

2 SHB 2077 - CONF REPT  
3 By Conference Committee

4 ADOPTED 3/11/98

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

7 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW  
8 to read as follows:

9 This section provides uniform exemptions to competitive bidding  
10 requirements utilized by municipalities when awarding contracts for  
11 public works and contracts for purchases. The statutes governing a  
12 specific type of municipality may also include other exemptions from  
13 competitive bidding requirements. The purpose of this section is to  
14 supplement and not to limit the current powers of any municipality to  
15 provide exemptions from competitive bidding requirements.

16 (1) Competitive bidding requirements may be waived by the governing  
17 body of the municipality for:

18 (a) Purchases that are clearly and legitimately limited to a single  
19 source of supply;

20 (b) Purchases involving special facilities or market conditions;

21 (c) Purchases in the event of an emergency;

22 (d) Purchases of insurance or bonds; and

23 (e) Public works in the event of an emergency.

24 (2)(a) The waiver of competitive bidding requirements under  
25 subsection (1) of this section may be by resolution or by the terms of  
26 written policies adopted by the municipality, at the option of the  
27 governing body of the municipality. If the governing body elects to  
28 waive competitive bidding requirements by the terms of written policies  
29 adopted by the municipality, immediately after the award of any  
30 contract, the contract and the factual basis for the exception must be  
31 recorded and open to public inspection.

32 If a resolution is adopted by a governing body to waive competitive  
33 bidding requirements under (b) of this subsection, the resolution must  
34 recite the factual basis for the exception. This subsection (2)(a)  
35 does not apply in the event of an emergency.

1 (b) If an emergency exists, the person or persons designated by the  
2 governing body of the municipality to act in the event of an emergency  
3 may declare an emergency situation exists, waive competitive bidding  
4 requirements, and award all necessary contracts on behalf of the  
5 municipality to address the emergency situation. If a contract is  
6 awarded without competitive bidding due to an emergency, a written  
7 finding of the existence of an emergency must be made by the governing  
8 body or its designee and duly entered of record no later than two weeks  
9 following the award of the contract.

10 (3) For purposes of this section "emergency" means unforeseen  
11 circumstances beyond the control of the municipality that either: (a)  
12 Present a real, immediate threat to the proper performance of essential  
13 functions; or (b) will likely result in material loss or damage to  
14 property, bodily injury, or loss of life if immediate action is not  
15 taken.

16 **Sec. 2.** RCW 35.22.620 and 1993 c 198 s 9 are each amended to read  
17 as follows:

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

20 (2) A first class city may have public works performed by contract  
21 pursuant to public notice and call for competitive bids. As limited by  
22 subsection (3) of this section, a first class city may have public  
23 works performed by city employees in any annual or biennial budget  
24 period equal to a dollar value not exceeding ten percent of the public  
25 works construction budget, including any amount in a supplemental  
26 public works construction budget, over the budget period. The amount  
27 of public works that a first class city has a county perform for it  
28 under RCW 35.77.020 shall be included within this ten percent  
29 limitation.

30 If a first class city has public works performed by public  
31 employees in any budget period that are in excess of this ten percent  
32 limitation, the amount in excess of the permitted amount shall be  
33 reduced from the otherwise permitted amount of public works that may be  
34 performed by public employees for that city in its next budget period.  
35 Twenty percent of the motor vehicle fuel tax distributions to that city  
36 shall be withheld if two years after the year in which the excess  
37 amount of work occurred, the city has failed to so reduce the amount of  
38 public works that it has performed by public employees. The amount so

1 withheld shall be distributed to the city when it has demonstrated in  
2 its reports to the state auditor that the amount of public works it has  
3 performed by public employees has been so reduced.

4 Whenever a first class city has had public works performed in any  
5 budget period up to the maximum permitted amount for that budget  
6 period, all remaining public works within that budget period shall be  
7 done by contract pursuant to public notice and call for competitive  
8 bids.

