

2 **SSB 5757** - H COMM AMD **ADOPTED 4/5/95**  
3 By Committee on Government Operations

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 35.22 RCW  
8 to read as follows:

9 A low bidder who claims error and fails to enter into a contract  
10 with a city for a public works project is prohibited from bidding on  
11 the same project if a second or subsequent call for bids is made for  
12 the project.

13 **Sec. 2.** RCW 35.23.352 and 1994 c 273 s 9 and 1994 c 81 s 18 are  
14 each reenacted and amended to read as follows:

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

27 Whenever the cost of the public work or improvement, including  
28 materials, supplies and equipment, will exceed these figures, the same  
29 shall be done by contract. All such contracts shall be let at public  
30 bidding upon publication of notice calling for sealed bids upon the  
31 work. The notice shall be published in the official newspaper, or a  
32 newspaper of general circulation most likely to bring responsive bids,  
33 at least thirteen days prior to the last date upon which bids will be  
34 received. The notice shall generally state the nature of the work to  
35 be done that plans and specifications therefor shall then be on file in

1 the city or town hall for public inspections, and require that bids be  
2 sealed and filed with the council or commission within the time  
3 specified therein. Each bid shall be accompanied by a bid proposal  
4 deposit in the form of a cashier's check, postal money order, or surety  
5 bond to the council or commission for a sum of not less than five  
6 percent of the amount of the bid, and no bid shall be considered unless  
7 accompanied by such bid proposal deposit. The council or commission of  
8 the city or town shall let the contract to the lowest responsible  
9 bidder or shall have power by resolution to reject any or all bids and  
10 to make further calls for bids in the same manner as the original call.

11 When the contract is let then all bid proposal deposits shall be  
12 returned to the bidders except that of the successful bidder which  
13 shall be retained until a contract is entered into and a bond to  
14 perform the work furnished, with surety satisfactory to the council or  
15 commission, in accordance with RCW 39.08.030. If the bidder fails to  
16 enter into the contract in accordance with his or her bid and furnish  
17 a bond within ten days from the date at which he or she is notified  
18 that he or she is the successful bidder, the check or postal money  
19 order and the amount thereof shall be forfeited to the council or  
20 commission or the council or commission shall recover the amount of the  
21 surety bond. A low bidder who claims error and fails to enter into a  
22 contract is prohibited from bidding on the same project if a second or  
23 subsequent call for bids is made for the project.

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

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

31 (3) In lieu of the procedures of subsection (1) of this section, a  
32 second class city or a town may use the small works roster process  
33 provided in RCW 39.04.155 to award public works contracts with an  
34 estimated value of one hundred thousand dollars or less.

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

38 (4) The form required by RCW 43.09.205 shall be to account and  
39 record costs of public works in excess of five thousand dollars that

1 are not let by contract.

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

5 (6) Any purchase of supplies, material, or equipment, except for  
6 public work or improvement, where the cost thereof exceeds seven  
7 thousand five hundred dollars shall be made upon call for bids.

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 of general  
10 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 formal sealed bidding to be dispensed  
14 with as to purchases between seven thousand five hundred and fifteen  
15 thousand dollars, the council or commission must authorize by  
16 resolution, use of the uniform procedure provided in RCW 39.04.190.

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

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

26 (11) Nothing in this section shall prohibit any second class city  
27 or any town from allowing for preferential purchase of products made  
28 from recycled materials or products that may be recycled or reused.

29 **Sec. 3.** RCW 36.32.250 and 1993 c 198 s 8 are each amended to read  
30 as follows:

31 No contract for public works may be entered into by the county  
32 legislative authority or by any elected or appointed officer of the  
33 county until after bids have been submitted to the county upon  
34 specifications therefor. Such specifications shall be in writing and  
35 shall be filed with the clerk of the county legislative authority for  
36 public inspection. An advertisement shall be published in the county  
37 official newspaper stating the time and place where bids will be  
38 opened, the time after which bids will not be received, the character

1 of the work to be done, the materials and equipment to be furnished,  
2 and that specifications therefor may be seen at the office of the clerk  
3 of the county legislative authority. An advertisement shall also be  
4 published in a legal newspaper of general circulation in or as near as  
5 possible to that part of the county in which such work is to be done.  
6 If the county official newspaper is a newspaper of general circulation  
7 covering at least forty percent of the residences in that part of the  
8 county in which such public works are to be done, then the publication  
9 of an advertisement of the applicable specifications in the county  
10 official newspaper shall be sufficient. Such advertisements shall be  
11 published at least once at least thirteen days prior to the last date  
12 upon which bids will be received. The bids shall be in writing, shall  
13 be filed with the clerk, shall be opened and read in public at the time  
14 and place named therefor in the advertisements, and after being opened,  
15 shall be filed for public inspection. No bid may be considered for  
16 public work unless it is accompanied by a bid deposit in the form of a  
17 surety bond, postal money order, cash, cashier's check, or certified  
18 check in an amount equal to five percent of the amount of the bid  
19 proposed. The contract for the public work shall be awarded to the  
20 lowest responsible bidder. Any or all bids may be rejected for good  
21 cause. The county legislative authority shall require from the  
22 successful bidder for such public work a contractor's bond in the  
23 amount and with the conditions imposed by law. If the bidder to whom  
24 the contract is awarded fails to enter into the contract and furnish  
25 the contractor's bond as required within ten days after notice of the  
26 award, exclusive of the day of notice, the amount of the bid deposit  
27 shall be forfeited to the county and the contract awarded to the next  
28 lowest and best bidder. A low bidder who claims error and fails to  
29 enter into a contract is prohibited from bidding on the same project if  
30 a second or subsequent call for bids is made for the project. The bid  
31 deposit of all unsuccessful bidders shall be returned after the  
32 contract is awarded and the required contractor's bond given by the  
33 successful bidder is accepted by the county legislative authority. In  
34 the letting of any contract for public works involving less than ten  
35 thousand dollars, advertisement and competitive bidding may be  
36 dispensed with on order of the county legislative authority.  
37 Immediately after the award is made, the bid quotations obtained shall  
38 be recorded and open to public inspection and shall be available by  
39 telephone inquiry.

