
SUBSTITUTE HOUSE BILL 2652

State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Local Government (originally sponsored by Representatives Springer, Edmondson, Dunshee, H. Myers, Morris, Chappell, Finkbeiner, Zellinsky, R. Meyers, Mastin, Karahalios and R. Fisher)

Read first time 02/04/94.

1 AN ACT Relating to limitations on local government day labor
2 projects and contracts for purchases and public works projects; and
3 amending RCW 35.22.620, 35.23.352, and 54.04.082.

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

5 **Sec. 1.** RCW 35.22.620 and 1993 c 198 s 9 are each amended to read
6 as follows:

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

9 (2) A first class city may have public works performed by contract
10 pursuant to public notice and call for competitive bids. As limited by
11 subsection (3) of this section, a first class city may have public
12 works performed by city employees in any annual or biennial budget
13 period equal to a dollar value not exceeding ten percent of the public
14 works construction budget, including any amount in a supplemental
15 public works construction budget, over the budget period. The amount
16 of public works that a first class city has a county perform for it
17 under RCW 35.77.020 shall be included within this ten percent
18 limitation.

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

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

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

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

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

1 project into units of work or classes of work to avoid the restriction
2 on work that may be performed by day labor on a single project.

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

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

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

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

31 (7) In lieu of the procedures of subsections (2) and (6) of this
32 section, a first class city may use a small works roster process and
33 award contracts for public works projects with an estimated value of
34 one hundred thousand dollars or less as provided in RCW 39.04.155.

35 Whenever possible, the city shall invite at least one proposal from
36 a minority or woman contractor who shall otherwise qualify under this
37 section.

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

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

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

7 **Sec. 2.** RCW 35.23.352 and 1993 c 198 s 10 are each amended to read
8 as follows:

9 (1) Any second or third class city or any town may construct any
10 public works, as defined in RCW 39.04.010, by contract or day labor
11 without calling for bids therefor whenever the estimated cost of the
12 work or improvement, including cost of materials, supplies and
13 equipment will not exceed the sum of (~~thirty~~) forty thousand dollars
14 if more than one craft or trade is involved with the public works, or
15 (~~twenty~~) twenty-five thousand dollars if a single craft or trade is
16 involved with the public works or the public works project is street
17 signalization or street lighting. A public works project means a
18 complete project. The restrictions in this subsection do not permit
19 the division of the project into units of work or classes of work to
20 avoid the restriction on work that may be performed by day labor on a
21 single project.

22 Whenever the cost of the public work or improvement, including
23 materials, supplies and equipment, will exceed these figures, the same
24 shall be done by contract. All such contracts shall be let at public
25 bidding upon publication of notice calling for sealed bids upon the
26 work. The notice shall be published in the official newspaper, or a
27 newspaper of general circulation most likely to bring responsive bids,
28 at least thirteen days prior to the last date upon which bids will be
29 received. The notice shall generally state the nature of the work to
30 be done that plans and specifications therefor shall then be on file in
31 the city or town hall for public inspections, and require that bids be
32 sealed and filed with the council or commission within the time
33 specified therein. Each bid shall be accompanied by a bid proposal
34 deposit in the form of a cashier's check, postal money order, or surety
35 bond to the council or commission for a sum of not less than five
36 percent of the amount of the bid, and no bid shall be considered unless
37 accompanied by such bid proposal deposit. The council or commission of
38 the city or town shall let the contract to the lowest responsible

1 bidder or shall have power by resolution to reject any or all bids and
2 to make further calls for bids in the same manner as the original call.

3 When the contract is let then all bid proposal deposits shall be
4 returned to the bidders except that of the successful bidder which
5 shall be retained until a contract is entered into and a bond to
6 perform the work furnished, with surety satisfactory to the council or
7 commission, in accordance with RCW 39.08.030. If the bidder fails to
8 enter into the contract in accordance with his or her bid and furnish
9 a bond within ten days from the date at which he or she is notified
10 that he or she is the successful bidder, the check or postal money
11 order and the amount thereof shall be forfeited to the council or
12 commission or the council or commission shall recover the amount of the
13 surety bond.

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

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

21 (3) In lieu of the procedures of subsection (1) of this section, a
22 second or third class city or a town may use a small works roster
23 process and award public works contracts with an estimated value of one
24 hundred thousand dollars or less as provided in RCW 39.04.155.

25 Whenever possible, the city or town shall invite at least one
26 proposal from a minority or woman contractor who shall otherwise
27 qualify under this section.

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

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

35 (6) Any purchase of supplies, material, or equipment (~~or services~~
36 ~~other than professional services~~), except for public work or
37 improvement, where the cost thereof exceeds seven thousand five hundred
38 dollars shall be made upon call for bids.

1 (7) Bids shall be called annually and at a time and in the manner
2 prescribed by ordinance for the publication in a newspaper of general
3 circulation in the city or town of all notices or newspaper
4 publications required by law. The contract shall be awarded to the
5 lowest responsible bidder.

6 (8) For advertisement and formal sealed bidding to be dispensed
7 with as to purchases between seven thousand five hundred and fifteen
8 thousand dollars, the city legislative authority must authorize by
9 resolution, use of the uniform procedure provided in RCW 39.04.190.

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

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

19 (11) Nothing in this section shall prohibit any second or third
20 class city or any town from allowing for preferential purchase of
21 products made from recycled materials or products that may be recycled
22 or reused.

23 **Sec. 3.** RCW 54.04.082 and 1993 c 198 s 15 are each amended to read
24 as follows:

25 For the awarding of a contract to purchase any item, or items of
26 the same kind of materials, equipment, or supplies in an amount
27 exceeding five thousand dollars, but less than (~~fifteen~~) twenty-five
28 thousand dollars, exclusive of sales tax, the commission may, in lieu
29 of the procedure described in RCW 54.04.070 and 54.04.080 requiring
30 public notice to invite sealed proposals for such materials, equipment,
31 or supplies, pursuant to commission resolution use the process provided
32 in RCW 39.04.190. Waiver of the deposit or bid bond required under RCW
33 54.04.080 may be authorized by the commission in securing such bid
34 quotations.

--- END ---