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

13 (3) In addition to the percentage limitation provided in subsection  
14 (2) of this section, a first class city with a population in excess of  
15 one hundred fifty thousand shall not have public employees perform a  
16 public works project in excess of fifty thousand dollars if more than  
17 a single craft or trade is involved with the public works project, or  
18 a public works project in excess of twenty-five thousand dollars if  
19 only a single craft or trade is involved with the public works project  
20 or the public works project is street signalization or street lighting.  
21 In addition to the percentage limitation provided in subsection (2) of  
22 this section, a first class city with a population of one hundred fifty  
23 thousand or less shall not have public employees perform a public works  
24 project in excess of thirty-five thousand dollars if more than one  
25 craft or trade is involved with the public works project, or a public  
26 works project in excess of twenty thousand dollars if only a single  
27 craft or trade is involved with the public works project or the public  
28 works project is street signalization or street lighting. A public  
29 works project means a complete project. The restrictions in this  
30 subsection do not permit the division of the project into units of work  
31 or classes of work to avoid the restriction on work that may be  
32 performed by day labor on a single project.

33 (4) In addition to the accounting and record-keeping requirements  
34 contained in RCW 39.04.070, every first class city annually shall  
35 prepare a report for the state auditor indicating the total public  
36 works construction budget and supplemental public works construction  
37 budget for that year, the total construction costs of public works  
38 performed by public employees for that year, and the amount of public  
39 works that is performed by public employees above or below ten percent

1 of the total construction budget. However, if a city budgets on a  
2 biennial basis, this annual report shall indicate the amount of public  
3 works that is performed by public employees within the current biennial  
4 period that is above or below ten percent of the total biennial  
5 construction budget.

6 After September 1, 1987, each first class city with a population of  
7 one hundred fifty thousand or less shall use the form required by RCW  
8 43.09.205 to account and record costs of public works in excess of five  
9 thousand dollars that are not let by contract.

10 (5) The cost of a separate public works project shall be the costs  
11 of materials, supplies, equipment, and labor on the construction of  
12 that project. The value of the public works budget shall be the value  
13 of all the separate public works projects within the budget.

14 ~~(6) ((When any emergency shall require the immediate execution of  
15 such public work, upon the finding of the existence of such emergency  
16 by the authority having power to direct such public work to be done and  
17 duly entered of record, publication of description and estimate may be  
18 made within seven days after the commencement of the work. Within two  
19 weeks of the finding that such an emergency existed, the city council  
20 shall adopt a resolution certifying the existence of this emergency  
21 situation.))~~ The competitive bidding requirements of this section may  
22 be waived by the city legislative authority pursuant to section 1 of  
23 this act if an exemption contained within that section applies to the  
24 work or contract.

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

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

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

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

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

4 **Sec. 3.** RCW 35.23.352 and 1996 c 18 s 2 are each amended to read  
5 as follows:

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

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

37 When the contract is let then all bid proposal deposits shall be  
38 returned to the bidders except that of the successful bidder which

1 shall be retained until a contract is entered into and a bond to  
2 perform the work furnished, with surety satisfactory to the council or  
3 commission, in accordance with RCW 39.08.030. If the bidder fails to  
4 enter into the contract in accordance with his or her bid and furnish  
5 a bond within ten days from the date at which he or she is notified  
6 that he or she is the successful bidder, the check or postal money  
7 order and the amount thereof shall be forfeited to the council or  
8 commission or the council or commission shall recover the amount of the  
9 surety 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 If no bid is received on the first call the council or commission  
13 may readvertise and make a second call, or may enter into a contract  
14 without any further call or may purchase the supplies, material or  
15 equipment and perform the work or improvement by day labor.

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

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

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

26 (4) The form required by RCW 43.09.205 shall be to account and  
27 record costs of public works in excess of five thousand dollars that  
28 are not let by contract.

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

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

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

1 (8) For advertisement and formal sealed bidding to be dispensed  
2 with as to purchases (~~between seven thousand five hundred and~~) with  
3 an estimated value of fifteen thousand dollars or less, the council or  
4 commission must authorize by resolution, use of the uniform procedure  
5 provided in RCW 39.04.190.