1 For advertisement and competitive bidding to be dispensed with as  
2 to public works projects with an estimated value of ten thousand  
3 dollars up to one hundred thousand dollars, a county must use a small  
4 works roster process as provided in RCW 39.04.155.

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

8 **Sec. 4.** RCW 36.77.040 and 1963 c 4 s 36.77.040 are each amended to  
9 read as follows:

10 The board shall proceed to award the contract to the lowest and  
11 best bidder but may reject any or all bids if in its opinion good cause  
12 exists therefor. The board shall require from the successful bidder a  
13 contractor's bond in the amount and with the conditions imposed by law.  
14 Should the bidder to whom the contract is awarded fail to enter into  
15 the contract and furnish the contractor's bond as required within ten  
16 days after notice of the award, exclusive of the day of notice, the  
17 amount of the bid deposit shall be forfeited to the county and placed  
18 in the county road fund and the contract awarded to the next lowest and  
19 best bidder. A low bidder who claims error and fails to enter into a  
20 contract is prohibited from bidding on the same project if a second or  
21 subsequent call for bids is made for the project. The bid deposit of  
22 all unsuccessful bidders shall be returned after the contract is  
23 awarded and the required contractor's bond given by the successful  
24 bidder is accepted by the board.

25 **Sec. 5.** RCW 39.04.220 and 1994 c 80 s 2 are each amended to read  
26 as follows:

27 (1) In addition to currently authorized methods of public works  
28 contracting, and in lieu of the requirements of RCW 39.04.010 and  
29 39.04.020 through 39.04.060, capital projects funded for over ten  
30 million dollars authorized by the legislature for the department of  
31 corrections to construct or repair facilities may be accomplished under  
32 contract using the general contractor/construction manager method  
33 described in this section. In addition, the general contractor/  
34 construction manager method may be used for up to two demonstration  
35 projects under ten million dollars for the department of corrections.  
36 Each demonstration project shall aggregate capital projects authorized  
37 by the legislature at a single site to total no less than three million

1 dollars with the approval of the office of financial management. The  
2 department of general administration shall present its plan for the  
3 aggregation of projects under each demonstration project to the  
4 oversight advisory committee established under subsection (2) of this  
5 section prior to soliciting proposals for general contractor/  
6 construction manager services for the demonstration project.

7 (2) For the purposes of this section, "general contractor/  
8 construction manager" means a firm with which the department of general  
9 administration has selected and negotiated a maximum allowable  
10 construction cost to be guaranteed by the firm, after competitive  
11 selection through a formal advertisement, and competitive bids to  
12 provide services during the design phase that may include life-cycle  
13 cost design considerations, value engineering, scheduling, cost  
14 estimating, constructability, alternative construction options for cost  
15 savings, and sequencing of work, and to act as the construction manager  
16 and general contractor during the construction phase. The department  
17 of general administration shall establish an independent oversight  
18 advisory committee with representatives of interest groups with an  
19 interest in this subject area, the department of corrections, and the  
20 private sector, to review selection and contracting procedures and  
21 contracting documents. The oversight advisory committee shall discuss  
22 and review the progress of the demonstration projects. The general  
23 contractor/construction manager method is limited to projects  
24 authorized on or before July 1, 1997.

25 (3) Contracts for the services of a general contractor/construction  
26 manager awarded under the authority of this section shall be awarded  
27 through a competitive process requiring the public solicitation of  
28 proposals for general contractor/construction manager services.  
29 Minority and women enterprise total project goals shall be specified in  
30 the bid instructions to the general contractor/construction manager  
31 finalists. The director of general administration is authorized to  
32 include an incentive clause in any contract awarded under this section  
33 for savings of either time or cost or both from that originally  
34 negotiated. No incentives granted shall exceed five percent of the  
35 maximum allowable construction cost. The director of general  
36 administration or his or her designee shall establish a committee to  
37 evaluate the proposals considering such factors as: Ability of  
38 professional personnel; past performance in negotiated and complex  
39 projects; ability to meet time and budget requirements; location;

