
HOUSE BILL 2744

State of Washington **66th Legislature** **2020 Regular Session**

By Representatives Doglio, Duerr, Davis, Fitzgibbon, and Ramel

Read first time 01/20/20. Referred to Committee on Capital Budget.

1 AN ACT Relating to improving environmental and social outcomes
2 associated with the production of building materials; amending RCW
3 39.04.350, 39.10.330, 39.10.360, 39.26.160, 36.32.245, 36.32.250,
4 35.23.352, 39.04.155, 53.08.120, 54.04.070, and 57.08.050; adding a
5 new section to chapter 19.27 RCW; adding a new chapter to Title 39
6 RCW; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

9 (1) Washington state, through its extensive purchasing power, can
10 accelerate necessary greenhouse gas reductions to protect public
11 health, the environment, and conserve a livable climate while
12 promoting a fair economy by incorporating greenhouse gas emissions
13 information from throughout the supply chain and product life cycle
14 and high labor standards into procurement decisions and using that
15 information to help direct expenditure.

16 (2) Incorporating emissions information and high labor standards
17 will acknowledge those companies that have invested in emissions
18 reduction technologies and practices and reward responsible
19 manufacturers that are promoting and protecting a twenty-first
20 century workforce through wages, fringe benefits, and workforce
21 training. It will encourage other companies to take action to reduce

1 emissions to become more competitive in the Washington contracting
2 process and improve labor practices.

3 (3) The legislature has committed to carbon reduction measures by
4 requiring action by public agencies. Those actions do not currently
5 encourage public dollars for infrastructure projects to be spent in a
6 way that is consistent with the state's carbon reduction goals as it
7 relates to the global warming potential within the materials procured
8 for these projects.

9 (4) State agencies must take global warming potential, or
10 equivalent embodied carbon, into account in their planning and
11 investment decisions with full life-cycle cost and global warming
12 potential accounting that evaluates and compares infrastructure
13 investments and alternatives.

14 (5) Full life-cycle cost accounting means a double bottom line
15 evaluation of cost and global warming potential, accounting for the
16 impacts across the life cycle of a product. The evaluations should
17 lead to action, before the time of bidding and procurement decisions,
18 when the life-cycle analysis uncertainties, as quantified by a
19 nationally recognized life-cycle analysis database or by an
20 independent life-cycle analysis expert, are shown to not overlap.
21 When a comparison of uncertainties creates a potential that a
22 decision based upon global warming potential only would not be fully
23 validated, then planning and investment decisions should be made
24 based upon other objectives, including cost and resiliency, and
25 global warming potential as a decision-making consideration should be
26 deferred until the time of bidding and procurement.

27 (6) Great quantities of greenhouse gas emissions are often
28 released during the material sourcing, manufacture, and transport of
29 products used in public infrastructure projects.

30 (7) Establishing a system for comparing the emissions of a
31 building material relative to other similar building materials with
32 like performance characteristics, and within the same material
33 categories, provides incentive for reduced greenhouse gas emissions.
34 When evaluations happen as a double bottom line cradle to gate life-
35 cycle analysis accounting at the time of bidding and purchasing, it
36 allows for the selection of lower global warming potential material
37 producers of like materials without biasing state procurement
38 decisions against alternative categories of building materials that
39 may have inherently higher associated emissions but that offer other

1 beneficial attributes that are appropriate to consider during the
2 purchasing process.

3 (8) Removing unnecessary barriers in the state building code and
4 in state procurement contracts will allow the use of low carbon
5 construction materials that achieve equal performance outcomes to
6 similar building materials produced using higher-carbon production
7 processes.

8 (9) Providing financial assistance to small manufacturers to
9 facilitate the production of environmental product declarations, and
10 the reporting mechanism based on life-cycle analysis, will ensure
11 that small manufacturers are not put at a competitive disadvantage in
12 state contracting as a result of the requirements of this chapter,
13 and will improve the state's ability to make purchasing decisions
14 that align with state carbon reduction goals.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Awarding authority" includes any of the following:

19 (a) The department of enterprise services;

20 (b) Institutions of higher education as defined in RCW
21 28B.92.030;

22 (c) Natural resource agencies, including the department of
23 natural resources, state parks and recreation commission, and
24 department of fish and wildlife;

25 (d) Any other state governmental entity that receives funding
26 from the omnibus capital appropriations act for a public works
27 project;

28 (e) The department of transportation; and

29 (f) Any nonprofit organization receiving funding from the omnibus
30 capital appropriations act for a public works project.

31 (2) "Department" means the department of commerce.

32 (3) "Eligible materials" includes any of the following:

33 (a) Concrete including, but not limited to, cast in place that is
34 used as a structural material, shotcrete, and precast;

35 (b) Carbon steel rebar;

36 (c) Steel that is used as a structural material;

37 (d) Unit masonry that is used as a structural material;

38 (e) Wood of any type including, but not limited to, wood
39 composites and wood laminated products; and

1 (f) Gauge metal products for roof and floor decking, wall studs,
2 and floor system studs.

3 (4) "Eligible project" means: (a) A construction project larger
4 than five thousand gross square feet of occupied or conditioned space
5 as defined in the Washington state energy code (chapter 51-11C WAC);
6 (b) a building renovation project when the cost is greater than fifty
7 percent of the assessed value and the project is larger than five
8 thousand gross square feet; or (c) a state transportation system
9 project funded or carried out by Washington state department of
10 transportation that (i) has a cost in excess of one million dollars,
11 and (ii) uses more than a de minimis amount of eligible materials.

12 (5) "Environmental product declaration" means a facility specific
13 type III environmental product declaration, as defined by the
14 international organization for standardization standard 14025 as that
15 standard existed as of January 1, 2020, or similarly robust life-
16 cycle assessment methods that have uniform standards in data
17 collection consistent with international organization for
18 standardization standard 14025, industry acceptance, and integrity.

19 (6) "Facility specific" means a facility that contributes to at
20 least eighty percent of the total global warming potential, as
21 measured and reported in the environmental product declaration, of
22 the manufacturing of the eligible material.

23 (7) "Greenhouse gas" has the same meaning as in RCW 70.235.010.

24 (8) "Low carbon" and "lower carbon" means a comparatively lower
25 global warming potential measure reported in an environmental product
26 declaration.

27 (9) "Performance-based specifications" means a contract provision
28 that requires that a structural material achieve specified
29 performance outcomes from the use of the structural material
30 including, but not limited to, outcomes related to the strength,
31 durability, permeability, or other attributes related to the function
32 of the building material for applied uses.

33 (10) "Prescriptive specifications" means a contract provision
34 that requires that a structural material be produced using a
35 specified manufacturing process, design features, technologies, or
36 proportions of constituent materials.

37 (11) "Proposer" means a person responding to a public
38 solicitation under alternative public works contracting procedures
39 authorized under chapter 39.10 RCW.

