
HOUSE BILL 1148

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By Representatives G. Cole, Franklin, Scott, Veloria, Jones, Quall and J. Kohl

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1 AN ACT Relating to public works contracts; and amending RCW
2 28A.335.190, 35.22.620, 35.23.352, 36.32.250, 39.04.015, and 39.04.155.

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

4 **Sec. 1.** RCW 28A.335.190 and 1990 c 33 s 362 are each amended to
5 read as follows:

6 (1) When, in the opinion of the board of directors of any school
7 district, the cost of any furniture, supplies, equipment, building,
8 improvements, or repairs, or other work or purchases, except books,
9 will equal or exceed the sum of twenty thousand dollars, complete plans
10 and specifications for such work or purchases shall be prepared and
11 notice by publication given in at least one newspaper of general
12 circulation within the district, once each week for two consecutive
13 weeks, of the intention to receive bids therefor and that
14 specifications and other information may be examined at the office of
15 the board or any other officially designated location: PROVIDED, That
16 the board without giving such notice may make improvements or repairs
17 to the property of the district through the shop and repair department
18 of such district when the total of such improvements or repair does not
19 exceed the sum of seventy-five hundred dollars. The cost of any public

1 work, improvement or repair for the purposes of this section shall be
2 the aggregate of all amounts to be paid for labor, material, and
3 equipment on one continuous or interrelated project where work is to be
4 performed simultaneously or in close sequence. The bids shall be in
5 writing and shall be opened and read in public on the date and in the
6 place named in the notice and after being opened shall be filed for
7 public inspection.

8 (2) Every purchase of furniture, equipment or supplies, except
9 books, the cost of which is estimated to be in excess of seventy-five
10 hundred dollars, shall be on a competitive basis. The board of
11 directors shall establish a procedure for securing telephone and/or
12 written quotations for such purchases. Whenever the estimated cost is
13 from seventy-five hundred dollars up to twenty thousand dollars, the
14 procedure shall require quotations from at least three different
15 sources to be obtained in writing or by telephone, and recorded for
16 public perusal. Whenever the estimated cost is in excess of twenty
17 thousand dollars, the public bidding process provided in subsection (1)
18 of this section shall be followed.

19 (3) Every building, improvement, repair or other public works
20 project, the cost of which is estimated to be in excess of seventy-five
21 hundred dollars, shall be on a competitive bid process. All such
22 projects estimated to be less than twenty thousand dollars may be
23 awarded to a contractor on the small works roster. The small works
24 roster shall be comprised of all responsible contractors who have
25 requested to be on the list. The board of directors shall establish a
26 procedure for securing telephone and/or written quotations from the
27 contractors on the small works roster to assure establishment of a
28 competitive price and for awarding contracts to the lowest responsible
29 bidder, except as provided in subsection (5) of this section. Such
30 procedure shall require that a good faith effort be made to request
31 quotations from all contractors on the small works roster who have
32 indicated the capability of performing the kind of public works being
33 contracted. Immediately after an award is made, the bid quotations
34 obtained shall be recorded, open to public inspection, and available by
35 telephone inquiry. The small works roster shall be revised at least
36 once each year by publishing notice of such opportunity in at least one
37 newspaper of general circulation in the district. Responsible
38 contractors shall be added to the list at any time they submit a
39 written request. Whenever the estimated cost of a public works project

1 is twenty thousand dollars or more, the public bidding process provided
2 in subsection (1) of this section shall be followed.

3 (4) The contract for the ((~~work or~~)) purchase shall be awarded to
4 the lowest responsible bidder as defined in RCW 43.19.1911 but the
5 board may by resolution reject any and all bids and make further calls
6 for bids in the same manner as the original call. On any ((~~work or~~))
7 purchase the board shall provide bidding information to any qualified
8 bidder or the bidder's agent, requesting it in person.

9 (5) For public works, the contract shall be awarded to a contractor
10 that can meet its financial obligations, can demonstrate its ability to
11 produce a quality project, shows its ability to participate in a state-
12 approved apprentice program, and has demonstrated its ability to comply
13 with all laws pertaining to minority and female hiring and affirmative
14 action, but the board may by resolution reject any and all bids and
15 make further calls for bids in the same manner as the original call.
16 On any work the board shall provide bidding information to any
17 qualified bidder or the bidder's agent, requesting it in person.

18 (6) In the event of any emergency when the public interest or
19 property of the district would suffer material injury or damage by
20 delay, upon resolution of the board declaring the existence of such an
21 emergency and reciting the facts constituting the same, the board may
22 waive the requirements of this section with reference to any purchase
23 or contract: PROVIDED, That an "emergency", for the purposes of this
24 section, means a condition likely to result in immediate physical
25 injury to persons or to property of the school district in the absence
26 of prompt remedial action.