1 recent, current, and projected work loads of the firm; and the concept  
2 of their proposal. After the committee has selected the most qualified  
3 finalists, these finalists shall submit sealed bids for the percent  
4 fee, which is the percentage amount to be earned by the general  
5 contractor/construction manager as overhead and profit, on the  
6 estimated maximum allowable construction cost and the fixed amount for  
7 the detailed specified general conditions work. The maximum allowable  
8 construction cost may be negotiated between the department of general  
9 administration and the selected firm after the scope of the project is  
10 adequately determined to establish a guaranteed contract cost for which  
11 the general contractor/construction manager will provide a performance  
12 and payment bond. The guaranteed contract cost includes the fixed  
13 amount for the detailed specified general conditions work, the  
14 negotiated maximum allowable construction cost, the percent fee on the  
15 negotiated maximum allowable construction cost, and sales tax. If the  
16 department of general administration is unable to negotiate a  
17 satisfactory maximum allowable construction cost with the firm selected  
18 that the department of general administration determines to be fair,  
19 reasonable, and within the available funds, negotiations with that firm  
20 shall be formally terminated and the department of general  
21 administration shall negotiate with the next low bidder and continue  
22 until an agreement is reached or the process is terminated. If the  
23 maximum allowable construction cost varies more than fifteen percent  
24 from the bid estimated maximum allowable construction cost due to  
25 requested and approved changes in the scope by the state, the percent  
26 fee shall be renegotiated. All subcontract work shall be competitively  
27 bid with public bid openings. Specific contract requirements for women  
28 and minority enterprise participation shall be specified in each  
29 subcontract bid package that exceeds ten percent of the department's  
30 estimated project cost. All subcontractors who bid work over two  
31 hundred thousand dollars shall post a bid bond and the awarded  
32 subcontractor shall provide a performance and payment bond for their  
33 contract amount if required by the general contractor/construction  
34 manager. A low bidder who claims error and fails to enter into a  
35 contract is prohibited from bidding on the same project if a second or  
36 subsequent call for bids is made for the project. Bidding on  
37 subcontract work by the general contractor/construction manager or its  
38 subsidiaries is prohibited. The general contractor/construction  
39 manager may negotiate with the low-responsive bidder only in accordance

1 with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

2 (4) If the project is completed for less than the agreed upon  
3 maximum allowable construction cost, any savings not otherwise  
4 negotiated as part of an incentive clause shall accrue to the state.  
5 If the project is completed for more than the agreed upon maximum  
6 allowable construction cost, excepting increases due to any contract  
7 change orders approved by the state, the additional cost shall be the  
8 responsibility of the general contractor/construction manager.

9 (5) The powers and authority conferred by this section shall be  
10 construed as in addition and supplemental to powers or authority  
11 conferred by any other law, and nothing contained (~~herein shall~~) in  
12 this section may be construed as limiting any other powers or authority  
13 of the department of general administration. However, all actions  
14 taken pursuant to the powers and authority granted to the director or  
15 the department of general administration under this section may only be  
16 taken with the concurrence of the department of corrections.

17 **Sec. 6.** RCW 39.10.060 and 1994 c 132 s 6 are each amended to read  
18 as follows:

19 (1) Notwithstanding any other provision of law, and after complying  
20 with RCW 39.10.030, the following public bodies may utilize the general  
21 contractor/construction manager procedure of public works contracting  
22 for public works projects authorized under subsection (2) of this  
23 section: The state department of general administration; the  
24 University of Washington; Washington State University; every city with  
25 a population greater than one hundred fifty thousand; every county with  
26 a population greater than four hundred fifty thousand; and every port  
27 district with a population greater than five hundred thousand. For the  
28 purposes of this section, "general contractor/construction manager"  
29 means a firm with which a public body has selected and negotiated a  
30 maximum allowable construction cost to be guaranteed by the firm, after  
31 competitive selection through formal advertisement and competitive  
32 bids, to provide services during the design phase that may include  
33 life-cycle cost design considerations, value engineering, scheduling,  
34 cost estimating, constructability, alternative construction options for  
35 cost savings, and sequencing of work, and to act as the construction  
36 manager and general contractor during the construction phase.

37 (2) Public bodies authorized under this section may utilize the  
38 general contractor/construction manager procedure for public works



1 projects valued over ten million dollars where:

2 (a) Implementation of the project involves complex scheduling  
3 requirements;

4 (b) The project involves construction at an existing facility which  
5 must continue to operate during construction; or

6 (c) The involvement of the general contractor/construction manager  
7 during the design stage is critical to the success of the project.

8 (3) Contracts for the services of a general contractor/construction  
9 manager under this section shall be awarded through a competitive  
10 process requiring the public solicitation of proposals for general  
11 contractor/construction manager services. Minority and women business  
12 enterprise total project goals shall be specified in the public  
13 solicitation of proposals and the bid instructions to the general  
14 contractor/construction manager finalists. A public body is authorized  
15 to include an incentive clause in any contract awarded under this  
16 section for savings of either time or cost or both from that originally  
17 negotiated. No incentives granted shall exceed five percent of the  
18 maximum allowable construction cost. A public body shall establish a  
19 committee to evaluate the proposals considering such factors as:  
20 Ability of professional personnel; past performance in negotiated and  
21 complex projects; ability to meet time and budget requirements;  
22 location; recent, current, and projected work loads of the firm; and  
23 the concept of their proposal. After the committee has selected the  
24 most qualified finalists, these finalists shall submit sealed bids for  
25 the percent fee, which is the percentage amount to be earned by the  
26 general contractor/construction manager as overhead and profit, on the  
27 estimated maximum allowable construction cost and the fixed amount for  
28 the detailed specified general conditions work. The maximum allowable  
29 construction cost may be negotiated between the public body and the  
30 selected firm after the scope of the project is adequately determined  
31 to establish a guaranteed contract cost for which the general  
32 contractor/construction manager will provide a performance and payment  
33 bond. The guaranteed contract cost includes the fixed amount for the  
34 detailed specified general conditions work, the negotiated maximum  
35 allowable construction cost, the percent fee on the negotiated maximum  
36 allowable construction cost, and sales tax. If the public body is  
37 unable to negotiate a satisfactory maximum allowable construction cost  
38 with the firm selected that the public body determines to be fair,  
39 reasonable, and within the available funds, negotiations with that firm