1 (12)(a) "Structural material" means a building material or
2 component that:

3 (i) Supports gravity loads, lateral loads, or both, as the
4 primary structure of the building or buildings including, but not
5 limited to, the foundations, bearing walls, shear walls, columns,
6 beams, slabs, and lateral bracing required to maintain the stability
7 of the final structure as a whole; or

8 (iii) Is used in a state transportation system project and
9 supports gravity loads or is a primary lateral system resisting wind
10 and earthquake loads.

11 (b) Structural materials and components include both below grade
12 and elevated above grade structures.

13 NEW SECTION. **Sec. 3.** (1)(a) Beginning January 1, 2022, an
14 awarding authority shall require the bidder for a contract for an
15 eligible project to submit a current environmental product
16 declaration for each eligible material proposed to be used.

17 (i) Each awarding authority must transmit to the department a
18 copy of each environmental product declaration that the awarding
19 authority receives along with the material quantities of all eligible
20 materials to be used on the project.

21 (ii) The department must track the data submitted in (a)(i) of
22 this subsection in a publicly accessible database with project
23 anonymized.

24 (iii) Environmental product declarations must include minimal
25 data quality assessment metadata as specified by the Q metadata
26 program or other similar procurement program.

27 (iv) Beginning January 1, 2025, environmental product
28 declarations must report actual data quality assessment including
29 variability in facility, product, and upstream data for key
30 processes.

31 (b) Beginning July 1, 2020, until December 31, 2021, awarding
32 authorities must encourage, but may not require, bidders to comply
33 with the requirements of (a) of this subsection.

34 (2) Beginning July 1, 2023, and subject to the requirements of
35 RCW 39.04.350, when awarding a contract for an eligible project when
36 a bid features a primary structural material that does not exceed the
37 maximum acceptable global warming potential for the material, an
38 awarding authority:

1 (a) Must award the contract to the bid that uses the lower carbon
2 eligible material for projects with bid prices lower than the
3 engineer's estimate;

4 (b) Must consider awarding a contract to a bid that uses the
5 lower carbon eligible material if the bid is no greater than fifteen
6 percent above the lowest bid for the eligible project; and

7 (c) May award a contract to a bid that uses the lower carbon
8 eligible material if the bid is greater than fifteen percent above
9 the lowest bid for the eligible project.

10 (3) (a) A successful bidder for a contract described in subsection
11 (2) of this section may not install any eligible materials on the
12 project until that bidder submits a facility specific environmental
13 product declaration for that material pursuant to subsection (1) of
14 this section.

15 (b) The requirements of (a) of this subsection do not apply to an
16 eligible material of a type for which no environmental product
17 declarations yet exist.

18 (4) This section only applies to a contract entered into on or
19 after January 1, 2022.

20 NEW SECTION. **Sec. 4.** (1) By January 1, 2023, the department
21 shall establish and publish a maximum acceptable global warming
22 potential for each category of eligible materials in accordance with
23 both of the following requirements:

24 (a) The department shall set the maximum acceptable global
25 warming potential at a high estimate of the current market
26 representing approximately the eightieth percentile value of the
27 product weighted distributions of the emissions intensity of each
28 category of product. The department shall determine this value by
29 consulting nationally or internationally recognized databases of
30 environmental product declarations of like performance and quality
31 materials, and may rely on the data in such databases or published
32 evaluations of that data for purposes of identifying industry
33 averages, ranges, and variations, and for establishing the maximum
34 acceptable global warming potentials for materials.

35 (b) The department shall express the maximum acceptable global
36 warming potential as a number that states the maximum acceptable
37 facility specific global warming potential for each category of
38 eligible materials. The global warming potential must be provided in

1 a manner that is consistent with criteria in a nationally recognized
2 and current environmental product declaration.

3 (2) By January 1, 2024, and in conformance with RCW 43.01.036,
4 the department shall submit a report to the appropriate committees of
5 the legislature that describes the method that the department used to
6 develop the maximum global warming potential for each category of
7 eligible materials pursuant to subsection (1) of this section.

8 (3) By January 1, 2027, and every three years thereafter, the
9 department shall review the range of global warming potential values
10 submitted for each category of eligible materials established
11 pursuant to subsection (1) of this section, and must adjust the
12 maximum acceptable global warming potential downward for any eligible
13 material to be the lower number of the following two options:

14 (a) Prior to January 1, 2030, the linearly interpolated value
15 between the initial maximum acceptable global warming potential
16 determined on January 1, 2023, and a fifty percent reduction by
17 January 1, 2030. After January 1, 2030, the linearly interpolated
18 value between the January 1, 2030, level and zero global warming
19 potential by January 1, 2050.

20 (b) The ninetieth percentile value of the range of global warming
21 potential data collected in the previous three years. If this option
22 is chosen, the department shall set the maximum acceptable global
23 warming potential based on the linearly interpolated value between
24 the ninetieth percentile value and zero global warming potential by
25 January 1, 2050.

26 (4) An awarding authority may amend their fee schedule to
27 accommodate this chapter.

28 (5) The department may contract for the use of nationally or
29 internationally recognized databases of environmental product
30 declarations for purposes of implementing this section and section 3
31 of this act.

32 (6) All recognized environmental product declarations shall
33 follow nationally or internationally recognized rules for producing
34 environmental product declarations for the subject material, follow
35 standards established for life-cycle analysis material reporting of
36 global warming potentials, and conform to ISO standards 14025, 14040,
37 14044, and 21930, as those standards existed as of January 1, 2020.

38 (7) Subject to funds made available for this purpose, the
39 department may provide financial assistance to small businesses, as
40 defined in RCW 19.85.020, equal to no less than half of the cost to

1 the small business of producing an environmental product declaration
2 required under section 3 of this act.

3 NEW SECTION. **Sec. 5.** (1) Beginning January 1, 2022, an awarding
4 authority shall require the bidders or proposers for a contract for
5 an eligible project to report on their compliance, including their
6 subcontractor's or subcontractors' compliance, with domestic labor
7 law in the countries where they produce goods or services.

8 (2) Beginning July 1, 2020, until December 31, 2021, awarding
9 authorities must encourage, but may not require, bidders or proposers
10 to comply with the requirements of subsection (1) of this section.

11 (3) For purposes of this section, "domestic labor law" includes
12 international standards that are applicable to employers under
13 domestic law. Examples of these laws include, but are not limited to,
14 wages and benefits, hours of work, harassment and abuse, and
15 prohibition of forced labor, child labor, or discrimination.

16 NEW SECTION. **Sec. 6.** The office of financial management shall
17 incorporate requirements for state agencies to consider lower carbon
18 building materials and domestic labor law compliance declarations
19 within existing business processes and tools including, but not
20 limited to, facility planning, predesign, and budget instructions.

21 NEW SECTION. **Sec. 7.** In carrying out its duties under this
22 chapter, an awarding authority shall strive to achieve a continuous
23 reduction of emissions over time.

