. **PUBLIC CONTRACTING – BASIC STRUCTURAL FRAMEWORK**

A. **Definition and Process:**

- RCW 39.04.010(4): “Public Work’ means all work, construction, alteration, repair or improvement, other than ordinary maintenance, executed at the cost of the ... municipality...”
 - “Ordinary maintenance” not defined.
 - *But see* WAC 296-127-010(7)(b)(iii); *Spokane v. Department of Labor and Industries*, 100 Wn.App 805, 816-20 (2000)
 - Prevailing wage? Definitely
 - Retainage and bond? Maybe
 - On rare occasions, the “at the cost of” language may affect whether work is or is not a public work
 - If either exception applies, the work is *not* a public work, so no public work laws apply
- Types of allowed procedures
 - Unit priced contract (RCW 35.23.352 (13))
 - Job order contract (not discussed in this outline)
 - Limited public works (RCW 35.23.352 (4), referring to RCW 39.04.155(3))
 - Small works (RCW 35.23.352 (4), referring to RCW 39.04.155)
 - Advertised bids (RCW 35.23.352 (1) & (2))

B. **Use of County Forces** (RCW 36.32.235; 36.32.250; 36.77.065)

- If county has no “purchasing department,” no limit
 - *See Association of General Contractors v. King County*, 124 Wn.2d 855 (1994); RCW 36.32.250
- If county has a “purchasing department”:
 - Total annual expenditure cannot exceed 10% of annual public works construction budget
 - Applies to all counties with purchasing department
 - If county population is \geq \$400,000, these limitations apply in addition to 10% cap:
 - If project involves more than a single craft or trade
 - Up to \$90,000 generally
 - Up to \$250,000 if a riverine or stormwater project
 - If project involves a single craft or trade

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- For road construction or improvement only:
 - If population \geq 400,000, annual total cost cannot exceed total of
 - \$3,250,000 plus
 - The county's previous year's motor vehicle fuel tax factor multiplied by \$3,250,000
 - If population \geq 150,000 but $<$ 400,000
 - \$1,750,000 plus
 - The county's previous year's motor vehicle fuel tax factor multiplied by \$1,750,000
 - If population \geq 30,000 but $<$ 150,000
 - \$1,150,000 plus
 - The county's previous year's motor vehicle fuel tax factor multiplied by \$1,150,000
 - If population $<$ 30,000
 - \$700,000 plus
 - The county's previous year's motor vehicle fuel tax factor multiplied by \$700,000

C. Unit Priced Contracts: (RCW 36.32.235(9))

- No bid limit
- Competitively bid contract for anticipated recurring work for a fixed period with indefinite quantity of work at a defined unit price
- Contract term cannot exceed 3 years
 - Option to extend 1 additional year
- Prevailing wage rates apply
 - Bond?
 - Retainage?

D. Limited Public Works Contracts (<\$50,000): (RCW 39.04.155(3))

- Small works roster process only
 - Contractors must be selected from appropriate roster
- Total cost under \$50,000
- Bids from at least three contractors from roster
 - Must equitably distribute opportunities to bid (See RCW 39.04.155(6))
- Maintain a list of contractors contacted and contracts awarded for prior 24 months, and list must include
 - Contractor's registration number
 - Contract amount
 - Brief description of work
 - Date contract awarded
- May waive bond and retainage
 - If waived, county assumes liability for
 - Payment of laborers and suppliers
 - State taxes
 - Liability up to amount of contract awarded (?)