1 shall be formally terminated and the public body shall negotiate with  
2 the next low bidder and continue until an agreement is reached or the  
3 process is terminated. If the maximum allowable construction cost  
4 varies more than fifteen percent from the bid estimated maximum  
5 allowable construction cost due to requested and approved changes in  
6 the scope by the public body, the percent fee shall be renegotiated.  
7 All subcontract work shall be competitively bid with public bid  
8 openings. Specific contract requirements for women and minority  
9 enterprise participation shall be specified in each subcontract bid  
10 package that exceeds ten percent of the public body's estimated project  
11 cost. All subcontractors who bid work over two hundred thousand  
12 dollars shall post a bid bond and all subcontractors who are awarded a  
13 contract over two hundred thousand dollars shall provide a performance  
14 and payment bond for their contract amount. A low bidder who claims  
15 error and fails to enter into a contract is prohibited from bidding on  
16 the same project if a second or subsequent call for bids is made for  
17 the project. All other subcontractors shall provide a performance and  
18 payment bond if required by the general contractor/construction  
19 manager. Bidding on subcontract work by the general contractor/  
20 construction manager or its subsidiaries is prohibited. The general  
21 contractor/construction manager may negotiate with the low-responsive  
22 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
23 negotiations, rebid.

24 (4) If the project is completed for less than the agreed upon  
25 maximum allowable construction cost, any savings not otherwise  
26 negotiated as part of an incentive clause shall accrue to the public  
27 body. If the project is completed for more than the agreed upon  
28 maximum allowable construction cost, excepting increases due to any  
29 contract change orders approved by the public body, the additional cost  
30 shall be the responsibility of the general contractor/construction  
31 manager.

32 NEW SECTION. Sec. 7. A new section is added to chapter 43.19 RCW  
33 to read as follows:

34 A low bidder who claims error and fails to enter into a contract is  
35 prohibited from bidding on the same purchase or project if a second or  
36 subsequent call for bids is made for the purchase or project.

37 **Sec. 8.** RCW 47.28.100 and 1984 c 7 s 171 are each amended to read

1 as follows:

2 If the successful bidder fails to enter into the contract and  
3 furnish satisfactory bond as provided by law within twenty days from  
4 the award, exclusive of the day of the award, his or her deposit shall  
5 be forfeited to the state and deposited by the state treasurer to the  
6 credit of the motor vehicle fund, and the department may award the  
7 contract to the second lowest responsible bidder. If the second lowest  
8 responsible bidder fails to enter into the contract and furnish bond  
9 within twenty days after award to him or her, forfeiture of his or her  
10 deposit shall also be made, and the contract may be awarded to the  
11 third lowest responsible bidder, and in like manner until the contract  
12 and bond are executed by a responsible bidder to whom award is made, or  
13 further bid proposals are rejected, or the number of bid proposals are  
14 exhausted. If the contract is not executed or no contractor's bond  
15 provided within the time required, and there appear circumstances that  
16 are deemed to warrant an extension of time, the department may extend  
17 the time for execution of the contract or furnishing bond for not to  
18 exceed twenty additional days. After awarding the contract the  
19 deposits of unsuccessful bidders shall be returned, but the department  
20 may retain the deposit of the next lowest responsible bidder or bidders  
21 as it desires until such time as the contract is entered into and  
22 satisfactory bond is provided by the bidder to whom the award is  
23 ultimately made. A low bidder who claims error and fails to enter into  
24 a contract is prohibited from bidding on the same project if a second  
25 or subsequent call for bids is made for the project.

26 If in the opinion of the department the acceptance of the bid of  
27 the lowest responsible bidder or bidders, or on prior failure of the  
28 lowest responsible bidder or bidders the acceptance of the bid of the  
29 remaining lowest responsible bidder or bidders, will not be for the  
30 best interest of the state, it may reject all bids or all remaining  
31 bids and republish a call for bids in the same manner as for an  
32 original publication thereof.

33 **Sec. 9.** RCW 47.60.778 and 1993 c 493 s 6 are each amended to read  
34 as follows:

35 Bids submitted by firms under this section constitute an offer and  
36 shall remain open for ninety days. When submitted, each bid shall be  
37 accompanied by a deposit in cash, certified check, cashier's check, or  
38 surety bond in an amount equal to five percent of the bid amount, and

1 no bid may be considered unless the deposit is enclosed. If the  
2 department awards a contract to a firm and the firm fails to enter into  
3 a contract or fails to furnish a satisfactory contract security as  
4 required by RCW 39.08.100, its deposit shall be forfeited to the state  
5 and be deposited by the state treasurer to the credit of the Puget  
6 Sound capital construction account. A low bidder who claims error and  
7 fails to enter into a contract is prohibited from bidding on the same  
8 project if a second or subsequent call for bids is made for the  
9 project. Upon the execution of a ferry construction contract for the  
10 construction of new jumbo ferries, all bid deposits shall be returned.