24 NEW SECTION. **Sec. 8.** Beginning January 1, 2023, and to the
25 extent practicable, specifications for a bid or proposal for a
26 project contract by an awarding authority, cities, counties, towns,
27 and other municipal corporations or political subdivisions of the
28 state may only include performance-based specifications for concrete
29 or unit masonry products used as a structural material. To the extent
30 practicable, an awarding authority, cities, counties, towns, and
31 other municipal subdivisions of the state may not enter into a
32 contract that includes prescriptive specifications for concrete or
33 unit masonry products used as a structural material.

34 NEW SECTION. **Sec. 9.** (1) By January 1, 2025, and in conformance
35 with RCW 43.01.036, the department shall submit a report to the

1 legislature on any obstacles to the implementation of this chapter,
2 and the effectiveness of this chapter to reduce global warming
3 potential.

4 (2) This section expires January 1, 2026.

5 NEW SECTION. **Sec. 10.** This chapter may be known and cited as
6 the buy clean and buy fair Washington act.

7 NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act
8 constitute a new chapter in Title 39 RCW.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.27
10 RCW to read as follows:

11 To the extent practicable, the state building code council shall
12 adopt rules that do not include or require the use of prescriptive
13 specifications, as that term is defined in section 2 of this act, for
14 concrete or unit masonry used as a structural material, as that term
15 is defined in section 2 of this act.

16 **Sec. 13.** RCW 39.04.350 and 2019 c 232 s 15 are each amended to
17 read as follows:

18 (1) Before award of a public works contract, a bidder must meet
19 the following responsibility criteria to be considered a responsible
20 bidder and qualified to be awarded a public works project. The bidder
21 must:

22 (a) At the time of bid submittal, have a certificate of
23 registration in compliance with chapter 18.27 RCW;

24 (b) Have a current state unified business identifier number;

25 (c) If applicable, have industrial insurance coverage for the
26 bidder's employees working in Washington as required in Title 51 RCW;
27 an employment security department number as required in Title 50 RCW;
28 and a state excise tax registration number as required in Title 82
29 RCW;

30 (d) Not be disqualified from bidding on any public works contract
31 under RCW 39.06.010 or 39.12.065(3);

32 (e) If bidding on a public works project subject to the
33 apprenticeship utilization requirements in RCW 39.04.320, not have
34 been found out of compliance by the Washington state apprenticeship
35 and training council for working apprentices out of ratio, without
36 appropriate supervision, or outside their approved work processes as

1 outlined in their standards of apprenticeship under chapter 49.04 RCW
2 for the one-year period immediately preceding the date of the bid
3 solicitation;

4 (f) Have received training on the requirements related to public
5 works and prevailing wage under this chapter and chapter 39.12 RCW.
6 The bidder must designate a person or persons to be trained on these
7 requirements. The training must be provided by the department of
8 labor and industries or by a training provider whose curriculum is
9 approved by the department. The department, in consultation with the
10 prevailing wage advisory committee, must determine the length of the
11 training. Bidders that have completed three or more public works
12 projects and have had a valid business license in Washington for
13 three or more years are exempt from this subsection. The department
14 of labor and industries must keep records of entities that have
15 satisfied the training requirement or are exempt and make the records
16 available on its web site. Responsible parties may rely on the
17 records made available by the department regarding satisfaction of
18 the training requirement or exemption; and

19 (g) Within the three-year period immediately preceding the date
20 of the bid solicitation, not have been determined by a final and
21 binding citation and notice of assessment issued by the department of
22 labor and industries or through a civil judgment entered by a court
23 of limited or general jurisdiction to have willfully violated, as
24 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or
25 49.52 RCW.

26 (2) Before award of a public works contract, a bidder shall
27 submit to the contracting agency a signed statement in accordance
28 with chapter 5.50 RCW verifying under penalty of perjury that the
29 bidder is in compliance with the responsible bidder criteria
30 requirement of subsection (1)(g) of this section. A contracting
31 agency may award a contract in reasonable reliance upon such a sworn
32 statement. For eligible projects under chapter 39.--- RCW (the new
33 chapter created in section 11 of this act), a bidder shall submit
34 environmental product declarations consistent with section 3 of this
35 act and domestic labor law compliance declarations consistent with
36 section 6 of this act.

37 (3) In addition to the bidder responsibility criteria in
38 subsection (1) of this section, the state or municipality may adopt
39 relevant supplemental criteria for determining bidder responsibility
40 applicable to a particular project which the bidder must meet.

1 (a) Supplemental criteria for determining bidder responsibility,
2 including the basis for evaluation and the deadline for appealing a
3 determination that a bidder is not responsible, must be provided in
4 the invitation to bid or bidding documents.

5 (b) In a timely manner before the bid submittal deadline, a
6 potential bidder may request that the state or municipality modify
7 the supplemental criteria. The state or municipality must evaluate
8 the information submitted by the potential bidder and respond before
9 the bid submittal deadline. If the evaluation results in a change of
10 the criteria, the state or municipality must issue an addendum to the
11 bidding documents identifying the new criteria.

12 (c) If the bidder fails to supply information requested
13 concerning responsibility within the time and manner specified in the
14 bid documents, the state or municipality may base its determination
15 of responsibility upon any available information related to the
16 supplemental criteria or may find the bidder not responsible.

17 (d) If the state or municipality determines a bidder to be not
18 responsible, the state or municipality must provide, in writing, the
19 reasons for the determination. The bidder may appeal the
20 determination within the time period specified in the bidding
21 documents by presenting additional information to the state or
22 municipality. The state or municipality must consider the additional
23 information before issuing its final determination. If the final
24 determination affirms that the bidder is not responsible, the state
25 or municipality may not execute a contract with any other bidder
26 until two business days after the bidder determined to be not
27 responsible has received the final determination.

28 (4) The capital projects advisory review board created in RCW
29 39.10.220 shall develop suggested guidelines to assist the state and
30 municipalities in developing supplemental bidder responsibility
31 criteria. The guidelines must be posted on the board's web site.

32 **Sec. 14.** RCW 39.10.330 and 2019 c 212 s 6 are each amended to
33 read as follows:

34 (1) Contracts for design-build services shall be awarded through
35 a competitive process using public solicitation of proposals for
36 design-build services. The public body shall publish at least once in
37 a legal newspaper of general circulation published in, or as near as
38 possible to, that part of the county in which the public work will be
39 done, a notice of its request for qualifications from proposers for

1 design-build services, and the availability and location of the
2 request for proposal documents. The request for qualifications
3 documents shall include:

4 (a) A description of the project including the estimated design-
5 build contract value and the intended use of the project;

6 (b) The reasons for using the design-build procedure;

7 (c) A description of the qualifications to be required of the
8 proposer;

9 (d) A description of the process the public body will use to
10 evaluate qualifications and finalists' proposals, including
11 evaluation factors and the relative weight of factors and any
12 specific forms to be used by the proposers;