27 **Sec. 2.** RCW 35.22.620 and 1989 c 431 s 59 are each amended to read
28 as follows:

29 (1) As used in this section, the term "public works" means as
30 defined in RCW 39.04.010.

31 (2) A first class city may have public works performed by contract
32 pursuant to public notice and call for competitive bids. As limited by
33 subsection (3) of this section, a first class city may have public
34 works performed by city employees in any annual or biennial budget
35 period equal to a dollar value not exceeding ten percent of the public
36 works construction budget, including any amount in a supplemental
37 public works construction budget, over the budget period. The amount
38 of public works that a first class city has a county perform for it

1 under RCW 35.77.020 shall be included within this ten percent
2 limitation.

3 If a first class city has public works performed by public
4 employees in any budget period that are in excess of this ten percent
5 limitation, the amount in excess of the permitted amount shall be
6 reduced from the otherwise permitted amount of public works that may be
7 performed by public employees for that city in its next budget period.
8 Twenty percent of the motor vehicle fuel tax distributions to that city
9 shall be withheld if two years after the year in which the excess
10 amount of work occurred, the city has failed to so reduce the amount of
11 public works that it has performed by public employees. The amount so
12 withheld shall be distributed to the city when it has demonstrated in
13 its reports to the state auditor that the amount of public works it has
14 performed by public employees has been so reduced.

15 Whenever a first class city has had public works performed in any
16 budget period up to the maximum permitted amount for that budget
17 period, all remaining public works within that budget period shall be
18 done by contract pursuant to public notice and call for competitive
19 bids.

20 The state auditor shall report to the state treasurer any first
21 class city that exceeds this amount and the extent to which the city
22 has or has not reduced the amount of public works it has performed by
23 public employees in subsequent years.

24 (3) In addition to the percentage limitation provided in subsection
25 (2) of this section, a first class city with a population in excess of
26 one hundred fifty thousand shall not have public employees perform a
27 public works project in excess of fifty thousand dollars if more than
28 a single craft or trade is involved with the public works project, or
29 a public works project in excess of twenty-five thousand dollars if
30 only a single craft or trade is involved with the public works project
31 or the public works project is street signalization or street lighting.
32 In addition to the percentage limitation provided in subsection (2) of
33 this section, a first class city with a population of one hundred fifty
34 thousand or less shall not have public employees perform a public works
35 project in excess of thirty-five thousand dollars if more than one
36 craft or trade is involved with the public works project, or a public
37 works project in excess of twenty thousand dollars if only a single
38 craft or trade is involved with the public works project or the public
39 works project is street signalization or street lighting. A public

1 works project means a complete project. The restrictions in this
2 subsection do not permit the division of the project into units of work
3 or classes of work to avoid the restriction on work that may be
4 performed by day labor on a single project.

5 (4) In addition to the accounting and record-keeping requirements
6 contained in RCW 39.04.070, every first class city annually shall
7 prepare a report for the state auditor indicating the total public
8 works construction budget and supplemental public works construction
9 budget for that year, the total construction costs of public works
10 performed by public employees for that year, and the amount of public
11 works that is performed by public employees above or below ten percent
12 of the total construction budget. However, if a city budgets on a
13 biennial basis, this annual report shall indicate the amount of public
14 works that is performed by public employees within the current biennial
15 period that is above or below ten percent of the total biennial
16 construction budget.

17 After September 1, 1987, each first class city with a population of
18 one hundred fifty thousand or less shall use the form required by RCW
19 43.09.205 to account and record costs of public works in excess of five
20 thousand dollars that are not let by contract.

21 (5) The cost of a separate public works project shall be the costs
22 of materials, supplies, equipment, and labor on the construction of
23 that project. The value of the public works budget shall be the value
24 of all the separate public works projects within the budget.

25 (6) When any emergency shall require the immediate execution of
26 such public work, upon the finding of the existence of such emergency
27 by the authority having power to direct such public work to be done and
28 duly entered of record, publication of description and estimate may be
29 made within seven days after the commencement of the work. Within two
30 weeks of the finding that such an emergency existed, the city council
31 shall adopt a resolution certifying the existence of this emergency
32 situation.

33 (7) In lieu of the procedures of subsections (2) and (6) of this
34 section, a first class city may use a small works roster and award
35 contracts under this subsection for contracts of one hundred thousand
36 dollars or less.