11 NEW SECTION. **Sec. 10.** A new section is added to chapter 52.14 RCW  
12 to read as follows:

13 A low bidder who claims error and fails to enter into a contract  
14 with a fire protection district for a public works project is  
15 prohibited from bidding on the same project if a second or subsequent  
16 call for bids is made for the project.

17 **Sec. 11.** RCW 53.08.130 and 1971 ex.s. c 258 s 2 are each amended  
18 to read as follows:

19 The notice shall state generally the nature of the work to be done  
20 and require that bids be sealed and filed with the commission at a time  
21 specified therein. Each bid shall be accompanied by a bid proposal  
22 deposit in the form of a cashier's check, money order, or surety bid  
23 bond to the commission for a sum not less than five percent of the  
24 amount of the bid, and no bid shall be considered unless accompanied by  
25 such bid proposal deposit. At the time and place named the bids shall  
26 be publicly opened and read and the commission shall proceed to canvass  
27 the bids and, except as otherwise in this section provided, shall let  
28 the contract to the lowest responsible bidder upon plans and  
29 specifications on file, or to the best bidder submitting his or her own  
30 plans and specifications. If, in the opinion of the commission, all  
31 bids are unsatisfactory, they may reject all of them and readvertise,  
32 and in such case all such bid proposal deposits shall be returned to  
33 the bidders; but if the contract is let, then all bid proposal deposits  
34 shall be returned to the bidders, except that of the successful bidder  
35 which shall be retained until a contract is entered into for the  
36 purchase of such materials or doing such work, and a bond given to the  
37 port district for the performance of the contract and otherwise

1 conditioned as required by law, with sureties satisfactory to the  
2 commission, in an amount to be fixed by the commission, but not in any  
3 event less than twenty-five percent of the contract price. If ((said))  
4 the bidder fails to enter into the contract in accordance with his or  
5 her bid and furnish such bond within ten days from the date at which he  
6 or she is notified that he or she is the successful bidder, the check  
7 or money order and the amount thereof shall be forfeited to the port  
8 district or the port district shall recover the amount of the surety  
9 bid bond. A low bidder who claims error and fails to enter into a  
10 contract is prohibited from bidding on the same project if a second or  
11 subsequent call for bids is made for the project.

12 **Sec. 12.** RCW 54.04.080 and 1972 ex.s. c 41 s 1 are each amended to  
13 read as follows:

14 Any notice inviting sealed bids shall state generally the work to  
15 be done, or the material to be purchased and shall call for proposals  
16 for furnishing it, to be sealed and filed with the commission on or  
17 before the time named therein. Each bid shall be accompanied by a  
18 certified or cashier's check, payable to the order of the commission,  
19 for a sum not less than five percent of the amount of the bid, or  
20 accompanied by a bid bond in an amount not less than five percent of  
21 the bid with a corporate surety licensed to do business in the state,  
22 conditioned that the bidder will pay the district as liquidated damages  
23 the amount specified in the bond unless he or she enters into a  
24 contract in accordance with his or her bid and furnishes the  
25 performance bond ((~~herein mentioned~~)) within ten days from the date on  
26 which he or she is notified that he or she is the successful bidder.  
27 A low bidder who claims error and fails to enter into a contract is  
28 prohibited from bidding on the same project if a second or subsequent  
29 call for bids is made for the project.

30 At the time and place named, the bids shall be publicly opened and  
31 read, and the commission shall canvass the bids, and may let the  
32 contract to the lowest responsible bidder upon the plans and  
33 specifications on file, or to the best bidder submitting his or her own  
34 plans or specifications; or if the contract to be let is to construct  
35 or improve electrical facilities, the contract may be let to the lowest  
36 bidder prequalified according to the provisions of RCW 54.04.085 upon  
37 the plans and specifications on file, or to the best bidder submitting  
38 his or her own plans and specifications: PROVIDED, That no contract

1 shall be let for more than fifteen percent in excess of the estimated  
2 cost of the materials or work. The commission may reject all bids and  
3 readvertise, and in such case all checks shall be returned to the  
4 bidders. The commission may procure materials in the open market, have  
5 its own personnel perform the work or negotiate a contract for such  
6 work to be performed by others, in lieu of readvertising, if it  
7 receives no bid. If the contract is let, all checks shall be returned  
8 to the bidders, except that of the successful bidder, which shall be  
9 retained until a contract is entered into and a bond to perform the  
10 work furnished, with sureties satisfactory to the commission, in an  
11 amount to be fixed by the commission, not less than twenty-five percent  
12 of the contract price, in accordance with the bid. If the bidder fails  
13 to enter into the contract and furnish the bond within ten days from  
14 the date at which he or she is notified that he or her is the  
15 successful bidder, his or her check and the amount thereof shall be  
16 forfeited to the district.

17 The commission shall, by resolution, define the term "same kind of  
18 materials, equipment, and supplies" with respect to purchase of items  
19 under the provisions of RCW 54.04.070.