13 (i) Evaluation factors for qualifications shall include technical
14 qualifications, such as specialized experience and technical
15 competence of the firms and the key design and construction
16 personnel; capacity to perform; the proposer's past performance in
17 utilization of the office of minority and women's business
18 enterprises certified businesses, to the extent permitted by law;
19 ability to provide a performance and payment bond for the project;
20 domestic labor law compliance declarations required under chapter
21 39.--- RCW (the new chapter created in section 11 of this act), if
22 applicable; and other appropriate factors. Evaluation factors may
23 also include, but are not limited to, the proposer's past performance
24 in utilization of small business entities. Cost or price-related
25 factors are not permitted in the request for qualifications phase;

26 (ii) Evaluation factors for finalists' proposals shall include
27 the management plan to meet time and budget requirements and one or
28 more price-related factors. Evaluation factors may also include, but
29 not be limited to, the technical approach, design concept, and the
30 outreach plan to include small business entities and disadvantaged
31 business enterprises as subconsultants, subcontractors, and suppliers
32 for the project;

33 (e) Protest procedures including time limits for filing a
34 protest, which in no event may limit the time to file a protest to
35 fewer than four business days from the date the proposer was notified
36 of the selection decision;

37 (f) The proposed contract;

38 (g) The honorarium to be paid to finalists submitting responsive
39 proposals and who are not awarded a design-build contract;

40 (h) The schedule for the procurement process and the project; and

1 (i) Other information relevant to the project.

2 (2) The public body shall establish an evaluation committee to
3 evaluate the responses to the request for qualifications based solely
4 on the factors, weighting, and process identified in the request for
5 qualifications and any addenda issued by the public body. Based on
6 the evaluation committee's findings, the public body shall select not
7 more than five responsive and responsible finalists to submit
8 proposals. The public body may, in its sole discretion, reject all
9 proposals and shall provide its reasons for rejection in writing to
10 all proposers.

11 (3) The public body must notify all proposers of the finalists
12 selected to move to the next phase of the selection process. The
13 process may not proceed to the next phase until two business days
14 after all proposers are notified of the committee's selection
15 decision. At the request of a proposer not selected as a finalist,
16 the public body must provide the requesting proposer with a scoring
17 summary of the evaluation factors for its proposal. Proposers filing
18 a protest on the selection of the finalists must file the protest in
19 accordance with the published protest procedures. The selection
20 process may not advance to the next phase of selection until two
21 business days after the final protest decision is transmitted to the
22 protestor.

23 (4) Upon selection of the finalists, the public body shall issue
24 a request for proposals to the finalists. The request for proposal
25 documents shall include:

26 (a) Any specific forms to be used by the finalists; and

27 (b) Submission of a summary of the finalist's accident prevention
28 program and an overview of its implementation.

29 (5) The public body shall establish an evaluation committee to
30 evaluate the proposals submitted by the finalists. The finalists'
31 proposals shall be evaluated and scored based solely on the factors,
32 weighting, and process identified in the request for qualifications,
33 the request for proposals, and in any addenda published by the public
34 body. Public bodies may request best and final proposals from
35 finalists. The public body may initiate negotiations with the
36 finalist submitting the highest scored proposal. If the public body
37 is unable to execute a contract with the finalist submitting the
38 highest scored proposal, negotiations with that finalist may be
39 suspended or terminated and the public body may proceed to negotiate
40 with the next highest scored finalist. Public bodies shall continue

1 in accordance with this procedure until a contract agreement is
2 reached or the selection process is terminated.

3 (6) The public body shall notify all finalists of the selection
4 decision and make a selection summary of the final proposals
5 available to all proposers within two business days of such
6 notification. If the public body receives a timely written protest
7 from a finalist firm, the public body may not execute a contract
8 until two business days after the final protest decision is
9 transmitted to the protestor. The protestor must submit its protest
10 in accordance with the published protest procedures.

11 (7) The firm awarded the contract shall provide a performance and
12 payment bond for the contracted amount.

13 (8) Any contract must require the firm awarded the contract to
14 track and report to the public body its utilization of the office of
15 minority and women's business enterprises certified businesses and
16 veteran certified businesses.

17 (9) The public body shall provide appropriate honorarium payments
18 to finalists submitting responsive proposals that are not awarded a
19 design-build contract. Honorarium payments shall be sufficient to
20 generate meaningful competition among potential proposers on design-
21 build projects. In determining the amount of the honorarium, the
22 public body shall recognize the level of effort required to meet the
23 selection criteria.

24 (10)(a) Awarding authorities shall require the selected firm for
25 an eligible project under chapter 39.--- RCW (the new chapter created
26 in section 11 of this act) to submit a current environmental product
27 declaration for each eligible material proposed to be used.

28 (b) Each awarding authority must transmit to the department a
29 copy of each environmental product declaration that the awarding
30 authority receives along with the material quantities of all eligible
31 materials to be used on the project.

32 (c) The department must track the data submitted in (b) of this
33 subsection in a publicly accessible database with projects
34 anonymized.

35 (d) Environmental product declarations must include minimal data
36 quality assessment metadata as specified by the Q metadata program or
37 other similar procurement program.

38 (e) Beginning January 1, 2025, environmental product declarations
39 must report actual data quality assessments including variability in
40 facility, product, and upstream data for key processes.

1 (f) For purposes of this subsection, the definitions in section 2
2 of this act apply.

3 **Sec. 15.** RCW 39.10.360 and 2014 c 42 s 5 are each amended to
4 read as follows:

5 (1) Public bodies should select general contractor/construction
6 managers early in the life of public works projects, and in most
7 situations no later than the completion of schematic design.

8 (2) Contracts for the services of a general contractor/
9 construction manager under this section shall be awarded through a
10 competitive process requiring the public solicitation of proposals
11 for general contractor/construction manager services. The public
12 solicitation of proposals shall include:

13 (a) A description of the project, including programmatic,
14 performance, and technical requirements and specifications when
15 available;

16 (b) The reasons for using the general contractor/construction
17 manager procedure including, if applicable, a clear statement that
18 the public body is electing to procure the project as a heavy civil
19 construction project, in which case the solicitation must
20 additionally:

21 (i) Indicate the minimum percentage of the cost of the work to
22 construct the project that will constitute the negotiated self-
23 perform portion of the project;

24 (ii) Indicate whether the public body will allow the price to be
25 paid for the negotiated self-perform portion of the project to be
26 deemed a cost of the work to which the general contractor/
27 construction manager's percent fee applies; and

28 (iii) Require proposals to indicate the proposer's fee for the
29 negotiated self-perform portion of the project;

30 (c) A description of the qualifications to be required of the
31 firm, including submission of the firm's accident prevention program;

32 (d) A description of the process the public body will use to
33 evaluate qualifications and proposals, including evaluation factors,
34 the relative weight of factors, and protest procedures including time
35 limits for filing a protest, which in no event may limit the time to
36 file a protest to fewer than four business days from the date the
37 proposer was notified of the selection decision;

38 (e) The form of the contract, including any contract for
39 preconstruction services, to be awarded;

1 (f) The estimated maximum allowable construction cost; and
2 (g) The bid instructions to be used by the general contractor/
3 construction manager finalists.