37 (a) The city may maintain a small works roster comprised of all
38 contractors who have requested to be on the roster and are, where

1 required by law, properly licensed or registered to perform such work
2 in this state.

3 (b) Whenever work is done by contract, the estimated cost of which
4 is one hundred thousand dollars or less, and the city uses the small
5 works roster, the city shall invite proposals from all appropriate
6 contractors on the small works roster: PROVIDED, That not less than
7 five separate appropriate contractors, if available, shall be invited
8 to submit bids on any one contract: PROVIDED FURTHER, That whenever
9 possible, the city shall invite at least one proposal from a minority
10 or woman contractor who shall otherwise qualify under this section.
11 Once a bidder on the small works roster has been offered an opportunity
12 to bid, that bidder shall not be offered another opportunity until all
13 other appropriate contractors on the small works roster have been
14 afforded an opportunity to submit a bid. Invitations shall include an
15 estimate of the scope and nature of the work to be performed, and
16 materials and equipment to be furnished.

17 (c) When awarding such a contract for work, the estimated cost of
18 which is one hundred thousand dollars or less, the city shall award the
19 contract to ((the)) a contractor ((submitting the lowest responsible
20 bid)) that can meet its financial obligations, can demonstrate its
21 ability to produce a quality project, shows its ability to participate
22 in a state-approved apprentice program, and has demonstrated its
23 ability to comply with all laws pertaining to minority and female
24 hiring and affirmative action.

25 (8) The allocation of public works projects to be performed by city
26 employees shall not be subject to a collective bargaining agreement.

27 (9) This section does not apply to performance-based contracts, as
28 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
29 RCW.

30 (10) Nothing in this section shall prohibit any first class city
31 from allowing for preferential purchase of products made from recycled
32 materials or products that may be recycled or reused.

33 **Sec. 3.** RCW 35.23.352 and 1989 c 431 s 56 are each amended to read
34 as follows:

35 (1) Any second or third class city or any town may construct any
36 public works, as defined in RCW 39.04.010, by contract or day labor
37 without calling for bids therefor whenever the estimated cost of the
38 work or improvement, including cost of materials, supplies and

1 equipment will not exceed the sum of thirty thousand dollars if more
2 than one craft or trade is involved with the public works, or twenty
3 thousand dollars if a single craft or trade is involved with the public
4 works or the public works project is street signalization or street
5 lighting. A public works project means a complete project. The
6 restrictions in this subsection do not permit the division of the
7 project into units of work or classes of work to avoid the restriction
8 on work that may be performed by day labor on a single project.

9 Whenever the cost of the public work or improvement, including
10 materials, supplies and equipment, will exceed these figures, the same
11 shall be done by contract. All such contracts shall be let at public
12 bidding upon posting notice calling for sealed bids upon the work. The
13 notice thereof shall be posted in a public place in the city or town
14 and by publication in the official newspaper, or a newspaper of general
15 circulation most likely to bring responsive bids, once each week for
16 two consecutive weeks before the date fixed for opening the bids. The
17 notice shall generally state the nature of the work to be done that
18 plans and specifications therefor shall then be on file in the city or
19 town hall for public inspections, and require that bids be sealed and
20 filed with the council or commission within the time specified therein.
21 Each bid shall be accompanied by a bid proposal deposit in the form of
22 a cashier's check, postal money order, or surety bond to the council or
23 commission for a sum of not less than five percent of the amount of the
24 bid, and no bid shall be considered unless accompanied by such bid
25 proposal deposit. The council or commission of the city or town shall
26 let the contract to (~~the lowest responsible~~) a bidder that can meet
27 its financial obligations, can demonstrate its ability to produce a
28 quality project, shows its ability to participate in a state-approved
29 apprentice program or has demonstrated its ability to comply with all
30 laws pertaining to minority and female hiring and affirmative action,
31 or shall have power by resolution to reject any or all bids and to make
32 further calls for bids in the same manner as the original call.

33 When the contract is let then all bid proposal deposits shall be
34 returned to the bidders except that of the successful bidder which
35 shall be retained until a contract is entered into and a bond to
36 perform the work furnished, with surety satisfactory to the council or
37 commission, in the full amount of the contract price. If the bidder
38 fails to enter into the contract in accordance with his bid and furnish
39 a bond within ten days from the date at which he is notified that he is

1 the successful bidder, the check or postal money order and the amount
2 thereof shall be forfeited to the council or commission or the council
3 or commission shall recover the amount of the surety bond.

4 If no bid is received on the first call the council or commission
5 may readvertise and make a second call, or may enter into a contract
6 without any further call or may purchase the supplies, material or
7 equipment and perform the work or improvement by day labor.