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E. Small Works Roster (<\$350,000): (RCW 39.04.155)

- County must adopt small works roster process by ordinance or resolution
- County may create its own roster or adopt another local government or agency's roster by interlocal agreement or contract (MRSC)
- Managing roster
 - One general roster or differentiated by specialties or categories
 - May be based on geographic area
 - May impose additional conditions in order to be added to roster
 - At least once a year, publish notice of existence of roster and solicit names for roster
 - Contractors may be added at any time
- Need "telephone, written, or electronic" quotes from the appropriate roster
- Invitations for quotes must include
 - Estimate of scope and nature of the work, including materials and equipment
 - "Detailed plans and specifications need not be included..."
 - This dramatically simplifies the contracting process
 - County engineer or contracting consultant does not have to develop detailed specifications
- Options on invitations to submit quotes
 - Invite all contractors on the appropriate roster
 - If contract amount under \$250,000, invite at least five quotes
 - From appropriate roster
 - Invitations must be equitably distributed
 - If contract between \$250,000 and \$350,000, invite at least five quotes with same conditions as above, plus
 - Notify the remaining contractors on that roster by
 - Publishing notice, or
 - Mailing notice, or
 - Sending notice by facsimile or other electronic means
- May *waive retainage*
 - *BUT* county then assumes liability for
 - Payment of laborers and suppliers
 - State taxes
 - Liability up to amount of contract awarded (?)

F. Advertised Bids for Counties *without* a Purchasing Department (RCW 36.32.250)

- If small works roster process not used, *must* issue advertised bids *unless*
 - <\$40,000 and legislative authority has approved waiver of advertisement and competitive bidding
- At a minimum, notice must be published in a newspaper of general circulation at least 13 days before bid opening.
 - Must be published in county's official newspaper, and

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- Must be published in county's legal newspaper closest to location of work
 - Unless official newspaper covers at least 40% of the residences in the area where the work will occur
- Must state the character of the work and the materials and equipment needed for the work
- Must state that plans and specifications are on file with the county for "inspection"
- Must state that submitted bids must be sealed
- Bid bond (cashier's check, money order, etc.) required in amount equal to five percent of the amount bid
- Award to lowest, responsible bidder

G. Advertised Bids for Counties *with* a Purchasing Department (RCW 36.32.235)

- If small works roster process not used, *must* issue advertised bids
 - \$40,000 exception under RCW 36.32.250???
- At a minimum, notice must be published in a newspaper of general circulation at least 13 days before bid opening.
 - Must be published in county's official newspaper, and
 - Must be published in county's legal newspaper closest to location of work
 - Unless official newspaper covers at least 40% of the residences in the area where the work will occur
 - Must state the character of the work and the materials and equipment needed for the work
 - Must state that plans and specifications are on file with the county for "inspection"
 - Must state that submitted bids must be sealed
- Bid bond (cashier's check, money order, etc.) required in amount equal to five percent of the amount bid
- Award to lowest, responsible bidder

H. Responsible Bidder Criteria: (RCW 39.04.390)

- Applies to all public works contracts, no matter what process used
- Must be submitted before contract is *awarded* (i.e., may be submitted after bids opened)
- Mandated statutory criteria
 - Proof of registration with L&I *at time of bid submittal*
 - Have current state unified business identifier number
 - Have all required industrial insurance (worker's comp) coverage
 - Not be disqualified from bidding due to nonpayment of prevailing wages and certain other registration and licensing requirements (RCW 39.06.010 and 39.12.065(3))

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- Compliance with state apprenticeship requirements, if apprentices used
- Received L&I training on public works and prevailing wages
- Not have been found by L&I or a court in a civil action to have violated certain wage laws in Title 49 RCW
- With each submittal, bidder must provide a signed statement, under penalty of perjury, that bidder is in compliance with these responsibility criteria
- *Additional, permissive* criteria
 - County can (and sometimes should) add additional criteria to show bidder responsibility
 - Additional criteria should only be used if genuinely will help to determine bidder responsibility
 - Criteria should be as objective as possible, so as to avoid bidder objections
 - Criteria should be tailored to the specific job being bid
 - Must include the basis for requiring additional criteria and deadline to appeal a decision that bidder is not responsible
 - Before bid submittal deadline, a bidder can “timely” request that county modify the criteria
 - If bidder fails to supply additional criteria information, county may still find bidder to be responsible, based on other information provided, or may reject bidder as not responsible
- If bidder determined to be not responsible, county must provide written reasons for “preliminary” determination
 - Bidder may appeal that determination “within the time period specified in the bidding documents”
 - Suggest you keep the appeal period very tight—24-48 hours
 - If timely appealed, county must consider additional information before making final determination
 - If county still thinks bidder not responsible, county may not contract with any other bidder until two business days after final determination of non-responsibility
- Certification form
 - Suggest your county prepare a statement form for bidders’ use, with mandatory criteria, additional criteria if used, and necessary signatory statement about perjury (New reference to Chapter 5.50, RCW)
 - Use “must” language for mandatory statutory criteria
 - “Failure to demonstrate compliance with and certify its compliance with the following mandatory criteria will result in rejection of your bid.”
 - Use “may” language for additional criteria
 - “Although the county has attempted to make these additional criteria as clear and objective as possible, determination of bidder responsibility with regard to the following criteria is, to a degree, inherently subjective. Failure to supply satisfactory