20 The term "construction or improvement of any electrical facility"  
21 as used in this section and in RCW 54.04.085, shall mean the  
22 construction, the moving, maintenance, modification, or enlargement of  
23 facilities primarily used or to be used for the transmission or  
24 distribution of electricity at voltages above seven hundred fifty  
25 volts, including structures directly supporting transmission or  
26 distribution conductors but not including site preparation, housing, or  
27 protective fencing associated with but not included in a contract for  
28 such construction, moving, modification, maintenance, or enlargement of  
29 such facilities.

30 The commission shall be the final authority with regard to whether  
31 a bid is responsive to the call for bids and as to whether a bidder is  
32 a responsible bidder under the conditions of his or her bid. No award  
33 of contract shall be invalidated solely because of the failure of any  
34 prospective bidder to receive an invitation to bid.

35 **Sec. 13.** RCW 56.08.070 and 1994 c 31 s 1 are each amended to read  
36 as follows:

37 (1) All materials purchased and work ordered, the estimated cost of  
38 which is in excess of five thousand dollars shall be let by contract.

1 All contract projects, the estimated cost of which is less than fifty  
2 thousand dollars, may be awarded to a contractor using the small works  
3 roster process provided in RCW 39.04.155 or the process provided in RCW  
4 39.04.190 for purchases. The board of sewer commissioners may set up  
5 uniform procedures to prequalify contractors for inclusion on the small  
6 works roster. All contract projects equal to or in excess of fifty  
7 thousand dollars shall be let by competitive bidding. Before awarding  
8 any competitive contract the board of sewer commissioners shall publish  
9 a notice in a newspaper of general circulation where the district is  
10 located at least once, thirteen days before the last date upon which  
11 bids will be received, inviting sealed proposals for such work, plans  
12 and specifications which must at the time of publication of such notice  
13 be on file in the office of the board of sewer commissioners subject to  
14 public inspection. Such notice shall state generally the work to be  
15 done and shall call for proposals for doing the same to be sealed and  
16 filed with the board of sewer commissioners on or before the day and  
17 hour named therein.

18 (2) Each bid shall be accompanied by a bid proposal deposit in the  
19 form of a certified check, cashier's check, postal money order, or  
20 surety bond payable to the order of the county treasurer for a sum not  
21 less than five percent of the amount of the bid and no bid shall be  
22 considered unless accompanied by such bid proposal deposit. At the  
23 time and place named such bids shall be publicly opened and read and  
24 the board of sewer commissioners shall proceed to canvass the bids and  
25 may let such contract to the lowest responsible bidder upon plans and  
26 specifications: PROVIDED, That no contract shall be let in excess of  
27 the cost of the materials or work. The board of sewer commissioners  
28 may reject all bids for good cause and readvertise and in such case all  
29 checks, cash or bid bonds shall be returned to the bidders. If such  
30 contract be let, then all checks, cash or bid bonds shall be returned  
31 to the bidders, except that of the successful bidder, which shall be  
32 retained until a contract shall be entered into for the purchase of  
33 such materials or doing such work, and a bond to perform such work  
34 furnished with sureties satisfactory to the board of sewer  
35 commissioners in the full amount of the contract price between the  
36 bidder and the commission in accordance with bid. If the bidder fails  
37 to enter into the contract in accordance with the bid and furnish such  
38 bond within ten days from the date at which the bidder is notified that  
39 he or she is the successful bidder, the check, cash, or bid bonds and

1 the amount thereof shall be forfeited to the sewer district. A low  
2 bidder who claims error and fails to enter into a contract is  
3 prohibited from bidding on the same project if a second or subsequent  
4 call for bids is made for the project.

5 (3) In the event of an emergency when the public interest or  
6 property of the sewer district would suffer material injury or damage  
7 by delay, upon resolution of the board of sewer commissioners, or  
8 proclamation of an official designated by the board to act for the  
9 board during such emergencies, declaring the existence of such  
10 emergency and reciting the facts constituting the same, the board, or  
11 the official acting for the board, may waive the requirements of this  
12 chapter with reference to any purchase or contract. In addition, these  
13 requirements may be waived for purchases which are clearly and  
14 legitimately limited to a single source of supply and purchases  
15 involving special facilities, services, or market conditions, in which  
16 instances the purchase price may be best established by direct  
17 negotiation.

18 **Sec. 14.** RCW 57.08.050 and 1994 c 31 s 2 are each amended to read  
19 as follows:

20 (1) The board of water commissioners shall have authority to create  
21 and fill such positions and fix salaries and bonds thereof as it may by  
22 resolution provide.

23 (2) All materials purchased and work ordered, the estimated cost of  
24 which is in excess of five thousand dollars shall be let by contract.  
25 All contract projects, the estimated cost of which is less than fifty  
26 thousand dollars, may be awarded to a contractor using a small works  
27 roster process provided in RCW 39.04.155 or the process provided in RCW  
28 39.04.190 for purchases. The board of water commissioners may set up  
29 uniform procedures to prequalify contractors for inclusion on the small  
30 works roster. All contract projects equal to or in excess of fifty  
31 thousand dollars shall be let by competitive bidding. Before awarding  
32 any such contract the board of water commissioners shall publish a  
33 notice in a newspaper of general circulation where the district is  
34 located at least once thirteen days before the last date upon which  
35 bids will be received, inviting sealed proposals for such work, plans  
36 and specifications which must at the time of publication of such notice  
37 be on file in the office of the board of water commissioners subject to  
38 public inspection. Such notice shall state generally the work to be



1 done and shall call for proposals for doing the same to be sealed and  
2 filed with the board of water commissioners on or before the day and  
3 hour named therein.