6 (9) (~~These requirements for purchasing may be waived by resolution~~  
7 ~~of the city or town council or commission which declared that the~~  
8 ~~purchase is clearly and legitimately limited to a single source or~~  
9 ~~supply within the near vicinity, or the materials, supplies, equipment,~~  
10 ~~or services are subject to special market conditions, and recites why~~  
11 ~~this situation exists. Such actions are subject to RCW 39.30.020.)~~)  
12 The city or town legislative authority may waive the competitive  
13 bidding requirements of this section pursuant to section 1 of this act  
14 if an exemption contained within that section applies to the purchase  
15 or public work.

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 class city  
20 or any town from allowing for preferential purchase of products made  
21 from recycled materials or products that may be recycled or reused.

22 **Sec. 4.** RCW 36.32.270 and 1963 c 4 s 36.32.270 are each amended to  
23 read as follows:

24 (~~In the event of an emergency when the public interest or property~~  
25 ~~of the county would suffer material injury or damage by delay, upon~~  
26 ~~resolution of the board of county commissioners declaring the existence~~  
27 ~~of such emergency and reciting the facts constituting the same, the~~  
28 ~~board~~) The county legislative authority may waive the competitive  
29 bidding requirements of this chapter ((with reference to any)) pursuant  
30 to section 1 of this act if an exemption contained within that section  
31 applies to the purchase or ((contract)) public work.

32 **Sec. 5.** RCW 52.14.110 and 1993 c 198 s 11 are each amended to read  
33 as follows:

34 Insofar as practicable, purchases and any public works by the  
35 district shall be based on competitive bids. A formal sealed bid  
36 procedure shall be used as standard procedure for purchases and

1 contracts for purchases executed by the board of commissioners. Formal  
2 sealed bidding shall not be required for:

3 ~~(1) ((Emergency purchases if the sealed bidding procedure would  
4 prevent or hinder the emergency from being addressed appropriately.  
5 The term emergency means an occurrence that creates an immediate threat  
6 to life or property;~~

7 ~~(2))~~ The purchase of any materials, supplies, or equipment if the  
8 cost will not exceed the sum of four thousand five hundred dollars.  
9 However, whenever the estimated cost ~~((is from four thousand five  
10 hundred dollars up to))~~ does not exceed ten thousand dollars, the  
11 commissioners may by resolution use the process provided in RCW  
12 39.04.190 to award contracts;

13 ~~((3))~~ (2) Contracting for work to be done involving the  
14 construction or improvement of a fire station or other buildings where  
15 the estimated cost will not exceed the sum of two thousand five hundred  
16 dollars, which includes the costs of labor, material, and equipment.  
17 However, whenever the estimated cost ~~((is from two thousand five  
18 hundred dollars up to))~~ does not exceed ten thousand dollars, the  
19 commissioner may by resolution use the small works roster process  
20 provided in RCW 39.04.155; and

21 ~~((4) Purchases which are clearly and legitimately limited to a  
22 single source of supply, or services, in which instances the purchase  
23 price may be best established by direct negotiation: PROVIDED, That  
24 this subsection shall not apply to purchases or contracts relating to  
25 public works as defined in chapter 39.04 RCW; and~~

26 ~~(5) Purchases of insurance and bonds.)~~ (3) Any contract for  
27 purchases or public work pursuant to section 1 of this act if an  
28 exemption contained within that section applies to the purchase or  
29 public work.

30 **Sec. 6.** RCW 53.08.120 and 1993 c 198 s 13 are each amended to read  
31 as follows:

32 All material required by a port district may be procured in the  
33 open market or by contract and all work ordered may be done by contract  
34 or day labor. All such contracts for work, the estimated cost of which  
35 exceeds one hundred thousand dollars, shall be let at public bidding  
36 upon notice published in a newspaper of general circulation in the  
37 district at least thirteen days before the last date upon which bids  
38 will be received, calling for sealed bids upon the work, plans and



1 specifications for which shall then be on file in the office of the  
2 commission for public inspection. The same notice may call for bids on  
3 such work or material based upon plans and specifications submitted by  
4 the bidder. The competitive bidding requirements for purchases or  
5 public works may be waived pursuant to section 1 of this act if an  
6 exemption contained within that section applies to the purchase or  
7 public work.

8 Each port district shall maintain a small works roster, as provided  
9 in RCW 39.04.155, and may use the small works roster process to award  
10 contracts in lieu of calling for sealed bids whenever work is done by  
11 contract, the estimated cost of which is one hundred thousand dollars  
12 or less. Whenever possible, the managing official shall invite at  
13 least one proposal from a minority contractor who shall otherwise  
14 qualify under this section.