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responses, in the county's sole discretion, may result in determination that bidder is not responsible to perform the project work."

- Suggest you use AIA responsibility criteria as a basis for your county's additional responsibility criteria, to demonstrate practical business approach

I. Retainage and Bond:

- Retainage—Contract "must provide," and county "must reserve" retainage "not to exceed" five percent of contract amount (RCW 60.28.011)
 - "Not to exceed" allows for less than 5%
 - Is zero (i.e., no retainage) still less than 5% and hence not in violation of statute?
- Payment and Performance Bond(s)—When county contracts for public work, it "must require ... a good and sufficient bond." (RCW 39.08.010)
 - BUT if a county fails to take a bond, it is liable to claims from general contractor's and all subcontractors' laborers and material suppliers (RCW 39.08.015)
 - State taxes as well? ("shall be liable to the persons mentioned in RCW 39.08.010....")
 - By establishing liability for failure to require a bond, legislature appears to imply that waiving bond requirement is not fatal to the contract; it just shifts responsibility
- Timing for claims
 - For *prevailing wage claims* against the *retainage or bond*, a laborer/employee/subcontractor/worker must first make a claim for non-payment of wages *with L&I* within 60 days of final acceptance (RCW 39.12.065(1), *effective 1/1/20*);
 - if L&I determines wages are due, L&I will notify your county and make a claim against the retainage or make a claim directly against the bond, or both.
 - For *wage claims* against the *bond* (prevailing wage or otherwise), a laborer/employee/subcontractor/worker apparently still can independently file a claim against the bond, by first filing a statutory notice of claim with your county within 30 days of final acceptance. RCW 39.08.030(1)(a).
 - This is also confusing, because, theoretically, a contractor's employee could independently file a claim against the bond, then file a claim with L&I. (L&I would not be under the same 30-day notice obligation.)
 - For *lien claims* against the *retainage*, "every person performing labor or furnishing supplies" (i.e., workers, subcontractors, suppliers, vendors, etc.) can make a claim for non-payment by filing the same statutory notice to your county within 45 days of final acceptance.

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- RCW 60.28.011(2) (The notice form can be found in RCW 39.08.030(1)a).
- For *lien claims* against the *bond*, “all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work” can make a claim for non-payment by filing the same statutory notice within 30 days to your county. RCW 39.08.030(1)(a) (referencing RCW 39.08.010)
- Priority of Claims—Claims are paid in this order of priority (RCW 60.28.040):
 - The contractor’s employees
 - All DOR (Title 82 RCW) excise taxes, increases, and penalties under the current project (unless contract is less than \$35K)
 - All other DOR (Title 82 RCW) excise taxes, increases, and penalties owed by the contractor on any other projects (unless contract is less than \$35K)
 - All Employment Security and L&I (Titles 50, “Unemployment Compensation,” and 51 “Industrial Insurance’ (Worker’s Comp) RCW) taxes, increases, and penalties owed by the contractor (unless contract is less than \$35K)
 - Any other taxes due
 - Subcontractors and suppliers
 - Amounts due your county, if any
 - For retainage only, if any retained funds are left, the contractor receives the difference