4 (3) (a) Evaluation factors for selection of the general
5 contractor/construction manager shall include, but not be limited to:

6 (i) Ability of the firm's professional personnel;
7 (ii) The firm's past performance in negotiated and complex
8 projects;

9 (iii) The firm's ability to meet time and budget requirements;
10 (iv) The scope of work the firm proposes to self-perform and its
11 ability to perform that work;

12 (v) The firm's proximity to the project location;
13 (vi) Recent, current, and projected workloads of the firm;
14 ((and))

15 (vii) The firm's approach to executing the project; and
16 (viii) Domestic labor law compliance declarations required under
17 chapter 39.--- RCW (the new chapter created in section 11 of this
18 act), if applicable.

19 (b) An agency may also consider the firm's outreach plan to
20 include small business entities and disadvantaged business
21 enterprises, and the firm's past performance in the utilization of
22 such firms as an evaluation factor.

23 (4) A public body shall establish a committee to evaluate the
24 proposals. After the committee has selected the most qualified
25 finalists, at the time specified by the public body, these finalists
26 shall submit final proposals, including sealed bids for the percent
27 fee on the estimated maximum allowable construction cost and the
28 fixed amount for the general conditions work specified in the request
29 for proposal. The public body shall establish a time and place for
30 the opening of sealed bids for the percent fee on the estimated
31 maximum allowable construction cost and the fixed amount for the
32 general conditions work specified in the request for proposal. At the
33 time and place named, these bids must be publicly opened and read and
34 the public body shall make all previous scoring available to the
35 public. The public body shall select the firm submitting the highest
36 scored final proposal using the evaluation factors and the relative
37 weight of factors published in the public solicitation of proposals.
38 A public body shall not evaluate or disqualify a proposal based on
39 the terms of a collective bargaining agreement.

1 (5) The public body shall notify all finalists of the selection
2 decision and make a selection summary of the final proposals
3 available to all proposers within two business days of such
4 notification. If the public body receives a timely written protest
5 from a proposer, the public body may not execute a contract until two
6 business days after the final protest decision is transmitted to the
7 protestor. The protestor must submit its protest in accordance with
8 the published protest procedures.

9 (6) Public bodies may contract with the selected firm to provide
10 services during the design phase that may include life-cycle cost
11 design considerations, value engineering, scheduling, cost
12 estimating, constructability, alternative construction options for
13 cost savings, and sequencing of work, and to act as the construction
14 manager and general contractor during the construction phase.

15 (7) (a) Awarding authorities shall require the selected firm for
16 an eligible project under chapter 39.--- RCW (the new chapter created
17 in section 11 of this act) to submit a current environmental product
18 declaration for each eligible material proposed to be used.

19 (b) Each awarding authority must transmit to the department a
20 copy of each environmental product declaration that the awarding
21 authority receives along with the material quantities of all eligible
22 materials to be used on the project.

23 (c) The department must track the data submitted in (b) of this
24 subsection in a publicly accessible database with projects
25 anonymized.

26 (d) Environmental product declarations must include minimal data
27 quality assessment metadata as specified by the Q metadata program or
28 other similar procurement program.

29 (e) Beginning January 1, 2025, environmental product declarations
30 must report actual data quality assessments including variability in
31 facility, product, and upstream data for key processes.

32 (f) For purposes of this subsection, the definitions in section 2
33 of this act apply.

34 **Sec. 16.** RCW 39.26.160 and 2019 c 232 s 16 are each amended to
35 read as follows:

36 (1) (a) After bids that are submitted in response to a competitive
37 solicitation process are reviewed by the awarding agency, the
38 awarding agency may:

1 (i) Reject all bids and rebid or cancel the competitive
2 solicitation;

3 (ii) Request best and final offers from responsive and
4 responsible bidders; or

5 (iii) Award the purchase or contract to the lowest responsive and
6 responsible bidder.

7 (b) The agency may award one or more contracts from a competitive
8 solicitation.

9 (2) In determining whether the bidder is a responsible bidder,
10 the agency must consider the following elements:

11 (a) The ability, capacity, and skill of the bidder to perform the
12 contract or provide the service required;

13 (b) The character, integrity, reputation, judgment, experience,
14 and efficiency of the bidder;

15 (c) Whether the bidder can perform the contract within the time
16 specified;

17 (d) The quality of performance of previous contracts or services;

18 (e) The previous and existing compliance by the bidder with laws
19 relating to the contract or services;

20 (f) Whether, within the three-year period immediately preceding
21 the date of the bid solicitation, the bidder has been determined by a
22 final and binding citation and notice of assessment issued by the
23 department of labor and industries or through a civil judgment
24 entered by a court of limited or general jurisdiction to have
25 willfully violated, as defined in RCW 49.48.082, any provision of
26 chapter 49.46, 49.48, or 49.52 RCW; and

27 (g) Such other information as may be secured having a bearing on
28 the decision to award the contract.

29 (3) In determining the lowest responsive and responsible bidder,
30 an agency may consider best value criteria, including but not limited
31 to:

32 (a) Whether the bid satisfies the needs of the state as specified
33 in the solicitation documents;

34 (b) Whether the bid encourages diverse contractor participation;

35 (c) Whether the bid provides competitive pricing, economies, and
36 efficiencies;

37 (d) Whether the bid considers human health and environmental
38 impacts;

39 (e) Whether the bid appropriately weighs cost and noncost
40 considerations; (~~and~~)

1 (f) Life-cycle cost; and

2 (g) Whether the bid meets the requirements of section 3 of this
3 act, if applicable.

4 (4) The solicitation document must clearly set forth the
5 requirements and criteria that the agency will apply in evaluating
6 bid submissions. Before award of a contract, a bidder shall submit to
7 the contracting agency a signed statement in accordance with chapter
8 5.50 RCW verifying under penalty of perjury that the bidder is in
9 compliance with the responsible bidder criteria requirement of
10 subsection (2)(f) of this section. A contracting agency may award a
11 contract in reasonable reliance upon such a sworn statement.

12 (5) The awarding agency may at its discretion reject the bid of
13 any contractor who has failed to perform satisfactorily on a previous
14 contract with the state.

15 (6) After reviewing all bid submissions, an agency may enter into
16 negotiations with the lowest responsive and responsible bidder in
17 order to determine if the bid may be improved. An agency may not use
18 this negotiation opportunity to permit a bidder to change a
19 nonresponsive bid into a responsive bid.

20 (7) The procuring agency must enter into the state's enterprise
21 vendor registration and bid notification system the name of each
22 bidder and an indication as to the successful bidder.