15 When awarding such a contract for work, when utilizing proposals  
16 from the small works roster, the managing official shall give weight to  
17 the contractor submitting the lowest and best proposal, and whenever it  
18 would not violate the public interest, such contracts shall be  
19 distributed equally among contractors, including minority contractors,  
20 on the small works roster.

21 **Sec. 7.** RCW 54.04.070 and 1993 c 198 s 14 are each amended to read  
22 as follows:

23 Any item, or items of the same kind of materials, equipment, or  
24 supplies purchased, the estimated cost of which is in excess of five  
25 thousand dollars, exclusive of sales tax shall be by contract:  
26 PROVIDED, That a district may make purchases of the same kind of items  
27 of materials, equipment and supplies not exceeding five thousand  
28 dollars in any calendar month without a contract, purchasing any excess  
29 thereof over five thousand dollars by contract. Any work ordered by a  
30 district commission, the estimated cost of which is in excess of ten  
31 thousand dollars exclusive of sales tax, shall be by contract, except  
32 that a district commission may have its own regularly employed  
33 personnel perform work which is an accepted industry practice under  
34 prudent utility management without a contract. Prudent utility  
35 management means performing work with regularly employed personnel  
36 utilizing material of a worth not exceeding fifty thousand dollars in  
37 value without a contract: PROVIDED, That such limit on the value of  
38 material being utilized in work being performed by regularly employed

1 personnel shall not include the value of individual items of equipment  
2 purchased or acquired and used as one unit of a project. Before  
3 awarding such a contract, the commission shall publish a notice once or  
4 more in a newspaper of general circulation in the district at least  
5 thirteen days before the last date upon which bids will be received,  
6 inviting sealed proposals for the work or materials; plans and  
7 specifications of which shall at the time of the publication be on file  
8 at the office of the district subject to public inspection. Any  
9 published notice ordering work to be performed for the district shall  
10 be mailed at the time of publication to any established trade  
11 association which files a written request with the district to receive  
12 such notices. The commission may at the same time and as part of the  
13 same notice, invite tenders for the work or materials upon plans and  
14 specifications to be submitted by the bidders.

15 Notwithstanding any other provisions herein, all contract projects,  
16 the estimated cost of which is less than one hundred thousand dollars,  
17 may be awarded to a contractor using the small works roster process  
18 provided in RCW 39.04.155. All contract projects equal to or in excess  
19 of one hundred thousand dollars shall be let by competitive bidding.

20 Whenever equipment or materials required by a district are held by  
21 a governmental agency and are available for sale but such agency is  
22 unwilling to submit a proposal, the commission may ascertain the price  
23 of such items and file a statement of such price supported by the sworn  
24 affidavit of one member of the commission and may consider such price  
25 as a bid without a deposit or bond. ~~((In the event of an emergency  
26 when the public interest or property of the district would suffer  
27 material injury or damage by delay, upon resolution of the commission,  
28 or proclamation of an official designated by the board to act for the  
29 board during such emergencies, declaring the existence of such  
30 emergency and reciting the facts constituting the same, the board, or  
31 the official acting for the board, may waive the requirements of this  
32 chapter with reference to any purchase or contract, after having taken  
33 precautions to secure the lowest price practicable under the  
34 circumstances.~~

35 ~~After determination by the commission during a public meeting that  
36 a particular purchase is available clearly and legitimately only from  
37 a single source of supply, the bidding requirements of this section may  
38 be waived by the commission.))~~

1       The commission may waive the competitive bidding requirements of  
2 this section pursuant to section 1 of this act if an exemption  
3 contained within that section applies to the purchase or public work.