J. Exemptions:

- Emergencies (RCW 39.04.280)
 - Within two weeks of contract award, county council (or designee) must enter written finding of existence of emergency.
- Electronic data processing and telecommunications systems (RCW 39.04.270)
 - Allows for “competitive negotiation”
 - RFP—submitted to “adequate number of qualified sources”
 - Newspaper notice at least once at least 13 days prior
 - RFP must identify “significant evaluation factors, price, and technical evaluation process
 - Award to “qualified bidder whose proposal is most advantageous” to county
 - Scope: unclear. Does it cover only data processing and telephone-type systems or can it be applied liberally to include most or all software and hardware systems?
- NOT sole source
- NOT special market conditions
- Design-build (“turnkey”) procedure (RCW 39.10.300—330)

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- GCCM (General contractor/construction manager) procedure (RCW 39.10.340—410)

III. KEY CONCEPTS AND CASES

A. Purpose of Public Bidding:

Edwards v. City of Renton, 67 Wn.2d 598, 602 (1965):

- “The purpose of requiring public bidding on municipal contracts is “to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the municipality receives the best work or supplies at the most reasonable prices practicable.”

B. Level Playing Field:

Goshert v. Seattle, 57 Wash. 645, 650 (1910):

- Competitive bidding must “afford an opportunity to all persons to bid upon the specific thing to be let according to plans previously adopted and made known....”
- “[T]here should be such definite and detailed specifications as would disclose the work to be done with fullness and detail, without which there could be no intelligent competitive bidding and no basis of comparison for ascertaining who in fact was the lowest bidder.”

C. Bid Splitting:

- RCW 35.23.352: “A public works project means a single project.”
- RCW 39.04.155(4): The breaking of any project into units or accomplishing any projects by phases is prohibited” if done to avoid the maximum dollar amount of a small works contract.

D. Specific Product:

Great Northern Railway Co. v. Leavenworth, 81 Wash. 511, 522 (1914)

- “[T]here must be competition where competition is possible.”
- “If the material, or part of it, is monopolized by patents, there cannot, of course, be absolutely free competition, and where that is impossible, it surely was not the intent of the Legislature that all improvements should cease, or that antiquated methods only should be adopted.”

Smith v. Seattle, 192 Wash. 64 (1937):

- “It is not the purpose of such statutes to deprive the city of the right to procure the best article available simply because it is held in a monopoly or is procurable only from a limited number of sources.”

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- “[T]he fact that there can be only a limited competition, or even no competition at all, is not a bar to calling for bids for the particular article desired....”
- “Alternate,” or “or Equal” language in specifications should make clear that the county, not the contractor or any dispute resolution process, has the sole right to determine what constitutes an acceptable substitution.

E. Addenda:

Contract clarification issued *before* bid opening

- Can be multiple addenda issued
- Must be timely (at least x days before bid opening)
- Make sure bidders acknowledge receipt of all addenda, in writing, with bid proposal

F. Bid Alternates:

Additional work to be performed, depending upon cost of bids received.

- Can be more than one alternate
- Can “mix and match” to determine lowest, responsible bidder
- Recommend: That, if alternate schedules in bid packet, agency clarify in call for bids how lowest bidder will be determined.

G. Invitation to Bid, Not an Offer:

Bellingham American Publishing Co. v. Bellingham Publishing Co., 145 Wash. 25, 29 (1927):

- *If city reserves the absolute right to reject any and all bids, the “right to reject the bids was unconditional.”*
- *City is entitled to reject all bids “for any cause it might deem satisfactory or even without an assignable cause.”*
- *“[T]he motive for rejection of bids is immaterial.”*
- *The aggrieved bidder’s rights “cannot be justly held to be greater than those conferred by the published advertisement on which [the] bid was made.”*
- *The advertisement was “not an offer of a contract, but an offer to receive proposals for a contract.”*

H. Mistake/Withdrawal Before Bid Opening:

Seattle Construction & Dry Dock v. Newell, 81 Wash. 144, 146 (1914)

