
HOUSE BILL 1359

State of Washington

66th Legislature

2019 Regular Session

By Representatives Leavitt, Irwin, Tharinger, Eslick, and Pollet

Read first time 01/21/19. Referred to Committee on Local Government.

1 AN ACT Relating to local government procurement modernization and
2 efficiency; amending RCW 39.04.155; and reenacting and amending RCW
3 36.32.235.

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

5 **Sec. 1.** RCW 36.32.235 and 2016 c 95 s 8 and 2016 c 19 s 8 are
6 each reenacted and amended to read as follows:

7 (1) In each county (~~with a population of four hundred thousand~~
8 ~~or more~~)) which by resolution establishes a county purchasing
9 department, the purchasing department shall enter into leases of
10 personal property on a competitive basis and purchase all supplies,
11 materials, and equipment on a competitive basis, for all departments
12 of the county, as provided in this chapter and chapter 39.04 RCW,
13 except that the county purchasing department is not required to make
14 purchases that are paid from the county road fund or equipment rental
15 and revolving fund.

16 (2) As used in this section:

17 (a) "Public works" has the same definition as in RCW 39.04.010.

18 (b) "Riverine project" means a project of construction,
19 alteration, repair, replacement, or improvement other than ordinary
20 maintenance, executed at the cost of the state or of any
21 municipality, or which is by law a lien or charge on any property,

1 carried out on a river or stream and its tributaries and associated
2 floodplains, beds, banks, and waters for the purpose of improving
3 aquatic habitat, improving water quality, restoring floodplain
4 function, or providing flood protection.

5 (c) "Stormwater project" means a project of construction,
6 alteration, repair, replacement, or improvement other than ordinary
7 maintenance, executed at the cost of the state or of any
8 municipality, or which is by law a lien or charge on any property,
9 carried out on a municipal separate storm sewer system, and any
10 connections to the system, that is regulated under a state-issued
11 national pollutant discharge elimination system general municipal
12 stormwater permit for the purpose of improving control of stormwater
13 runoff quantity and quality from developed land, safely conveying
14 stormwater runoff, or reducing erosion or other water quality impacts
15 caused by municipal separate storm sewer system discharges.

16 (3) Except as otherwise specified in this chapter or in chapter
17 36.77 RCW, all counties subject to these provisions shall contract on
18 a competitive basis for all public works after bids have been
19 submitted to the county upon specifications therefor. Such
20 specifications shall be in writing and shall be filed with the clerk
21 of the county legislative authority for public inspection.

22 (4) An advertisement shall be published in the county official
23 newspaper stating the time and place where bids will be opened, the
24 time after which bids will not be received, the character of the work
25 to be done, the materials and equipment to be furnished, and that
26 specifications therefor may be seen at the office of the clerk of the
27 county legislative authority. An advertisement shall also be
28 published in a legal newspaper of general circulation in or as near
29 as possible to that part of the county in which such work is to be
30 done. If the county official newspaper is a newspaper of general
31 circulation covering at least forty percent of the residences in that
32 part of the county in which such public works are to be done, then
33 the publication of an advertisement of the applicable specifications
34 in the county official newspaper is sufficient. Such advertisements
35 shall be published at least once at least thirteen days prior to the
36 last date upon which bids will be received.

37 (5) The bids shall be in writing, may be in either hard copy or
38 electronic form as specified by the county, shall be filed with the
39 clerk, shall be opened and read in public at the time and place named
40 therefor in the advertisements, and, after being opened, shall be

1 filed for public inspection. No bid may be considered for public work
2 unless it is accompanied by a bid deposit in the form of a surety
3 bond, postal money order, cash, cashier's check, or certified check
4 in an amount equal to five percent of the amount of the bid proposed.

5 (6) The contract for the public work shall be awarded to the
6 lowest responsible bidder. Any or all bids may be rejected for good
7 cause. The county legislative authority shall require from the
8 successful bidder for such public work a contractor's bond in the
9 amount and with the conditions imposed by law.

10 (7) If the bidder to whom the contract is awarded fails to enter
11 into the contract and furnish the contractor's bond as required
12 within ten days after notice of the award, exclusive of the day of
13 notice, the amount of the bid deposit shall be forfeited to the
14 county and the contract awarded to the next lowest and best bidder.
15 The bid deposit of all unsuccessful bidders shall be returned after
16 the contract is awarded and the required contractor's bond given by
17 the successful bidder is accepted by the county legislative
18 authority. Immediately after the award is made, the bid quotations
19 obtained shall be recorded and open to public inspection and shall be
20 available by telephone inquiry.