4       **Sec. 8.** RCW 57.08.050 and 1997 c 245 s 4 are each amended to read  
5 as follows:

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

24       Each bid shall be accompanied by a certified or cashier's check or  
25 postal money order payable to the order of the county treasurer for a  
26 sum not less than five percent of the amount of the bid, or accompanied  
27 by a bid bond in an amount not less than five percent of the bid with  
28 a corporate surety licensed to do business in the state, conditioned  
29 that the bidder will pay the district as liquidated damages the amount  
30 specified in the bond, unless the bidder enters into a contract in  
31 accordance with the bidder's bid, and no bid shall be considered unless  
32 accompanied by such check, cash or bid bond. At the time and place  
33 named such bids shall be publicly opened and read and the board of  
34 commissioners shall proceed to canvass the bids and may let such  
35 contract to the lowest responsible bidder upon plans and specifications  
36 on file or to the best bidder submitting the bidder's own plans and  
37 specifications. (~~However, no contract shall be let in excess of the~~  
38 ~~cost of the materials or work.~~) The board of commissioners may reject

1 all bids for good cause and readvertise and in such case all checks,  
2 cash or bid bonds shall be returned to the bidders. If the contract is  
3 let, then all checks, cash, or bid bonds shall be returned to the  
4 bidders, except that of the successful bidder, which shall be retained  
5 until a contract shall be entered into for doing the work, and a bond  
6 to perform such work furnished with sureties satisfactory to the board  
7 of commissioners in the full amount of the contract price between the  
8 bidder and the commission in accordance with the bid. If the bidder  
9 fails to enter into the contract in accordance with the bid and furnish  
10 the bond within ten days from the date at which the bidder is notified  
11 that the bidder is the successful bidder, the check, cash, or bid bonds  
12 and the amount thereof shall be forfeited to the district. If the  
13 bidder fails to enter into a contract in accordance with the bidder's  
14 bid, and the board of commissioners deems it necessary to take legal  
15 action to collect on any bid bond required by this section, then the  
16 district shall be entitled to collect from the bidder any legal  
17 expenses, including reasonable attorneys' fees occasioned thereby. A  
18 low bidder who claims error and fails to enter into a contract is  
19 prohibited from bidding on the same project if a second or subsequent  
20 call for bids is made for the project.

21 (2) Any purchase of materials, supplies, or equipment, with an  
22 estimated cost in excess of ten thousand dollars, shall be by contract.  
23 Any purchase of materials, supplies, or equipment, with an estimated  
24 cost of (~~from five thousand dollars to~~) less than fifty thousand  
25 dollars shall be made using the process provided in RCW (~~39.04.155 or~~  
26 ~~by competitive bidding following the procedure for letting contracts~~  
27 ~~for projects under subsection (1) of this section~~) 39.04.190. Any  
28 purchase of materials, supplies, or equipment with an estimated cost of  
29 fifty thousand dollars or more shall be made by competitive bidding  
30 following the procedure for letting contracts for projects under  
31 subsection (1) of this section.

32 (3) (~~In the event of an emergency when the public interest or~~  
33 ~~property of the district would suffer material injury or damage by~~  
34 ~~delay, upon resolution of the board of commissioners, or proclamation~~  
35 ~~of an official designated by the board to act for the board during such~~  
36 ~~emergencies, declaring the existence of such emergency and reciting the~~  
37 ~~facts constituting the same, the board or official acting for the board~~  
38 ~~may waive the requirements of this chapter with reference to any~~  
39 ~~purchase or contract. In addition, these requirements may be waived~~

1 ~~for purchases which are clearly and legitimately limited to a single~~  
2 ~~source of supply and purchases involving special facilities, services,~~  
3 ~~or market conditions, in which instances the purchase price may be best~~  
4 ~~established by direct negotiation.))~~ The board may waive the  
5 competitive bidding requirements of this section pursuant to section 1  
6 of this act if an exemption contained within that section applies to  
7 the purchase or public work.

8 **Sec. 9.** RCW 70.44.140 and 1996 c 18 s 15 are each amended to read  
9 as follows:

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

1 (~~shall be~~) is retained until a contract shall be entered into for the  
2 purchase of such materials for doing such work, and a bond to perform  
3 such work furnished, with sureties satisfactory to the commission, in  
4 an amount to be fixed by the commission, not less than twenty-five  
5 percent of contract price in any case, between the bidder and  
6 commission, in accordance with the bid. If such bidder fails to enter  
7 into the contract in accordance with the bid and furnish such bond  
8 within ten days from the date at which the bidder is notified that he  
9 or she is the successful bidder, the bid proposal security and the  
10 amount thereof shall be forfeited to the public hospital district. A  
11 low bidder who claims error and fails to enter into a contract is  
12 prohibited from bidding on the same project if a second or subsequent  
13 call for bids is made for the project.

