
SUBSTITUTE SENATE BILL 6143

State of Washington **65th Legislature** **2018 Regular Session**

By Senate Local Government (originally sponsored by Senator Takko)

READ FIRST TIME 01/18/18.

1 AN ACT Relating to clarifying the authority and procedures for
2 unit priced contracting by cities; and amending RCW 35.22.620 and
3 35.23.352.

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

5 **Sec. 1.** RCW 35.22.620 and 2012 1st sp.s. c 5 s 1 are each
6 amended to read as follows:

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

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

19 If a first-class city has public works performed by public
20 employees in any budget period that are in excess of this ten percent
21 limitation, the amount in excess of the permitted amount shall be

1 reduced from the otherwise permitted amount of public works that may
2 be performed by public employees for that city in its next budget
3 period. Twenty percent of the motor vehicle fuel tax distributions to
4 that city shall be withheld if two years after the year in which the
5 excess amount of work occurred, the city has failed to so reduce the
6 amount of public works that it has performed by public employees. The
7 amount so withheld shall be distributed to the city when it has
8 demonstrated in its reports to the state auditor that the amount of
9 public works it has performed by public employees has been so
10 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
17 first-class city that exceeds this amount and the extent to which the
18 city has or has not reduced the amount of public works it has
19 performed by public employees in subsequent years.

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

32 (4) In addition to the accounting and recordkeeping requirements
33 contained in RCW 39.04.070, every first-class city annually may
34 prepare a report for the state auditor indicating the total public
35 works construction budget and supplemental public works construction
36 budget for that year, the total construction costs of public works
37 performed by public employees for that year, and the amount of public
38 works that is performed by public employees above or below ten
39 percent of the total construction budget. However, if a city budgets
40 on a biennial basis, this annual report may indicate the amount of

1 public works that is performed by public employees within the current
2 biennial period that is above or below ten percent of the total
3 biennial construction budget.

4 Each first-class city with a population of one hundred fifty
5 thousand or less shall use the form required by RCW 43.09.205 to
6 account and record costs of public works in excess of five thousand
7 dollars that are not let by contract.

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

13 (6) The competitive bidding requirements of this section may be
14 waived by the city legislative authority pursuant to RCW 39.04.280 if
15 an exemption contained within that section applies to the work or
16 contract.

17 (7) In lieu of the procedures of subsections (2) and (6) of this
18 section, a first-class city may let contracts using the small works
19 roster process in RCW 39.04.155.

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

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

26 (9) This section does not apply to performance-based contracts,
27 as defined in RCW 39.35A.020(4), that are negotiated under chapter
28 39.35A RCW.

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

32 (11)(a) Any first-class city may procure public works with a unit
33 priced contract under this section for the purpose of completing
34 anticipated types of work based on hourly rates or unit pricing for
35 one or more categories of work or trades.

36 (b) For the purposes of this section, "unit priced contract"
37 means a competitively bid contract in which public works are
38 anticipated on a recurring basis to meet the business or operational
39 needs of the city, under which the contractor agrees to a fixed

1 period indefinite quantity delivery of work, at a defined unit price
2 for each category of work.

3 (c) Unit priced contracts must be executed for an initial
4 contract term not to exceed three years, with the city having the
5 option of extending or renewing the unit priced contract for one
6 additional year.

7 (d) Invitations for unit price bids shall include, for purposes
8 of the bid evaluation, estimated quantities of the anticipated types
9 of work or trades, and specify how the city will issue or release
10 work assignments, work orders, or task authorizations pursuant to a
11 unit priced contract for projects, tasks, or other work based on the
12 hourly rates or unit prices bid by the contractor. Contracts must be
13 awarded to the lowest responsible bidder as per RCW 39.04.010.

14 (e) Unit price contractors shall pay prevailing wages for all
15 work that would otherwise be subject to the requirements of chapter
16 39.12 RCW. Prevailing wages for all work performed pursuant to each
17 work order must be the prevailing wage rates in effect at the
18 beginning date for each contract year. Unit priced contracts must
19 have prevailing wage rates updated annually. Intents and affidavits
20 for prevailing wages paid must be submitted annually for all work
21 completed within the previous twelve-month period of the unit priced
22 contract.