21 (8) As limited by subsection (~~((10))~~) (11) of this section, a
22 county subject to these provisions may have public works performed by
23 county employees in any annual or biennial budget period equal to a
24 dollar value not exceeding ten percent of the public works
25 construction budget, including any amount in a supplemental public
26 works construction budget, over the budget period.

27 Whenever a county subject to these provisions has had public
28 works performed in any budget period up to the maximum permitted
29 amount for that budget period, all remaining public works except
30 emergency work under subsection (~~((12))~~) (13) of this section within
31 that budget period shall be done by contract pursuant to public
32 notice and call for competitive bids as specified in subsection (3)
33 of this section. The state auditor shall report to the state
34 treasurer any county subject to these provisions that exceeds this
35 amount and the extent to which the county has or has not reduced the
36 amount of public works it has performed by public employees in
37 subsequent years.

38 (9) A county may procure public works with a unit priced contract
39 under this section for the purpose of completing anticipated types of

1 work based on hourly rates or unit pricing for one or more categories
2 of work or trades.

3 (a) For the purposes of this section, "unit priced contract"
4 means a competitively bid contract in which public works are
5 anticipated on a recurring basis to meet the business or operational
6 needs of the county, under which the contractor agrees to a fixed
7 period indefinite quantity delivery of work, at a defined unit price
8 for each category of work.

9 (b) Unit priced contracts must be executed for an initial
10 contract term not to exceed three years, with the county having the
11 option of extending or renewing the unit priced contract for one
12 additional year.

13 (c) Invitations for unit price bids shall include, for purposes
14 of the bid evaluation, estimated quantities of the anticipated types
15 of work or trades, and specify how the county will issue or release
16 work assignments, work orders, or task authorizations pursuant to a
17 unit priced contract for projects, tasks, or other work based on the
18 hourly rates or unit prices bid by the contractor. The contract must
19 be awarded to the lowest responsible bidder as defined under RCW
20 39.04.010. Whenever possible, the county must invite at least one bid
21 from a minority or woman contractor who otherwise qualifies under
22 this section.

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

32 (10) If a county subject to these provisions has public works
33 performed by public employees in any budget period that are in excess
34 of this ten percent limitation, the amount in excess of the permitted
35 amount shall be reduced from the otherwise permitted amount of public
36 works that may be performed by public employees for that county in
37 its next budget period. Ten percent of the motor vehicle fuel tax
38 distributions to that county shall be withheld if two years after the
39 year in which the excess amount of work occurred, the county has
40 failed to so reduce the amount of public works that it has performed

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

5 ~~((10))~~ (11) In addition to the percentage limitation provided
6 in subsection (8) of this section, counties subject to these
7 provisions containing a population of four hundred thousand or more
8 shall not have public employees perform: A public works project in
9 excess of ninety thousand dollars if more than a single craft or
10 trade is involved with the public works project, a riverine project
11 or stormwater project in excess of two hundred fifty thousand dollars
12 if more than a single craft or trade is involved with the riverine
13 project or stormwater project, a public works project in excess of
14 forty-five thousand dollars if only a single craft or trade is
15 involved with the public works project, or a riverine project or
16 stormwater project in excess of one hundred twenty-five thousand
17 dollars if only a single craft or trade is involved with the riverine
18 project or stormwater project. A public works project, a riverine
19 project, and a stormwater project means a complete project. The
20 restrictions in this subsection do not permit the division of the
21 project into units of work or classes of work to avoid the
22 restriction on work that may be performed by public employees on a
23 single project.

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

28 ~~((11))~~ (12) In addition to the accounting and recordkeeping
29 requirements contained in chapter 39.04 RCW, any county which uses
30 public employees to perform public works projects under RCW
31 36.32.240(1) shall prepare a year-end report to be submitted to the
32 state auditor indicating the total dollar amount of the county's
33 public works construction budget and the total dollar amount for
34 public works projects performed by public employees for that year.

35 The year-end report submitted pursuant to this subsection to the
36 state auditor shall be in accordance with the standard form required
37 by RCW 43.09.205.