14 (2) In lieu of the procedures of subsection (1) of this section, a  
15 public hospital district may use ~~((a))~~ the small works roster process  
16 provided in RCW 39.04.155 and award public works contracts for projects  
17 ~~((in excess of five thousand dollars up to))~~ with an estimated value in  
18 excess of fifty thousand dollars ~~((as provided in RCW 39.04.155))~~.

19 (3) ~~((For advertisement and formal sealed bidding to be dispensed~~  
20 ~~with as to))~~ Any purchases ~~((between five thousand and))~~ with an  
21 estimated cost of up to fifteen thousand dollars ~~((, the commission must~~  
22 ~~authorize by resolution a procedure as))~~ may be made using the process  
23 provided in RCW 39.04.190.

24 (4) The commission may waive the competitive bidding requirements  
25 of this section pursuant to section 1 of this act if an exemption  
26 contained within that section applies to the purchase or public work.

27 NEW SECTION. Sec. 10. A new section is added to chapter 36.34 RCW  
28 to read as follows:

29 In accordance with RCW 35.42.010 through 35.42.220, a county with  
30 a population of one million or more may lease space and provide for the  
31 leasing of such space through leases with an option to purchase and the  
32 acquisition of buildings erected upon land owned by the county upon the  
33 expiration of lease of such land. For the purposes of this section,  
34 "building," as defined in RCW 35.42.020 shall be construed to include  
35 any building or buildings used as part of, or in connection with, the  
36 operation of the county. The authority conferred by this section is in  
37 addition to and not in lieu of any other provision authorizing counties  
38 to lease property.

1       **Sec. 11.** RCW 39.04.150 and 1994 c 264 s 12 and 1994 c 243 s 2 are  
2 each reenacted and amended to read as follows:

3       (1) As used in this section, "agency" means the department of  
4 general administration, the department of fish and wildlife, the  
5 department of natural resources, the department of transportation, and  
6 the state parks and recreation commission.

7       (2) In addition to any other power or authority that an agency may  
8 have, each agency, alone or in concert, may establish a small works  
9 roster consisting of all qualified contractors who have requested to be  
10 included on the roster.

11       (3) The small works roster may make distinctions between  
12 contractors based on the geographic areas served and the nature of the  
13 work the contractor is qualified to perform. At least once every year,  
14 the agency shall advertise in a newspaper of general circulation the  
15 existence of the small works roster and shall add to the roster those  
16 contractors who request to be included on the roster.

17       (4) Construction, repair, or alteration projects estimated to cost  
18 less than one hundred thousand dollars are exempt from the requirement  
19 that the contracts be awarded after advertisement and competitive bid  
20 as defined by RCW 39.04.010. In lieu of advertisement and competitive  
21 bid, ~~((the agency shall solicit at least five quotations, confirmed in  
22 writing, from contractors chosen from the small works roster for the  
23 category of job type involved and shall award the work to the party  
24 with the lowest quotation or reject all quotations. If the agency does  
25 not receive at least two responsive quotations for a particular  
26 project, then the project shall be advertised and competitively bid.  
27 The agency shall solicit quotations from contractors selected randomly  
28 from the small works roster in a manner which will equitably distribute  
29 the opportunity for these contracts among contractors on the roster.  
30 The agency shall invite at least one proposal each from a certified  
31 minority and a certified women owned contractor who shall otherwise  
32 qualify to perform such work. Immediately after an award is made, the  
33 bid quotations obtained shall be recorded, open to public inspection,  
34 and available by telephone request. If the work is executed by  
35 competitive bid, the agency shall invite at least one proposal each  
36 from a certified minority and a certified women owned contractor who  
37 shall otherwise qualify to perform such work)) each agency alone or in  
38 concert shall establish a procedure for securing telephone, electronic,  
39 or written quotations from the contractors on the small works roster to~~