8 (2) The allocation of public works projects to be performed by city
9 or town employees shall not be subject to a collective bargaining
10 agreement.

11 (3) In lieu of the procedures of subsection (1) of this section, a
12 second or third class city or a town may use a small works roster and
13 award contracts under this subsection for contracts of one hundred
14 thousand dollars or less.

15 (a) The city or town may maintain a small works roster comprised of
16 all contractors who have requested to be on the roster and are, where
17 required by law, properly licensed or registered to perform such work
18 in this state.

19 (b) Whenever work is done by contract, the estimated cost of which
20 is one hundred thousand dollars or less, and the city uses the small
21 works roster, the city or town shall invite proposals from all
22 appropriate contractors on the small works roster: PROVIDED, That
23 whenever possible, the city or town shall invite at least one proposal
24 from a minority or woman contractor who shall otherwise qualify under
25 this section. The invitation shall include an estimate of the scope
26 and nature of the work to be performed, and materials and equipment to
27 be furnished.

28 (c) When awarding such a contract for work, the estimated cost of
29 which is one hundred thousand dollars or less, the city or town shall
30 award the contract to the contractor submitting the lowest responsible
31 bid.

32 (4) After September 1, 1987, each second class city, third class
33 city, and town shall use the form required by RCW 43.09.205 to account
34 and record costs of public works in excess of five thousand dollars
35 that are not let by contract.

36 (5) The cost of a separate public works project shall be the costs
37 of the materials, equipment, supplies, and labor on that construction
38 project.

1 (6) Any purchase of supplies, material, equipment or services other
2 than professional services, except for public work or improvement,
3 where the cost thereof exceeds seven thousand five hundred dollars
4 shall be made upon call for bids: PROVIDED, That the limitations
5 herein shall not apply to any purchases of materials at auctions
6 conducted by the government of the United States, any agency thereof or
7 by the state of Washington or a political subdivision thereof.

8 (7) Bids shall be called annually and at a time and in the manner
9 prescribed by ordinance for the publication in a newspaper published or
10 of general circulation in the city or town of all notices or newspaper
11 publications required by law. The contract shall be awarded to the
12 lowest responsible bidder.

13 (8) For advertisement and competitive bidding to be dispensed with
14 as to purchases between seven thousand five hundred and fifteen
15 thousand dollars, the city legislative authority must authorize by
16 resolution a procedure for securing telephone and/or written quotations
17 from enough vendors to assure establishment of a competitive price and
18 for awarding the contracts for purchase of materials, equipment, or
19 services to the lowest responsible bidder. Immediately after the award
20 is made, the bid quotations obtained shall be recorded and open to
21 public inspection and shall be available by telephone inquiry.

22 (9) These requirements for purchasing may be waived by resolution
23 of the city or town council which declared that the purchase is clearly
24 and legitimately limited to a single source or supply within the near
25 vicinity, or the materials, supplies, equipment, or services are
26 subject to special market conditions, and recites why this situation
27 exists. Such actions are subject to RCW 39.30.020.

28 (10) This section does not apply to performance-based contracts, as
29 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
30 RCW.

31 (11) Nothing in this section shall prohibit any second or third
32 class city or any town from allowing for preferential purchase of
33 products made from recycled materials or products that may be recycled
34 or reused.

35 **Sec. 4.** RCW 36.32.250 and 1991 c 363 s 58 are each amended to read
36 as follows:

37 No contract for public works may be entered into by the county
38 legislative authority or by any elected or appointed officer of the

1 county until after bids have been submitted to the county upon
2 specifications therefor. Such specifications shall be in writing and
3 shall be filed with the clerk of the county legislative authority for
4 public inspection. An advertisement shall be published in the county
5 official newspaper stating the time and place where bids will be
6 opened, the time after which bids will not be received, the character
7 of the work to be done, the materials and equipment to be furnished,
8 and that specifications therefor may be seen at the office of the clerk
9 of the county legislative authority. An advertisement shall also be
10 published in a legal newspaper of general circulation in or as near as
11 possible to that part of the county in which such work is to be done.
12 If the county official newspaper is a newspaper of general circulation
13 covering at least forty percent of the residences in that part of the
14 county in which such public works are to be done, then the publication
15 of an advertisement of the applicable specifications in the county
16 official newspaper shall be sufficient. Such advertisements shall be
17 published at least once at least ten days prior to the last date upon
18 which bids will be received. The bids shall be in writing, shall be
19 filed with the clerk, shall be opened and read in public at the time
20 and place named therefor in the advertisements, and after being opened,
21 shall be filed for public inspection. No bid may be considered for
22 public work unless it is accompanied by a bid deposit in the form of a
23 surety bond, postal money order, cash, cashier's check, or certified
24 check in an amount equal to five percent of the amount of the bid
25 proposed. The contract for the public work shall be awarded to (~~the~~
26 ~~lowest responsible~~) a bidder that can meet its financial obligations,
27 can demonstrate its ability to produce a quality project, shows its
28 ability to participate in a state-approved apprentice program, and has
29 demonstrated its ability to comply with all laws pertaining to minority
30 and female hiring and affirmative action. Any or all bids may be
31 rejected for good cause. The county legislative authority shall
32 require from the successful bidder for such public work a contractor's
33 bond in the amount and with the conditions imposed by law. If the
34 bidder to whom the contract is awarded fails to enter into the contract
35 and furnish the contractor's bond as required within ten days after
36 notice of the award, exclusive of the day of notice, the amount of the
37 bid deposit shall be forfeited to the county and the contract awarded
38 to the next lowest and best bidder. The bid deposit of all
39 unsuccessful bidders shall be returned after the contract is awarded