- *“The rule ... is that, until the proposal is accepted, it may be withdrawn.”*
- *“[T]he transaction [has] not reached the degree of a contract—a proposal and acceptance.*
- *“[W]here there is a reservation on the part of a municipality to reject any and all bids, there can be no mutuality until the bid is accepted, and until it is accepted, the proposer is under no obligation to keep it good, but may withdraw it.”*

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I. Bid Opening:

Be specific in your call for bids

- Specify exact location for receipt of bids.
- State that bids must be sealed, with exact labeling instructions
- State whether bids can or cannot be delivered by email or fax
- State that it is bidder's responsibility to accomplish timely delivery
 - Untimely mail/messenger service not an excuse
- State exactly how the county will mark the exact time bid submittals are due

J. Negotiations After Bid Opening:

Platt Electric Supply v. Seattle, 16 Wn.App. 265, 271 (1976):

- "The law does not permit private negotiations with an individual bidder..."
- "The whole matter is to be conducted with ... fairness, certainty, publicity, and absolute impartiality...."

K. Primary Purpose of Bidding to Protect the Public Purse:

Gostovich v. West Richland, 75 Wn.2d 583, 587 (1969):

- "[T]he requirement for public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the public interest."

Mottner v. Mercer Island, 75 Wn.2d 575, 578 (1969):

- The "mantle of protection [of competitive bidding statutes] was not intended to benefit the unsuccessful contractor seeking a public work contract, but rather the tax paying public from arbitrary, capricious, fraudulent conduct on the part of public officials...."

L. Secondary Purpose to Treat Contractors Fairly:

Gostovich v. West Richland, 75 Wn.2d 583,587 (1969):

- Although the primary purpose of competitive bidding is to protect the general public, "another purpose is to provide a fair forum for those interested in undertaking public projects."

M. Irregularities in Bid:

Platt Electric Supply, Inc. v. Seattle, 16 Wn.App. 265, 274 (1976):

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- “[W]hen less than all bids are rejected, the right to reject is more limited.”

Gostovich v. West Richland, 75 Wn.2d 583, 587 (1969):

- “If there are material irregularities in the bidding process, the municipality should not accept the offensive bid.”
- The city may “waive the irregularity as an informality in the bidding if the irregularity is not material.”
- “The test of whether a variance is material is whether it gives a bidder a substantial advantage or benefit not enjoyed by other bidders.”

Case study: *Gostovich v. West Richland*, 75 Wn.2d 583 (1969):

- Pieler mails bid postmarked 5:00 p.m., August 17, 1961, to city.
- Bids opened at 7:30 p.m., August 18, 1961.
- Pieler’s bid arrives Monday, August 21, 1961, but “by due course of mail this bid should have reached West Richland in time for the bid opening.”
- City award to Pieler; Gostovich sues.
- Immaterial: Bid was mailed in 24 hours ahead of time; “not the slightest suggestion of fraud, collusion” by Pieler.

Case study: *Land Construction Company v. Snohomish County*, 40 Wn.App. 480 (1985)

- City requires contractor to meet MBE goals with state-certified MBEs.
- Land submits low bid with uncertified MBE
- Land offers to substitute certified MBE without changing its bid
- Material irregularity:
 - After bid opening, Land could refuse to substitute certified MBE if Land determines its bid is too low.
 - “[C]ontrol over the award of public work contracts would pass from the municipality to the bidder.”

N. Injunctive Relief, not Damages:

Bellingham American Publishing Co. v. Bellingham Publishing Co., 145 Wash. 25, 29-30 (1927):

- By reserving the right to reject all bids, no contract formed and no right to mandamus to compel city to take low bid.
- Injunctive relief is available to stop bid award
- Since no injunction sought, contract had been awarded, and appellant had no right to compel the acceptance of its bid, “there is not now existing any legal controversy between the parties. The question has become merely academic or moot.”

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Mottner v. Mercer Island, 75 Wn. 2d 575, 580 (1969):

- “The plaintiffs did not in this action seek injunctive relief. Instead they sought a remedy that is not available to them, that is monetary damages.”