23 **Sec. 17.** RCW 36.32.245 and 2016 c 95 s 9 are each amended to
24 read as follows:

25 (1) No contract for the purchase of materials, equipment, or
26 supplies may be entered into by the county legislative authority or
27 by any elected or appointed officer of the county until after bids
28 have been submitted to the county. Bid specifications shall be in
29 writing and shall be filed with the clerk of the county legislative
30 authority for public inspection. An advertisement shall be published
31 in the official newspaper of the county stating the time and place
32 where bids will be opened, the time after which bids will not be
33 received, the materials, equipment, supplies, or services to be
34 purchased, and that the specifications may be seen at the office of
35 the clerk of the county legislative authority. The advertisement
36 shall be published at least once at least thirteen days prior to the
37 last date upon which bids will be received.

38 (2) The bids shall be in writing, may be in either hard copy or
39 electronic form as specified by the county, and shall be filed with

1 the clerk. The bids shall be opened and read in public at the time
2 and place named in the advertisement. Contracts requiring competitive
3 bidding under this section may be awarded only to the lowest
4 responsible bidder, except where consideration of additional criteria
5 is allowed or required under section 3 of this act, if applicable.
6 Immediately after the award is made, the bid quotations shall be
7 recorded and open to public inspection and shall be available by
8 telephone inquiry. Any or all bids may be rejected for good cause.

9 (3) For advertisement and formal sealed bidding to be dispensed
10 with as to purchases between ten thousand and fifty thousand dollars,
11 the county legislative authority must use the uniform process to
12 award contracts as provided in RCW 39.04.190. Advertisement and
13 formal sealed bidding may be dispensed with as to purchases of less
14 than ten thousand dollars upon the order of the county legislative
15 authority.

16 (4) This section does not apply to performance-based contracts,
17 as defined in RCW 39.35A.020(4), that are negotiated under chapter
18 39.35A RCW; or contracts and purchases for the printing of election
19 ballots, voting machine labels, and all other election material
20 containing the names of candidates and ballot titles.

21 (5) Nothing in this section shall prohibit the legislative
22 authority of any county from allowing for preferential purchase of
23 products made from recycled materials or products that may be
24 recycled or reused.

25 (6) This section does not apply to contracting for public
26 defender services by a county.

27 **Sec. 18.** RCW 36.32.250 and 2009 c 229 s 8 are each amended to
28 read as follows:

29 No contract for public works may be entered into by the county
30 legislative authority or by any elected or appointed officer of the
31 county until after bids have been submitted to the county upon
32 specifications therefor. Such specifications shall be in writing and
33 shall be filed with the clerk of the county legislative authority for
34 public inspection. An advertisement shall be published in the county
35 official newspaper stating the time and place where bids will be
36 opened, the time after which bids will not be received, the character
37 of the work to be done, the materials and equipment to be furnished,
38 and that specifications therefor may be seen at the office of the
39 clerk of the county legislative authority. An advertisement shall

1 also be published in a legal newspaper of general circulation in or
2 as near as possible to that part of the county in which such work is
3 to be done. If the county official newspaper is a newspaper of
4 general circulation covering at least forty percent of the residences
5 in that part of the county in which such public works are to be done,
6 then the publication of an advertisement of the applicable
7 specifications in the county official newspaper shall be sufficient.
8 Such advertisements shall be published at least once at least
9 thirteen days prior to the last date upon which bids will be
10 received. The bids shall be in writing, shall be filed with the
11 clerk, shall be opened and read in public at the time and place named
12 therefor in the advertisements, and after being opened, shall be
13 filed for public inspection. No bid may be considered for public work
14 unless it is accompanied by a bid deposit in the form of a surety
15 bond, postal money order, cash, cashier's check, or certified check
16 in an amount equal to five percent of the amount of the bid proposed.
17 The contract for the public work shall be awarded to the lowest
18 responsible bidder, except where consideration of additional criteria
19 is allowed or required under section 3 of this act, if applicable.
20 Any or all bids may be rejected for good cause. The county
21 legislative authority shall require from the successful bidder for
22 such public work a contractor's bond in the amount and with the
23 conditions imposed by law. If the bidder to whom the contract is
24 awarded fails to enter into the contract and furnish the contractor's
25 bond as required within ten days after notice of the award, exclusive
26 of the day of notice, the amount of the bid deposit shall be
27 forfeited to the county and the contract awarded to the next lowest
28 and best bidder. A low bidder who claims error and fails to enter
29 into a contract is prohibited from bidding on the same project if a
30 second or subsequent call for bids is made for the project. The bid
31 deposit of all unsuccessful bidders shall be returned after the
32 contract is awarded and the required contractor's bond given by the
33 successful bidder is accepted by the county legislative authority. In
34 the letting of any contract for public works involving less than
35 forty thousand dollars, advertisement and competitive bidding may be
36 dispensed with on order of the county legislative authority.
37 Immediately after the award is made, the bid quotations obtained
38 shall be recorded and open to public inspection and shall be
39 available by telephone inquiry.

1 As an alternative to requirements under this section, a county
2 may let contracts using the small works roster process under RCW
3 39.04.155.

4 This section does not apply to performance-based contracts, as
5 defined in RCW 39.35A.020(4), that are negotiated under chapter
6 39.35A RCW.

7 **Sec. 19.** RCW 35.23.352 and 2019 c 434 s 1 are each amended to
8 read as follows:

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

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

1 consideration of additional criteria is allowed or required under
2 section 3 of this act, if applicable, or shall have power by
3 resolution to reject any or all bids and to make further calls for
4 bids in the same manner as the original call.

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

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

22 (2) For the purposes of this section, "lowest responsible bidder"
23 means a bid that meets the criteria under RCW 39.04.350 and has the
24 lowest bid; provided, that if the city issues a written finding that
25 the lowest bidder has delivered a project to the city within the last
26 three years which was late, over budget, or did not meet
27 specifications, and the city does not find in writing that such
28 bidder has shown how they would improve performance to be likely to
29 meet project specifications then the city may choose the second
30 lowest bidder whose bid is within five percent of the lowest bid and
31 meets the same criteria as the lowest bidder.

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

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

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

1 (5) The form required by RCW 43.09.205 shall be to account and
2 record costs of public works in excess of five thousand dollars that
3 are not let by contract.

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

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

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

15 (9) For advertisement and formal sealed bidding to be dispensed
16 with as to purchases with an estimated value of fifteen thousand
17 dollars or less, the council or commission must authorize by
18 resolution, use of the uniform procedure provided in RCW 39.04.190.

19 (10) The city or town legislative authority may waive the
20 competitive bidding requirements of this section pursuant to RCW
21 39.04.280 if an exemption contained within that section applies to
22 the purchase or public work.

23 (11) This section does not apply to performance-based contracts,
24 as defined in RCW 39.35A.020(4), that are negotiated under chapter
25 39.35A RCW.

26 (12) Nothing in this section shall prohibit any second-class city
27 or any town from allowing for preferential purchase of products made
28 from recycled materials or products that may be recycled or reused.

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

33 (b) For the purposes of this section, "unit priced contract"
34 means a competitively bid contract in which public works are
35 anticipated on a recurring basis to meet the business or operational
36 needs of the city or town, under which the contractor agrees to a
37 fixed period indefinite quantity delivery of work, at a defined unit
38 price for each category of work.

