

---

HOUSE BILL 2077

---

State of Washington                      55th Legislature                      1997 Regular Session

By Representatives D. Schmidt, Scott and D. Sommers

Read first time 02/19/97.      Referred to Committee on Government Administration.

1            AN ACT Relating to competitive bidding; amending RCW 35.22.620,  
2 35.23.352, 36.32.270, 52.14.110, 53.08.120, 54.04.070, and 70.44.140;  
3 reenacting and amending RCW 57.08.050; and adding a new section to  
4 chapter 39.04 RCW.

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

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

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

15            (1) Competitive bidding procedures may be waived by resolution of  
16 the governing body of the municipality for:

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

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

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

2 (d) Purchases of insurance or bonds; and

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

4 (2)(a) A resolution adopted by a governing body to waive  
5 competitive bidding procedures pursuant to subsection (1) of this  
6 section must recite the factual basis for the exception, and any  
7 economic or health-related justifications for the waiver. The  
8 resolution must be adopted by the municipality prior to the final award  
9 of the contract. This subsection (2)(a) does not apply in the event of  
10 an emergency.

11 (b) If an emergency exists, the person or persons designated by the  
12 governing body of the municipality to act in the event of an emergency  
13 may declare an emergency situation exists, waive competitive bidding  
14 requirements, and award all necessary contracts on behalf of the  
15 municipality to address the emergency situation. If a contract is  
16 awarded without competitive bidding due to an emergency, the governing  
17 body of the municipality must adopt a resolution reciting the factual  
18 basis for the emergency at either a regular or special meeting no later  
19 than two weeks following the award of the contract.

20 (3) For purposes of this section:

21 (a) "Emergency" means unforeseen circumstances beyond the control  
22 of the municipality that either: (i) Present a real, immediate threat  
23 to the proper performance of essential functions; or (ii) will likely  
24 result in material loss or damage to property, bodily injury, or loss  
25 of life if immediate action is not taken.

26 (b) "Municipality" means any city, code city, town, county, port  
27 district, fire district, public utility district, public hospital  
28 district, or water-sewer district.

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

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

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

1 public works construction budget, over the budget period. The amount  
2 of public works that a first class city has a county perform for it  
3 under RCW 35.77.020 shall be included within this ten percent  
4 limitation.

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

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

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

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

1 craft or trade is involved with the public works project or the public  
2 works project is street signalization or street lighting. A public  
3 works project means a complete project. The restrictions in this  
4 subsection do not permit the division of the project into units of work  
5 or classes of work to avoid the restriction on work that may be  
6 performed by day labor on a single project.

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

19 After September 1, 1987, each first class city with a population of  
20 one hundred fifty thousand or less shall use the form required by RCW  
21 43.09.205 to account and record costs of public works in excess of five  
22 thousand dollars that are not let by contract.

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

27 ~~(6) ((When any emergency shall require the immediate execution of  
28 such public work, upon the finding of the existence of such emergency  
29 by the authority having power to direct such public work to be done and  
30 duly entered of record, publication of description and estimate may be  
31 made within seven days after the commencement of the work. Within two  
32 weeks of the finding that such an emergency existed, the city council  
33 shall adopt a resolution certifying the existence of this emergency  
34 situation.)) The competitive bidding requirements of this section may  
35 be waived by the city legislative authority pursuant to section 1 of  
36 this act if an exemption contained within that section applies to the  
37 work or contract.~~

38 (7) In lieu of the procedures of subsections (2) and (6) of this  
39 section, a first class city may use ((a)) the small works roster

1 process ((and)) in RCW 39.04.155 to award contracts for public works  
2 projects with an estimated value of one hundred thousand dollars or  
3 less ((as provided in RCW 39.04.155)).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (8) For advertisement and formal sealed bidding to be dispensed  
13 with as to purchases between seven thousand five hundred and fifteen  
14 thousand dollars, the council or commission must authorize by  
15 resolution, use of the uniform procedure provided in RCW 39.04.190.