1 assure establishment of a competitive price and for awarding contracts  
2 to the lowest responsive and responsible bidder. This procedure shall  
3 require either that the agency make a good faith effort to request  
4 quotations from all contractors on the small works roster who have  
5 indicated the capability of performing the kind of public works being  
6 contracted or that the agency solicit quotations from at least five  
7 contractors in a manner that will equitably distribute the opportunity  
8 among contractors willing to perform in the geographic area of the  
9 work. The agency shall invite at least one proposal from a certified  
10 minority or women-owned contractor, if available, who is otherwise  
11 qualified to perform such work. Immediately after an award is made,  
12 the bid quotations obtained shall be recorded, open to public  
13 inspection, and available by telephone inquiry.

14 (5) The breaking down of any public work or improvement into units  
15 or accomplishing any public work or improvement by phases for the  
16 purpose of avoiding the minimum dollar amount for bidding is contrary  
17 to public policy and is prohibited.

18 (6) The director of general administration shall adopt by rule a  
19 procedure to (~~prequalify~~) qualify contractors for inclusion on the  
20 small works roster. Each agency shall follow the procedure adopted by  
21 the director of general administration. No agency shall be required to  
22 make available for public inspection or copying under chapter 42.17 RCW  
23 financial information required to be provided by the  
24 (~~prequalification~~) qualification procedure.

25 (7) An agency may adopt by rule procedures to implement this  
26 section which shall not be inconsistent with the procedures adopted by  
27 the director of the department of general administration pursuant to  
28 subsection (6) of this section.

29 **Sec. 12.** RCW 39.04.155 and 1993 c 198 s 1 are each amended to read  
30 as follows:

31 (1) This section provides a uniform process to award contracts for  
32 public works projects by those municipalities that are authorized to  
33 use a small works roster in lieu of the requirements for formal sealed  
34 bidding. The state statutes governing a specific type of municipality  
35 shall establish the maximum dollar thresholds of the contracts that can  
36 be awarded under this process, and may include other matters concerning  
37 the small works roster process, for the municipality.



1 (2) Such municipalities may create a single general small works  
2 roster, or may create a small works roster for different categories of  
3 anticipated work. The small works roster or rosters shall consist of  
4 all responsible contractors who have requested to be on the list, and  
5 where required by law are properly licensed or registered to perform  
6 such work in this state. At least twice a year, the municipality shall  
7 publish in a newspaper of general circulation within the jurisdiction  
8 a notice of the existence of the roster or rosters and solicit the  
9 names of contractors for such roster or rosters.

10 The governing body of the municipality shall establish a procedure  
11 for securing telephone or written quotations from the contractors on  
12 the general small works roster, or a specific small works roster for  
13 the appropriate category of work, to assure that a competitive price is  
14 established and to award contracts to the lowest responsible bidder, as  
15 defined in RCW 43.19.1911. Such invitations for quotations shall  
16 include an estimate of the scope and nature of the work to be performed  
17 as well as materials and equipment to be furnished. However, detailed  
18 plans and specifications need not be included in the invitation. This  
19 section does not eliminate other requirements for architectural or  
20 engineering approvals as to quality and compliance with building codes.  
21 Whenever possible at least five contractors shall be invited to submit  
22 bids. Once a contractor has been afforded an opportunity to submit a  
23 proposal, that contractor shall not be offered another opportunity  
24 until all other appropriate contractors on the small works roster have  
25 been afforded an opportunity to submit a proposal on a contract.  
26 Proposals may be invited from all appropriate contractors on the small  
27 works roster.

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

30 Immediately after an award is made, the bid quotations obtained  
31 shall be recorded, open to public inspection, and available by  
32 telephone inquiry."

33 **SHB 2077** - CONF REPT  
34 By Conference Committee

35 ADOPTED 3/11/98

36 On page 1, line 1 of the title, after "bidding;" strike the  
37 remainder of the title and insert "amending RCW 35.22.620, 35.23.352,

1 36.32.270, 52.14.110, 53.08.120, 54.04.070, 57.08.050, 70.44.140, and  
2 39.04.155; reenacting and amending RCW 39.04.150; adding a new section  
3 to chapter 39.04 RCW; and adding a new section to chapter 36.34 RCW."

--- **END** ---