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**SUBSTITUTE SENATE BILL 5524**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Government Operations (originally sponsored by Senators Haugen, Horn, Jacobsen, Hale and Winsley)

Read first time 03/05/97.

1 AN ACT Relating to competitive bidding procedures for emergency  
2 public works; amending RCW 35.22.620, 35.23.352, 36.32.270, 52.14.110,  
3 53.08.120, 54.04.070, and 70.44.140; reenacting and amending RCW  
4 57.08.050; and adding a new section to 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 (1) This section provides uniform exemptions to competitive bidding  
9 procedures utilized by municipalities when awarding contracts for  
10 public works. The purpose of this section is to supplement and not to  
11 limit the current powers, requirements, or practices of any  
12 municipality to provide exemptions from competitive bidding procedures.

13 (2) Competitive bidding procedures for public works may be waived  
14 by the municipality for public works contracts in the event of an  
15 emergency, as defined under subsection (5) of this section.

16 (3) The governing body of the municipality may designate by  
17 resolution a person or persons who shall declare that an emergency  
18 situation exists for the purpose of waiving competitive bidding

1 requirements and awarding all necessary contracts for public works on  
2 behalf of the municipality to address the emergency situation.

3 (4) If a contract is awarded without competitive bidding due to an  
4 emergency, a written finding of the existence of an emergency must be  
5 made by the governing body or its designee and duly entered of record  
6 not later than two weeks following the award of the contract.

7 (5) For purposes of this section:

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

13 (b) "Municipality" includes every city, county, town, district, or  
14 other public agency thereof that is authorized by law to require the  
15 execution of public work, except drainage districts, diking districts,  
16 diking and drainage improvement districts, drainage improvement  
17 districts, diking improvement districts, consolidated diking and  
18 drainage improvement districts, consolidated drainage improvement  
19 districts, consolidated diking improvement districts, irrigation  
20 districts, or any other districts as may from time to time be  
21 authorized by law for the reclamation or development of waste or  
22 undeveloped lands.

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

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

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

37 If a first class city has public works performed by public  
38 employees in any budget period that are in excess of this ten percent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the city or town shall let the contract to the lowest responsible  
2 bidder or shall have power by resolution to reject any or all bids and  
3 to make further calls for bids in the same manner as the original call.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Insofar as practicable, purchases and any public works by the  
2 district shall be based on competitive bids. A formal sealed bid  
3 procedure shall be used as standard procedure for purchases and  
4 contracts for purchases executed by the board of commissioners. Formal  
5 sealed bidding shall not be required for:

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

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

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

22 ~~((4))~~ (3) Purchases which are clearly and legitimately limited to  
23 a single source of supply, or services, in which instances the purchase  
24 price may be best established by direct negotiation: PROVIDED, That  
25 this subsection shall not apply to purchases or contracts relating to  
26 public works as defined in chapter 39.04 RCW; ~~((and~~

27 ~~(5))~~ (4) Purchases of insurance and bonds; and

28 (5) Any contract for purchases or public work pursuant to section  
29 1 of this act if an exemption contained within that section applies to  
30 the purchase or public work.

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

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



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

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

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

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

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

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

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

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

36 After determination by the commission during a public meeting that  
37 a particular purchase is available clearly and legitimately only from  
38 a single source of supply, the bidding requirements of this section may  
39 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 1996 c 230 s 311 and 1996 c 18 s 14 are  
5 each reenacted and amended to read 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  
8 projects, the estimated cost of which is in excess of five thousand  
9 dollars but less than fifty thousand dollars, may be awarded to a  
10 contractor using the small works roster process provided in RCW  
11 39.04.155. The board of commissioners may set up uniform procedures to  
12 prequalify contractors for inclusion on the small works roster. All  
13 contract projects equal to or in excess of fifty thousand dollars shall  
14 be let by competitive bidding. Before awarding any such contract the  
15 board of commissioners shall publish a notice in a newspaper of general  
16 circulation where the district is located at least once thirteen days  
17 before the last date upon which bids will be received, inviting sealed  
18 proposals for such work(~~(7)~~). The plans and specifications (~~((which))~~)  
19 for such work must at the time of publication of such notice be on file  
20 in the office of the board of commissioners (~~((subject to the))~~) and be  
21 available for public inspection. The notice shall state generally the  
22 work to be done and shall call for proposals for doing the same to be  
23 sealed and filed with the board of (~~(water)~~) commissioners on or before  
24 the day and hour named therein.

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

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

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

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

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

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

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

1 that of the successful bidder, which shall be retained until a contract  
2 shall be entered into for the purchase of such materials for doing such  
3 work, and a bond to perform such work furnished, with sureties  
4 satisfactory to the commission, in an amount to be fixed by the  
5 commission, not less than twenty-five percent of contract price in any  
6 case, between the bidder and commission, in accordance with the bid.  
7 If such bidder fails to enter into the contract in accordance with the  
8 bid and furnish such bond within ten days from the date at which the  
9 bidder is notified that he or she is the successful bidder, the bid  
10 proposal security and the amount thereof shall be forfeited to the  
11 public hospital district. A low bidder who claims error and fails to  
12 enter into a contract is prohibited from bidding on the same project if  
13 a second or subsequent 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 small works roster process and award  
16 public works contracts for projects in excess of five thousand dollars  
17 up to fifty thousand dollars as provided in RCW 39.04.155.

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

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

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