Peerless Food Products, Inc. v. Washington, 119 Wn.2d 584, 596-597 (1992):

- “By restricting the remedy available to disappointed low bidders to the parameters outlined in *Mottner* and *Bellingham Am.*, we allow relief to bidders that does not compete with the public interest...”
- Allowing damages to a low bidder denied a public contract “is a remedy inherently conflicting with the primary policy behind public bidding law: the protection of the public purse.”

Dick Enterprises, Inc. v. Metropolitan King County, 83 Wn.App. 566, (1996):

- “Post-contract injunctive suits by bidders would compete with the public interest in preventing excessive taxation, and we will therefore not recognize them.”
- Because the only relief requested was to enjoin the *creation* of a contract, and a contract has been formed, there is no longer any remedy that this court can provide to it.
- *But see*, RCW 39.04.105: If county receives written protest from aggrieved bidder, county cannot execute contract with anyone other than protesting bidder without first providing at least two full business days’ written notice of the county’s intent to sign the contract. (Further discussion of RCW 39.04.350 in section II.F)

O. Lowest Responsible Bidder:

Hadaller v. Port of Chehalis, 97 Wn.App. 750, 756 (1999):

- Bid instructions had 3-stage process: (1) selection of low bidder; (2) further investigation of bidder and its subcontractors; and (3) contract formation.
- Low bidder received mixed messages, but failed to provide adequate evidence of responsibility for one of its subcontractors; architect found bidder not responsible to do the work; bid awarded to next low bidder.
- “[N]o binding contract could be formed until the Port’s investigation under [the bid’s responsibility criteria] was completed.”
- *But see*, RCW 39.04.350: Complicated bidder responsibility procedures. (Further discussion of RCW 39.04.350 in section II.F)

P. Mistake After Bid Opening:

Puget Sound Painters v. Washington, 45 Wn.2d 819, 823 (1954):

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- “The basic purpose of bid bonds is to afford protection against a change of status involving substantial damages, loss, or detriment by a party soliciting bids.”
- Equity will relieve against forfeiture of a bid bond if
 - Bidder acted in good faith
 - Without gross negligence
 - Reasonably prompt in giving notice of the error
 - Bidder will suffer “substantial detriment” by forfeiture
 - Other party’s status has not greatly changed

Peter Kiewit Sons’ Company v. Department of Transportation, 30 Wn.App 424, 431 (1981):

- “The modern trend is to accord equitable relief to mistakes which render the bid incompatible with the true intent of the bidder, and which can be clearly and convincingly demonstrated by objective proof.
- “[T]here are certain types of judgmental error which never provide grounds for equitable relief.”
 - Guessing at the nature and cost of work not grounds for equitable relief
 - Errors of judgment, not fact.

IV. AMERICAN INSTITUTE OF ARCHITECTS FORMS 101 & 201—A few general notes

- Substantially different kind of contract; markedly different than WSDOT Standard Specifications for Road, Bridge and Municipal Construction
- Written so that architect is constant arbiter between general contractor and county (“Owner”)
- Architect is king—the “Initial Decision Maker”
 - Architect is contract administrator, not county/owner
 - All communications from contractor or county “filter” through architect
 - Architect approves general contractor’s selection of subcontractors
 - Architect approves shop drawings
 - Architect approves change orders
 - Architect conducts inspections
 - All pay requests go through the architect
 - Architect resolves disputes
 - Has authority to “rule” in favor of contractor over county
 - If architect does so, county must comply
- Designed primarily for private construction; not designed to accommodate statutory rules for public projects
 - Doesn’t adequately address laborer, subcontractor, material supplier rights under Washington law
 - Does not address prevailing wage requirements

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- Lacks specific language to address common areas of owner/contractor conflict
 - Does not clarify who has speaking authority for the county
 - I.e., not staff and perhaps not department directors
 - Burden on owner to warrant field conditions—provide accurate surveys and show underground conflicts
 - Insufficient language to maintain county control over contractor delay or slide in contract schedule
 - Weak protection for county/owner after Substantial Completion to assure timely and accurate completion of remaining work and punchlist items

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