1 and the required contractor's bond given by the successful bidder is
2 accepted by the county legislative authority. In the letting of any
3 contract involving less than ten thousand dollars, advertisement and
4 competitive bidding may be dispensed with on order of the county
5 legislative authority. Immediately after the award is made, the bid
6 quotations obtained shall be recorded and open to public inspection and
7 shall be available by telephone inquiry.

8 For advertisement and competitive bidding to be dispensed with as
9 to public works projects with an estimated value of one hundred
10 thousand dollars or less, a county must use a small works roster
11 process as provided in RCW 39.04.155.

12 This section does not apply to performance-based contracts, as
13 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
14 RCW.

15 **Sec. 5.** RCW 39.04.015 and 1989 c 59 s 1 are each amended to read
16 as follows:

17 Notwithstanding the provisions of RCW 39.04.010, a state
18 contracting authority is authorized to negotiate an adjustment to a bid
19 price, based upon agreed changes to the contract plans and
20 specifications, with a (~~low responsive~~) bidder that can meet its
21 financial obligations, can demonstrate its ability to produce a quality
22 project, shows its ability to participate in a state-approved
23 apprentice program, and has demonstrated its ability to comply with all
24 laws pertaining to minority and female hiring and affirmative action,
25 under the following conditions:

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

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

36 (3) The negotiated adjustment will bring the bid price within the
37 amount of available funds.

1 **Sec. 6.** RCW 39.04.155 and 1991 c 363 s 109 are each amended to
2 read as follows:

3 (1) This section provides a uniform process to award contracts for
4 public works projects by those counties that are authorized to use a
5 small works roster in lieu of the requirements for formal sealed
6 bidding. The state statutes governing counties shall establish the
7 maximum dollar thresholds of the contracts that can be awarded under
8 this process, and may include other matters concerning the small works
9 roster process, for the county.

10 (2) Counties may create a single general small works roster, or may
11 create a small works roster for different categories of anticipated
12 work. The small works roster or rosters shall consist of all
13 responsible contractors who have requested to be on the list, and where
14 required by law are properly licensed or registered to perform such
15 work in this state. At least once a year, the county shall publish in
16 a newspaper of general circulation within the jurisdiction a notice of
17 the existence of the roster or rosters and solicit the names of
18 contractors for such roster or rosters.

19 The governing body of the county shall establish a procedure for
20 securing telephone or written quotations from the contractors on the
21 general small works roster, or a specific small works roster for the
22 appropriate category of work, to assure that a competitive price is
23 established and to award contracts to ~~((the lowest responsible))~~ a
24 bidder ~~((, as defined in RCW 43.19.1911))~~ that can meet its financial
25 obligations, can demonstrate its ability to produce a quality project,
26 shows its ability to participate in a state-approved apprentice
27 program, and has demonstrated its ability to comply with all laws
28 pertaining to minority and female hiring and affirmative action. Such
29 invitations for quotations shall include an estimate of the scope and
30 nature of the work to be performed as well as materials and equipment
31 to be furnished. Whenever possible at least five contractors shall be
32 invited to submit bids. Once a contractor has been afforded an
33 opportunity to submit a proposal, that contractor shall not be offered
34 another opportunity until all other appropriate contractors on the
35 small works roster have been afforded an opportunity to submit a
36 proposal on a contract.

37 A contract awarded from a small works roster under this section
38 need not be advertised.

1 Immediately after an award is made, the bid quotations obtained
2 shall be recorded, open to public inspection, and available by
3 telephone inquiry.

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