4 (3) Each bid shall be accompanied by a certified or cashier's check  
5 or postal money order payable to the order of the county treasurer for  
6 a sum not less than five percent of the amount of the bid, or  
7 accompanied by a bid bond in an amount not less than five percent of  
8 the bid with a corporate surety licensed to do business in the state,  
9 conditioned that the bidder will pay the district as liquidated damages  
10 the amount specified in the bond, unless the bidder enters into a  
11 contract in accordance with his or her bid, and no bid shall be  
12 considered unless accompanied by such check, cash or bid bond. At the  
13 time and place named such bids shall be publicly opened and read and  
14 the board of water commissioners shall proceed to canvass the bids and  
15 may let such contract to the lowest responsible bidder upon plans and  
16 specifications on file or to the best bidder submitting his or her own  
17 plans and specifications: PROVIDED, That no contract shall be let in  
18 excess of the cost of the materials or work. The board of water  
19 commissioners may reject all bids for good cause and readvertise and in  
20 such case all checks, cash or bid bonds shall be returned to the  
21 bidders. If such contract be let, then all checks, cash or bid bonds  
22 shall be returned to the bidders, except that of the successful bidder,  
23 which shall be retained until a contract shall be entered into for the  
24 purchase of such materials or doing such work, and a bond to perform  
25 such work furnished with sureties satisfactory to the board of water  
26 commissioners in the full amount of the contract price between the  
27 bidder and the commission in accordance with the bid. If the bidder  
28 fails to enter into the contract in accordance with the bid and furnish  
29 such bond within ten days from the date at which the bidder is notified  
30 that he or she is the successful bidder, the check, cash or bid bonds  
31 and the amount thereof shall be forfeited to the water district:  
32 PROVIDED, That if the bidder fails to enter into a contract in  
33 accordance with his or her bid, and the board of water commissioners  
34 deems it necessary to take legal action to collect on any bid bond  
35 required (~~herein~~) in this section, then the water district shall be  
36 entitled to collect from the bidder any legal expenses, including  
37 reasonable attorneys' fees occasioned thereby. A low bidder who claims  
38 error and fails to enter into a contract is prohibited from bidding on  
39 the same project if a second or subsequent call for bids is made for

1 the project.

2 (4) In the event of an emergency when the public interest or  
3 property of the water district would suffer material injury or damage  
4 by delay, upon resolution of the board of water commissioners, or  
5 proclamation of an official designated by the board to act for the  
6 board during such emergencies, declaring the existence of such  
7 emergency and reciting the facts constituting the same, the board, or  
8 official acting for the board, may waive the requirements of this  
9 chapter with reference to any purchase or contract. In addition, these  
10 requirements may be waived for purchases which are clearly and  
11 legitimately limited to a single source of supply and purchases  
12 involving special facilities, services, or market conditions, in which  
13 instances the purchase price may be best established by direct  
14 negotiation.

15 **Sec. 15.** RCW 70.44.140 and 1993 c 198 s 22 are each amended to  
16 read as follows:

17 (1) All materials purchased and work ordered, the estimated cost of  
18 which is in excess of five thousand dollars, shall be by contract.  
19 Before awarding any such contract, the commission shall publish a  
20 notice at least thirteen days before the last date upon which bids will  
21 be received, inviting sealed proposals for such work. The plans and  
22 specifications must at the time of the publication of such notice be on  
23 file at the office of the public hospital district, subject to public  
24 inspection: PROVIDED, HOWEVER, That the commission may at the same  
25 time, and as part of the same notice, invite tenders for the work or  
26 materials upon plans and specifications to be submitted by bidders.  
27 The notice shall state generally the work to be done, and shall call  
28 for proposals for doing the same, to be sealed and filed with the  
29 commission on or before the day and hour named therein. Each bid shall  
30 be accompanied by bid proposal security in the form of a certified  
31 check, cashier's check, postal money order, or surety bond made payable  
32 to the order of the commission, for a sum not less than five percent of  
33 the amount of the bid, and no bid shall be considered unless  
34 accompanied by such bid proposal security. At the time and place  
35 named, such bids shall be publicly opened and read, and the commission  
36 shall proceed to canvass the bids, and may let such contract to the  
37 lowest responsible bidder upon plans and specifications on file, or to  
38 the best bidder submitting his or her own plans and specifications:

1 PROVIDED, HOWEVER, That no contract shall be let in excess of the  
2 estimated cost of the materials or work, or if, in the opinion of the  
3 commission, all bids are unsatisfactory, they may reject all of them  
4 and readvertise, and in such case all bid proposal security shall be  
5 returned to the bidders; but if such contract be let, then and in such  
6 case all bid proposal security shall be returned to the bidders, except  
7 that of the successful bidder, which shall be retained until a contract  
8 shall be entered into for the purchase of such materials for doing such  
9 work, and a bond to perform such work furnished, with sureties  
10 satisfactory to the commission, in an amount to be fixed by the  
11 commission, not less than twenty-five percent of contract price in any  
12 case, between the bidder and commission, in accordance with the bid.  
13 If such bidder fails to enter into the contract in accordance with the  
14 bid and furnish such bond within ten days from the date at which the  
15 bidder is notified that he or she is the successful bidder, the bid  
16 proposal security and the amount thereof shall be forfeited to the  
17 public hospital district. A low bidder who claims error and fails to  
18 enter into a contract is prohibited from bidding on the same project if  
19 a second or subsequent call for bids is made for the project.