16 (9) ~~((These requirements for purchasing may be waived by resolution  
17 of the city or town council or commission which declared that the  
18 purchase is clearly and legitimately limited to a single source or  
19 supply within the near vicinity, or the materials, supplies, equipment,  
20 or services are subject to special market conditions, and recites why  
21 this situation exists. Such actions are subject to RCW 39.30.020.))~~  
22 The city or town legislative authority may waive the competitive  
23 bidding requirements of this section pursuant to section 1 of this act  
24 if an exemption contained within that section applies to the purchase  
25 or public work.

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

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

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

34 ~~((In the event of an emergency when the public interest or property  
35 of the county would suffer material injury or damage by delay, upon  
36 resolution of the board of county commissioners declaring the existence  
37 of such emergency and reciting the facts constituting the same, the  
38 board))~~ The county legislative authority may waive the competitive

1 bidding requirements of this chapter ((with reference to any)) pursuant  
2 to section 1 of this act if an exemption contained within that section  
3 applies to the purchase or ((contract)) public work.

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

6 Insofar as practicable, purchases and any public works by the  
7 district shall be based on competitive bids. A formal sealed bid  
8 procedure shall be used as standard procedure for purchases and  
9 contracts for purchases executed by the board of commissioners. Formal  
10 sealed bidding shall not be required for:

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

15 ~~(2))~~ The purchase of any materials, supplies, or equipment if the  
16 cost will not exceed the sum of four thousand five hundred dollars.  
17 However, whenever the estimated cost is from four thousand five hundred  
18 dollars up to ten thousand dollars, the commissioners may by resolution  
19 use the process provided in RCW 39.04.190 to award contracts;

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

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

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

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



1 All material required by a port district may be procured in the  
2 open market or by contract and all work ordered may be done by contract  
3 or day labor. All such contracts for work, the estimated cost of which  
4 exceeds one hundred thousand dollars, shall be let at public bidding  
5 upon notice published in a newspaper of general circulation in the  
6 district at least thirteen days before the last date upon which bids  
7 will be received, calling for sealed bids upon the work, plans and  
8 specifications for which shall then be on file in the office of the  
9 commission for public inspection. The same notice may call for bids on  
10 such work or material based upon plans and specifications submitted by  
11 the bidder. The competitive bidding requirements for purchases or  
12 public works may be waived pursuant to section 1 of this act if an  
13 exemption contained within that section applies to the purchase or  
14 public work.

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

22 When awarding such a contract for work, when utilizing proposals  
23 from the small works roster, the managing official shall give weight to  
24 the contractor submitting the lowest and best proposal, and whenever it  
25 would not violate the public interest, such contracts shall be  
26 distributed equally among contractors, including minority contractors,  
27 on the small works roster.

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

30 Any item, or items of the same kind of materials, equipment, or  
31 supplies purchased, the estimated cost of which is in excess of five  
32 thousand dollars, exclusive of sales tax shall be by contract:  
33 PROVIDED, That a district may make purchases of the same kind of items  
34 of materials, equipment and supplies not exceeding five thousand  
35 dollars in any calendar month without a contract, purchasing any excess  
36 thereof over five thousand dollars by contract. Any work ordered by a  
37 district commission, the estimated cost of which is in excess of ten  
38 thousand dollars exclusive of sales tax, shall be by contract, except

1 that a district commission may have its own regularly employed  
2 personnel perform work which is an accepted industry practice under  
3 prudent utility management without a contract. Prudent utility  
4 management means performing work with regularly employed personnel  
5 utilizing material of a worth not exceeding fifty thousand dollars in  
6 value without a contract: PROVIDED, That such limit on the value of  
7 material being utilized in work being performed by regularly employed  
8 personnel shall not include the value of individual items of equipment  
9 purchased or acquired and used as one unit of a project. Before  
10 awarding such a contract, the commission shall publish a notice once or  
11 more in a newspaper of general circulation in the district at least  
12 thirteen days before the last date upon which bids will be received,  
13 inviting sealed proposals for the work or materials; plans and  
14 specifications of which shall at the time of the publication be on file  
15 at the office of the district subject to public inspection. Any  
16 published notice ordering work to be performed for the district shall  
17 be mailed at the time of publication to any established trade  
18 association which files a written request with the district to receive  
19 such notices. The commission may at the same time and as part of the  
20 same notice, invite tenders for the work or materials upon plans and  
21 specifications to be submitted by the bidders.

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

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

1 precautions to secure the lowest price practicable under the  
2 circumstances.