38 ~~((12))~~ (13) Notwithstanding any other provision in this
39 section, counties may use public employees without any limitation for
40 emergency work performed under an emergency declared pursuant to RCW

1 36.32.270, and any such emergency work shall not be subject to the
2 limitations of this section. Publication of the description and
3 estimate of costs relating to correcting the emergency may be made
4 within seven days after the commencement of the work. Within two
5 weeks of the finding that such an emergency existed, the county
6 legislative authority shall adopt a resolution certifying the damage
7 to public facilities and costs incurred or anticipated relating to
8 correcting the emergency. Additionally this section shall not apply
9 to architectural and engineering or other technical or professional
10 services performed by public employees in connection with a public
11 works project.

12 ~~((13))~~ (14) In lieu of the procedures of subsections (3)
13 through ~~((11))~~ (12) of this section, a county may let contracts
14 using the small works roster process provided in RCW 39.04.155.

15 Whenever possible, the county shall invite at least one proposal
16 from a minority or woman contractor who shall otherwise qualify under
17 this section.

18 ~~((14))~~ (15) The allocation of public works projects to be
19 performed by county employees shall not be subject to a collective
20 bargaining agreement.

21 ~~((15))~~ (16) This section does not apply to performance-based
22 contracts, as defined in RCW 39.35A.020(4), that are negotiated under
23 chapter 39.35A RCW.

24 ~~((16))~~ (17) Nothing in this section prohibits any county from
25 allowing for preferential purchase of products made from recycled
26 materials or products that may be recycled or reused.

27 ~~((17))~~ (18) This section does not apply to contracts between
28 the public stadium authority and a team affiliate under RCW
29 36.102.060(4), or development agreements between the public stadium
30 authority and a team affiliate under RCW 36.102.060(7) or leases
31 entered into under RCW 36.102.060(8).

32 **Sec. 2.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to
33 read as follows:

34 (1) This section provides uniform small works roster provisions
35 to award contracts for construction, building, renovation,
36 remodeling, alteration, repair, or improvement of real property that
37 may be used by state agencies and by any local government that is
38 expressly authorized to use these provisions. These provisions may be
39 used in lieu of other procedures to award contracts for such work

1 with an estimated cost of (~~three~~) five hundred thousand dollars or
2 less. The small works roster process includes the limited public
3 works process authorized under subsection (3) of this section and any
4 local government authorized to award contracts using the small works
5 roster process under this section may award contracts using the
6 limited public works process under subsection (3) of this section.

7 (2) (a) A state agency or authorized local government may create a
8 single general small works roster, or may create a small works roster
9 for different specialties or categories of anticipated work. Where
10 applicable, small works rosters may make distinctions between
11 contractors based upon different geographic areas served by the
12 contractor. The small works roster or rosters shall consist of all
13 responsible contractors who have requested to be on the list, and
14 where required by law are properly licensed or registered to perform
15 such work in this state. A state agency or local government
16 establishing a small works roster or rosters may require eligible
17 contractors desiring to be placed on a roster or rosters to keep
18 current records of any applicable licenses, certifications,
19 registrations, bonding, insurance, or other appropriate matters on
20 file with the state agency or local government as a condition of
21 being placed on a roster or rosters. At least once a year, the state
22 agency or local government shall publish in a newspaper of general
23 circulation within the jurisdiction a notice of the existence of the
24 roster or rosters and solicit the names of contractors for such
25 roster or rosters. In addition, responsible contractors shall be
26 added to an appropriate roster or rosters at any time they submit a
27 written request and necessary records. Master contracts may be
28 required to be signed that become effective when a specific award is
29 made using a small works roster.

30 (b) A state agency establishing a small works roster or rosters
31 shall adopt rules implementing this subsection. A local government
32 establishing a small works roster or rosters shall adopt an ordinance
33 or resolution implementing this subsection. Procedures included in
34 rules adopted by the department of enterprise services in
35 implementing this subsection must be included in any rules providing
36 for a small works roster or rosters that is adopted by another state
37 agency, if the authority for that state agency to engage in these
38 activities has been delegated to it by the department of enterprise
39 services under chapter 43.19 RCW. An interlocal contract or agreement
40 between two or more state agencies or local governments establishing

1 a small works roster or rosters to be used by the parties to the
2 agreement or contract must clearly identify the lead entity that is
3 responsible for implementing the provisions of this subsection.