23 **Sec. 2.** RCW 35.23.352 and 2009 c 229 s 4 are each amended to
24 read as follows:

25 (1) Any second-class city or any town may construct any public
26 works, as defined in RCW 39.04.010, by contract or day labor without
27 calling for bids therefor whenever the estimated cost of the work or
28 improvement, including cost of materials, supplies and equipment will
29 not exceed the sum of sixty-five thousand dollars if more than one
30 craft or trade is involved with the public works, or forty thousand
31 dollars if a single craft or trade is involved with the public works
32 or the public works project is street signalization or street
33 lighting. A public works project means a complete project. The
34 restrictions in this subsection do not permit the division of the
35 project into units of work or classes of work to avoid the
36 restriction on work that may be performed by day labor on a single
37 project.

38 Whenever the cost of the public work or improvement, including
39 materials, supplies and equipment, will exceed these figures, the

1 same shall be done by contract. All such contracts shall be let at
2 public bidding upon publication of notice calling for sealed bids
3 upon the work. The notice shall be published in the official
4 newspaper, or a newspaper of general circulation most likely to bring
5 responsive bids, at least thirteen days prior to the last date upon
6 which bids will be received. The notice shall generally state the
7 nature of the work to be done that plans and specifications therefor
8 shall then be on file in the city or town hall for public
9 inspections, and require that bids be sealed and filed with the
10 council or commission within the time specified therein. Each bid
11 shall be accompanied by a bid proposal deposit in the form of a
12 cashier's check, postal money order, or surety bond to the council or
13 commission for a sum of not less than five percent of the amount of
14 the bid, and no bid shall be considered unless accompanied by such
15 bid proposal deposit. The council or commission of the city or town
16 shall let the contract to the lowest responsible bidder or shall have
17 power by resolution to reject any or all bids and to make further
18 calls for bids in the same manner as the original call.

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

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

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

1 (3) In lieu of the procedures of subsection (1) of this section,
2 a second-class city or a town may let contracts using the small works
3 roster process provided in RCW 39.04.155.

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

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

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

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

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

21 (8) For advertisement and formal sealed bidding to be dispensed
22 with as to purchases with an estimated value of fifteen thousand
23 dollars or less, the council or commission must authorize by
24 resolution, use of the uniform procedure provided in RCW 39.04.190.

25 (9) The city or town legislative authority may waive the
26 competitive bidding requirements of this section pursuant to RCW
27 39.04.280 if an exemption contained within that section applies to
28 the purchase or public work.

29 (10) This section does not apply to performance-based contracts,
30 as defined in RCW 39.35A.020(4), that are negotiated under chapter
31 39.35A RCW.

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

35 (12)(a) Any second-class city or any town may procure public
36 works with a unit priced contract under this section for the purpose
37 of completing anticipated types of work based on hourly rates or unit
38 pricing for one or more categories of work or trades.

39 (b) For the purposes of this section, "unit priced contract"
40 means a competitively bid contract in which public works are

1 anticipated on a recurring basis to meet the business or operational
2 needs of the city or town, under which the contractor agrees to a
3 fixed period indefinite quantity delivery of work, at a defined unit
4 price for each category of work.

5 (c) Unit priced contracts must be executed for an initial
6 contract term not to exceed three years, with the city or town having
7 the option of extending or renewing the unit priced contract for one
8 additional year.

9 (d) Invitations for unit price bids shall include, for purposes
10 of the bid evaluation, estimated quantities of the anticipated types
11 of work or trades, and specify how the city or town will issue or
12 release work assignments, work orders, or task authorizations
13 pursuant to a unit priced contract for projects, tasks, or other work
14 based on the hourly rates or unit prices bid by the contractor.
15 Contracts must be awarded to the lowest responsible bidder as per RCW
16 39.04.010.

17 (e) Unit price contractors shall pay prevailing wages for all
18 work that would otherwise be subject to the requirements of chapter
19 39.12 RCW. Prevailing wages for all work performed pursuant to each
20 work order must be the prevailing wage rates in effect at the
21 beginning date for each contract year. Unit priced contracts must
22 have prevailing wage rates updated annually. Intents and affidavits
23 for prevailing wages paid must be submitted annually for all work
24 completed within the previous twelve-month period of the unit priced
25 contract.

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