3 After determination by the commission during a public meeting that  
4 a particular purchase is available clearly and legitimately only from  
5 a single source of supply, the bidding requirements of this section may  
6 be waived by the commission.))

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

10 **Sec. 8.** RCW 57.08.050 and 1996 c 230 s 311 and 1996 c 18 s 14 are  
11 each reenacted and amended to read as follows:

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

31 Each bid shall be accompanied by a certified or cashier's check or  
32 postal money order payable to the order of the county treasurer for a  
33 sum not less than five percent of the amount of the bid, or accompanied  
34 by a bid bond in an amount not less than five percent of the bid with  
35 a corporate surety licensed to do business in the state, conditioned  
36 that the bidder will pay the district as liquidated damages the amount  
37 specified in the bond, unless the bidder enters into a contract in  
38 accordance with the bidder's bid, and no bid shall be considered unless

1 accompanied by such check, cash, or bid bond. At the time and place  
2 named such bids shall be publicly opened and read and the board of  
3 commissioners shall proceed to canvass the bids and may let such  
4 contract to the lowest responsible bidder upon plans and specifications  
5 on file or to the best bidder submitting the bidder's own plans and  
6 specifications. However, no contract shall be let in excess of the  
7 cost of the materials or work. The board of commissioners may reject  
8 all bids for good cause and readvertise and in such case all checks,  
9 cash, or bid bonds shall be returned to the bidders. If the contract  
10 is let, then all checks, cash, or bid bonds shall be returned to the  
11 bidders, except that of the successful bidder, which shall be retained  
12 until a contract shall be entered into for doing the work, and a bond  
13 to perform such work furnished with sureties satisfactory to the board  
14 of commissioners in the full amount of the contract price between the  
15 bidder and the commission in accordance with the bid. If the bidder  
16 fails to enter into the contract in accordance with the bid and furnish  
17 the bond within ten days from the date at which the bidder is notified  
18 that the bidder is the successful bidder, the check, cash, or bid bonds  
19 and the amount thereof shall be forfeited to the district. If the  
20 bidder fails to enter into a contract in accordance with the bidder's  
21 bid, and the board of commissioners deems it necessary to take legal  
22 action to collect on any bid bond required by this section, then the  
23 district shall be entitled to collect from the bidder any legal  
24 expenses, including reasonable attorneys' fees (~~occasioned thereby~~).  
25 A low bidder who claims error and fails to enter into a contract is  
26 prohibited from bidding on the same project if a second or subsequent  
27 call for bids is made for the project.

28 (2) Any purchase of materials, supplies, or equipment, with an  
29 estimated cost in excess of ten thousand dollars, shall be by contract.  
30 Any purchase of materials, supplies, or equipment, with an estimated  
31 cost of from (~~five~~) ten thousand dollars to less than fifty thousand  
32 dollars shall be made using the process provided in RCW (~~39.04.155~~)  
33 39.04.190 or by competitive bidding following the procedure for letting  
34 contracts for projects under subsection (1) of this section. Any  
35 purchase of materials, supplies, or equipment with an estimated cost of  
36 fifty thousand dollars or more shall be made by competitive bidding  
37 following the procedure for letting contracts for projects under  
38 subsection (1) of this section.

1       (3) (~~In the event of an emergency when the public interest or~~  
2 ~~property of the district would suffer material injury or damage by~~  
3 ~~delay, upon resolution of the board of commissioners, or proclamation~~  
4 ~~of an official designated by the board to act for the board during such~~  
5 ~~emergencies, declaring the existence of such emergency and reciting the~~  
6 ~~facts constituting the same, the board or official acting for the board~~  
7 ~~may waive the requirements of this chapter with reference to any~~  
8 ~~purchase or contract. In addition, these requirements may be waived~~  
9 ~~for purchases which are clearly and legitimately limited to a single~~  
10 ~~source of supply and purchases involving special facilities, services,~~  
11 ~~or market conditions, in which instances the purchase price may be best~~  
12 ~~established by direct negotiation.)) The board may waive the  
13 competitive bidding requirements of this section pursuant to section 1  
14 of this act if an exemption contained within that section applies to  
15 the purchase or public work.~~

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

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

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

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

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

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

--- END ---