4 (c) Procedures shall be established for securing telephone,
5 written, or electronic quotations from contractors on the appropriate
6 small works roster to assure that a competitive price is established
7 and to award contracts to the lowest responsible bidder, as defined
8 in RCW 39.04.010. Invitations for quotations shall include an
9 estimate of the scope and nature of the work to be performed as well
10 as materials and equipment to be furnished. However, detailed plans
11 and specifications need not be included in the invitation. This
12 subsection does not eliminate other requirements for architectural or
13 engineering approvals as to quality and compliance with building
14 codes. Quotations may be invited from all appropriate contractors on
15 the appropriate small works roster. As an alternative, quotations may
16 be invited from at least five contractors on the appropriate small
17 works roster who have indicated the capability of performing the kind
18 of work being contracted, in a manner that will equitably distribute
19 the opportunity among the contractors on the appropriate roster.
20 However, if the estimated cost of the work is from ~~((one))~~ two
21 hundred fifty thousand dollars to ~~((three))~~ five hundred thousand
22 dollars, a state agency or local government that chooses to solicit
23 bids from less than all the appropriate contractors on the
24 appropriate small works roster must also notify the remaining
25 contractors on the appropriate small works roster that quotations on
26 the work are being sought. The government has the sole option of
27 determining whether this notice to the remaining contractors is made
28 by: (i) Publishing notice in a legal newspaper in general circulation
29 in the area where the work is to be done; (ii) mailing a notice to
30 these contractors; or (iii) sending a notice to these contractors by
31 facsimile or other electronic means. For purposes of this subsection
32 (2)(c), "equitably distribute" means that a state agency or local
33 government soliciting bids may not favor certain contractors on the
34 appropriate small works roster over other contractors on the
35 appropriate small works roster who perform similar services.

36 (d) A contract awarded from a small works roster under this
37 section need not be advertised.

38 (e) Immediately after an award is made, the bid quotations
39 obtained shall be recorded, open to public inspection, and available
40 by telephone inquiry.

1 (3) In lieu of awarding contracts under subsection (2) of this
2 section, a state agency or authorized local government may award a
3 contract for work, construction, alteration, repair, or improvement
4 projects estimated to cost less than (~~thirty-five~~) fifty thousand
5 dollars using the limited public works process provided under this
6 subsection. Public works projects awarded under this subsection are
7 exempt from the other requirements of the small works roster process
8 provided under subsection (2) of this section and are exempt from the
9 requirement that contracts be awarded after advertisement as provided
10 under RCW 39.04.010.

11 For limited public works projects, a state agency or authorized
12 local government shall solicit electronic or written quotations from
13 a minimum of three contractors from the appropriate small works
14 roster and shall award the contract to the lowest responsible bidder
15 as defined under RCW 39.04.010. After an award is made, the
16 quotations shall be open to public inspection and available by
17 electronic request. A state agency or authorized local government
18 shall attempt to distribute opportunities for limited public works
19 projects equitably among contractors willing to perform in the
20 geographic area of the work. A state agency or authorized local
21 government shall maintain a list of the contractors contacted and the
22 contracts awarded during the previous twenty-four months under the
23 limited public works process, including the name of the contractor,
24 the contractor's registration number, the amount of the contract, a
25 brief description of the type of work performed, and the date the
26 contract was awarded. For limited public works projects, a state
27 agency or authorized local government may waive the payment and
28 performance bond requirements of chapter 39.08 RCW and the retainage
29 requirements of chapter 60.28 RCW, thereby assuming the liability for
30 the contractor's nonpayment of laborers, mechanics, subcontractors,
31 materialpersons, suppliers, and taxes imposed under Title 82 RCW that
32 may be due from the contractor for the limited public works project,
33 however the state agency or authorized local government shall have
34 the right of recovery against the contractor for any payments made on
35 the contractor's behalf.

36 (4) The breaking of any project into units or accomplishing any
37 projects by phases is prohibited if it is done for the purpose of
38 avoiding the maximum dollar amount of a contract that may be let
39 using the small works roster process or limited public works process.

1 (5) (a) A state agency or authorized local government may use the
2 limited public works process of subsection (3) of this section to
3 solicit and award small works roster contracts to small businesses
4 that are registered contractors with gross revenues under one million
5 dollars annually as reported on their federal tax return.

6 (b) A state agency or authorized local government may adopt
7 additional procedures to encourage small businesses that are
8 registered contractors with gross revenues under two hundred fifty
9 thousand dollars annually as reported on their federal tax returns to
10 submit quotations or bids on small works roster contracts.

11 (6) As used in this section, "state agency" means the department
12 of enterprise services, the state parks and recreation commission,
13 the department of natural resources, the department of fish and
14 wildlife, the department of transportation, any institution of higher
15 education as defined under RCW 28B.10.016, and any other state agency
16 delegated authority by the department of enterprise services to
17 engage in construction, building, renovation, remodeling, alteration,
18 improvement, or repair activities.

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