39 (c) Unit priced contracts must be executed for an initial
40 contract term not to exceed three years, with the city or town having

1 the option of extending or renewing the unit priced contract for one
2 additional year.

3 (d) Invitations for unit price bids shall include, for purposes
4 of the bid evaluation, estimated quantities of the anticipated types
5 of work or trades, and specify how the city or town will issue or
6 release work assignments, work orders, or task authorizations
7 pursuant to a unit priced contract for projects, tasks, or other work
8 based on the hourly rates or unit prices bid by the contractor.
9 Contracts must be awarded to the lowest responsible bidder as ((per))
10 defined in RCW 39.04.010, except where consideration of additional
11 criteria is allowed or required under section 3 of this act, if
12 applicable. Whenever possible, the city or town must invite at least
13 one proposal from a certified minority or woman contractor who
14 otherwise qualifies under this section.

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

24 (14) Any second-class city or town that awards a project to a
25 bidder under the criteria described in subsection (2) of this section
26 must make an annual report to the department of commerce that
27 includes the total number of bids awarded to certified minority or
28 women contractors and describing how notice was provided to potential
29 certified minority or women contractors.

30 **Sec. 20.** RCW 39.04.155 and 2019 c 434 s 5 are each amended to
31 read as follows:

32 (1) This section provides uniform small works roster provisions
33 to award contracts for construction, building, renovation,
34 remodeling, alteration, repair, or improvement of real property that
35 may be used by state agencies and by any local government that is
36 expressly authorized to use these provisions. These provisions may be
37 used in lieu of other procedures to award contracts for such work
38 with an estimated cost of three hundred fifty thousand dollars or
39 less. The small works roster process includes the limited public

1 works process authorized under subsection (3) of this section and any
2 local government authorized to award contracts using the small works
3 roster process under this section may award contracts using the
4 limited public works process under subsection (3) of this section.

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

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

1 agreement or contract must clearly identify the lead entity that is
2 responsible for implementing the provisions of this subsection.

3 (c) Procedures shall be established for securing telephone,
4 written, or electronic quotations from contractors on the appropriate
5 small works roster to assure that a competitive price is established
6 and to award contracts to the lowest responsible bidder, as defined
7 in RCW 39.04.010, except where consideration of additional criteria
8 is allowed or required under section 3 of this act, if applicable.

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

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

1 (e) Immediately after an award is made, the bid quotations
2 obtained shall be recorded, open to public inspection, and available
3 by at least one of the following: Telephone or electronic request.

4 (f) For projects awarded under the small works roster process
5 established under this subsection, a state agency or authorized local
6 government may waive the retainage requirements of RCW
7 60.28.011(1)(a), thereby assuming the liability for contractor's
8 nonpayment of: (i) Laborers, mechanics, subcontractors,
9 materialpersons, and suppliers; and (ii) taxes, increases, and
10 penalties under Titles 50, 51, and 82 RCW that may be due from the
11 contractor for the project. However, the state agency or local
12 government has the right of recovery against the contractor for any
13 payments made on the contractor's behalf. Recovery of unpaid wages
14 and benefits are the first priority for actions filed against the
15 contract.

16 (3)(a) In lieu of awarding contracts under subsection (2) of this
17 section, a state agency or authorized local government may award a
18 contract for work, construction, alteration, repair, or improvement
19 projects estimated to cost less than fifty thousand dollars using the
20 limited public works process provided under this subsection. Public
21 works projects awarded under this subsection are exempt from the
22 other requirements of the small works roster process provided under
23 subsection (2) of this section and are exempt from the requirement
24 that contracts be awarded after advertisement as provided under RCW
25 39.04.010.

26 (b) For limited public works projects, a state agency or
27 authorized local government shall solicit electronic or written
28 quotations from a minimum of three contractors from the appropriate
29 small works roster and shall award the contract to the lowest
30 responsible bidder as defined under RCW 39.04.010. After an award is
31 made, the quotations shall be open to public inspection and available
32 by electronic request. A state agency or authorized local government
33 must equitably distribute opportunities for limited public works
34 projects among contractors willing to perform in the geographic area
35 of the work. A state agency or authorized local government shall
36 maintain a list of the contractors contacted and the contracts
37 awarded during the previous twenty-four months under the limited
38 public works process, including the name of the contractor, the
39 contractor's registration number, the amount of the contract, a brief
40 description of the type of work performed, and the date the contract

1 was awarded. For limited public works projects, a state agency or
2 authorized local government may waive the payment and performance
3 bond requirements of chapter 39.08 RCW and may waive the retainage
4 requirements of RCW 60.28.011(1)(a), thereby assuming the liability
5 for the contractor's nonpayment of laborers, mechanics,
6 subcontractors, materialpersons, suppliers, and taxes, increases, and
7 penalties imposed under Titles 50, 51, and 82 RCW that may be due
8 from the contractor for the limited public works project, however the
9 state agency or authorized local government shall have the right of
10 recovery against the contractor for any payments made on the
11 contractor's behalf.

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

16 (5) A state agency or authorized local government may use the
17 limited public works process in this section to solicit and award
18 small works roster contracts to minibusinesses and microbusinesses as
19 defined under RCW 39.26.010 that are registered contractors.

20 (6) The definitions in this subsection apply throughout this
21 section unless the context clearly requires otherwise.

22 (a) "Equitably distribute opportunities" means that a state
23 agency or authorized local government may not favor certain
24 contractors on the appropriate small works roster over other
25 contractors on the same roster who perform similar services.

26 (b) "State agency" means the department of enterprise services,
27 the state parks and recreation commission, the department of natural
28 resources, the department of fish and wildlife, the department of
29 transportation, any institution of higher education as defined under
30 RCW 28B.10.016, and any other state agency delegated authority by the
31 department of enterprise services to engage in construction,
32 building, renovation, remodeling, alteration, improvement, or repair
33 activities.

34 **Sec. 21.** RCW 53.08.120 and 2018 c 149 s 2 are each amended to
35 read as follows:

36 (1) All material and work required by a port district not meeting
37 the definition of public work in RCW 39.04.010(4) may be procured in
38 the open market or by contract and all work ordered may be done by
39 contract or day labor.

1 (2)(a) All such contracts for work meeting the definition of
2 "public work" in RCW 39.04.010(4), the estimated cost of which
3 exceeds three hundred thousand dollars, shall be awarded using a
4 competitive bid process. The contract must be awarded at public
5 bidding upon notice published in a newspaper of general circulation
6 in the district at least thirteen days before the last date upon
7 which bids will be received, calling for bids upon the work, plans
8 and specifications for which shall then be on file in the office of
9 the commission for public inspection. The same notice may call for
10 bids on such work or material based upon plans and specifications
11 submitted by the bidder. The competitive bidding requirements for
12 purchases or public works may be waived pursuant to RCW 39.04.280 if
13 an exemption contained within that section applies to the purchase or
14 public work.