20 (2) In lieu of the procedures of subsection (1) of this section, a  
21 public hospital district may use a small works roster process and award  
22 public works contracts for projects in excess of five thousand dollars  
23 up to fifty thousand dollars as provided in RCW 39.04.155.

24 (3) For advertisement and formal sealed bidding to be dispensed  
25 with as to purchases between five thousand and fifteen thousand  
26 dollars, the commission must authorize by resolution a procedure as  
27 provided in RCW 39.04.190.

28 **Sec. 16.** RCW 91.08.530 and 1911 c 23 s 52 are each amended to read  
29 as follows:

30 After the confirmation of the assessment roll of any improvement  
31 district provided for herein, the board shall proceed at once with the  
32 construction of the improvement, and in carrying on (~~said~~) the  
33 construction it shall have full charge and management thereof and the  
34 power to employ such assistants as it may deem necessary, and purchase  
35 all material required in such construction; and it shall have power to  
36 let the whole or any part of the work of (~~said~~) the improvement to  
37 the lowest and best bidder therefor, after public advertisement and  
38 call for bids; and in case of such letting of a contract it shall have

1 the power also to enter into all necessary agreements with the  
2 contractor in the premises: PROVIDED, That in the case of the letting  
3 of a contract the board shall require the contractor to give a bond in  
4 the amount of the contract price, with sureties to be approved by the  
5 board and running to the board as obligee therein, conditioned for the  
6 faithful and accurate performance of his or her contract by ((said))  
7 the contractor, and that he or she will pay, or cause to be paid, all  
8 just claims of all persons performing labor upon or rendering services  
9 in doing ((said)) the work, or furnishing materials, merchandise or  
10 provisions used by ((said)) the contractor in the construction of  
11 ((said)) the improvement. ((Said)) The bond shall be filed and  
12 recorded in the office of the auditor of the county and every  
13 subcontractor on any such work shall file and record a like bond in the  
14 full amount of his or her subcontract. Unless otherwise paid their  
15 claims for labor or services, materials, merchandise or provisions, the  
16 claimants may have recourse by suit upon such bond in their own names:  
17 PROVIDED, That no such claim or suit shall be maintained unless the  
18 persons making ((said)) the claim shall within thirty days after the  
19 completion of ((said)) the improvement, file their claims, duly  
20 verified, to the effect that the amounts thereof are just and due and  
21 are unpaid, with the clerk of the board. Each bidder for a contract to  
22 be let under this section shall deliver with his or her bid a check for  
23 five percent of the amount of the bid, drawn upon a bank in this state  
24 and certified by the bank, as surety to the board that the bidder will  
25 enter into the contract with the board. The checks of unsuccessful  
26 bidders will be returned to them when an award of the contract has been  
27 made by the board. A low bidder who claims error and fails to enter  
28 into a contract is prohibited from bidding on the same project if a  
29 second or subsequent call for bids is made for the project.

30 NEW SECTION. Sec. 17. A new section is added to chapter 36.32 RCW  
31 to read as follows:

32 (1) Notwithstanding the provisions of RCW 36.32.240, and effective  
33 through July 1, 1996, any county of one million or more population with  
34 a purchasing department is only required to contract on a competitive  
35 basis for public works projects in excess of fifty thousand dollars if  
36 more than a single craft or trade is involved with the public works  
37 project, or for public works projects in excess of twenty-five thousand  
38 dollars if only a single craft or trade is involved with the public

1 works project or the public works project is street signalization or  
2 street lighting.

3 (2) The limitations contained in this section restricting the use  
4 of public employees to perform public works projects shall not apply  
5 to: (a) Any public works project that was commenced prior to the  
6 effective date of this section; (b) any county road or bridge  
7 construction governed by chapter 36.77 RCW; (c) any emergency work  
8 declared pursuant to RCW 36.32.270; or (d) any architectural and  
9 engineering or other technical and/or professional services performed  
10 by public employees in connection with a public works project.

11 NEW SECTION. **Sec. 18.** Section 6 of this act shall expire July 1,  
12 1997."

13 **SSB 5757** - H COMM AMD  
14 By Committee on Government Operations

15  
16 On page 1, line 1 of the title, after "requirements;" strike the  
17 remainder of the title and insert "amending RCW 36.32.250, 36.77.040,  
18 39.04.220, 39.10.060, 47.28.100, 47.60.778, 53.08.130, 54.04.080,  
19 56.08.070, 57.08.050, 70.44.140, and 91.08.530; reenacting and amending  
20 RCW 35.23.352; adding a new section to chapter 35.22 RCW; adding a new  
21 section to chapter 43.19 RCW; adding a new section to chapter 52.14  
22 RCW; adding a new section to chapter 36.32 RCW; and providing an  
23 expiration date."

--- END ---