15 (b) For all contracts related to work meeting the definition of
16 "public work" in RCW 39.04.010(4) that are estimated at three hundred
17 thousand dollars or less, a port district may let contracts using the
18 small works roster process under RCW 39.04.155 in lieu of advertising
19 for bids. 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
24 to the contractor submitting the lowest and best proposal, and
25 whenever it would not violate the public interest, such contracts
26 shall be distributed equally among contractors, including minority
27 contractors, on the small works roster.

28 (c) Any port district may construct any public work, as defined
29 in RCW 39.04.010, by contract without calling for bids whenever the
30 estimated cost of the work or improvement, including cost of
31 materials, supplies, and equipment, will not exceed the sum of forty
32 thousand dollars. A "public works project" means a complete project.
33 The restrictions in this subsection do not permit the division of the
34 project into units of work or classes of work to avoid calling for
35 bids. The port district managing official shall make his or her best
36 effort to reach out to qualified contractors, including certified
37 minority and woman-owned contractors.

38 (3)(a) A port district may procure public works with a unit
39 priced contract under this section or RCW 39.04.010(2) for the

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

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

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

13 (d) Invitations for unit priced 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 port district will issue or
16 release work assignments, work orders, or task authorizations
17 pursuant to a unit priced contract for projects, tasks, or other work
18 based on the hourly rates or unit prices bid by the contractor.
19 Contracts must be awarded to the lowest responsible bidder as (~~per~~)
20 defined in RCW 39.04.010, except where consideration of additional
21 criteria is allowed or required under section 3 of this act, if
22 applicable. Whenever possible, the port district must invite at least
23 one proposal from a minority or woman contractor who otherwise
24 qualifies under this section.

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

34 **Sec. 22.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to
35 read as follows:

36 (1) Any item, or items of the same kind of materials, equipment,
37 or supplies purchased, the estimated cost of which is in excess of
38 thirty thousand dollars, exclusive of sales tax, shall be by
39 contract. However, a district may make purchases of the same kind of

1 items of materials, equipment, and supplies not exceeding twelve
2 thousand dollars in any calendar month without a contract, purchasing
3 any excess thereof over twelve thousand dollars by contract.

4 (2) Any work ordered by a district commission, the estimated cost
5 of which is in excess of fifty thousand dollars, exclusive of sales
6 tax, shall be by contract. However, a district commission may have
7 its own regularly employed personnel perform work which is an
8 accepted industry practice under prudent utility management without a
9 contract. For purposes of this section, "prudent utility management"
10 means performing work with regularly employed personnel utilizing
11 material of a worth not exceeding three hundred thousand dollars in
12 value without a contract. This limit on the value of material being
13 utilized in work being performed by regularly employed personnel
14 shall not include the value of individual items of equipment. For the
15 purposes of this section, the term "equipment" includes but is not
16 limited to conductor, cabling, wire, pipe, or lines used for
17 electrical, water, fiber optic, or telecommunications.

18 (3) Before awarding a contract required under subsection (1) or
19 (2) of this section, the commission shall publish a notice once or
20 more in a newspaper of general circulation in the district at least
21 thirteen days before the last date upon which bids will be received,
22 inviting sealed proposals for the work or materials. Plans and
23 specifications for the work or materials shall at the time of
24 publication be on file at the office of the district and subject to
25 public inspection. Any published notice ordering work to be performed
26 for the district shall be mailed at the time of publication to any
27 established trade association which files a written request with the
28 district to receive such notices. The commission may, at the same
29 time and as part of the same notice, invite tenders for the work or
30 materials upon plans and specifications to be submitted by the
31 bidders.

32 (4) As an alternative to the competitive bidding requirements of
33 this section and RCW 54.04.080, a district may let contracts using
34 the small works roster process under RCW 39.04.155.

35 (5) Whenever equipment or materials required by a district are
36 held by a governmental agency and are available for sale but such
37 agency is unwilling to submit a proposal, the commission may
38 ascertain the price of such items and file a statement of such price
39 supported by the sworn affidavit of one member of the commission, and
40 may consider such price as a bid without a deposit or bond.

1 (6) Pursuant to RCW 39.04.280, the commission may waive the
2 competitive bidding requirements of this section and RCW 54.04.080 if
3 an exemption contained within RCW 39.04.280 applies to the purchase
4 or public work.

5 (7)(a) A district may procure public works with a unit priced
6 contract under this section, RCW 54.04.080, or 54.04.085 for the
7 purpose of completing anticipated types of work based on hourly rates
8 or unit pricing for one or more categories of work or trades.

9 (b) For the purposes of this section, unit priced contract means
10 a competitively bid contract in which public works are anticipated on
11 a recurring basis to meet the business or operational needs of a
12 district, under which the contractor agrees to a fixed period
13 indefinite quantity delivery of work, at a defined unit price, for
14 each category of work.

15 (c) Unit priced contracts must be executed for an initial
16 contract term not to exceed three years, with the district having the
17 option of extending or renewing the unit priced contract for one
18 additional year.

19 (d) Invitations for unit price bids shall include, for purposes
20 of the bid evaluation, estimated quantities of the anticipated types
21 of work or trades, and specify how the district will issue or release
22 work assignments, work orders, or task authorizations pursuant to a
23 unit priced contract for projects, tasks, or other work based on the
24 hourly rates or unit prices bid by the contractor. Where electrical
25 facility construction or improvement work is anticipated, contractors
26 on a unit priced contract shall comply with the requirements under
27 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
28 lowest responsible bidder as (~~per~~) defined in RCW 39.04.010, except
29 where consideration of additional criteria is allowed or required
30 under section 3 of this act, if applicable.

31 (e) Unit price contractors shall pay prevailing wages for all
32 work that would otherwise be subject to the requirements of chapter
33 39.12 RCW. Prevailing wages for all work performed pursuant to each
34 work order must be the prevailing wage rates in effect at the
35 beginning date for each contract year. Unit priced contracts must
36 have prevailing wage rates updated annually. Intents and affidavits
37 for prevailing wages paid must be submitted annually for all work
38 completed within the previous twelve-month period of the unit priced
39 contract.

1 **Sec. 23.** RCW 57.08.050 and 2019 c 434 s 10 are each amended to
2 read as follows:

3 (1) All work ordered, the estimated cost of which is in excess of
4 fifty thousand dollars, shall be let by contract and competitive
5 bidding. Before awarding any such contract the board of commissioners
6 shall publish a notice in a newspaper of general circulation where
7 the district is located at least once thirteen days before the last
8 date upon which bids will be received, inviting sealed proposals for
9 such work, plans and specifications which must at the time of
10 publication of such notice be on file in the office of the board of
11 commissioners subject to the public inspection. The notice shall
12 state generally the work to be done and shall call for proposals for
13 doing the same to be sealed and filed with the board of commissioners
14 on or before the day and hour named therein.

15 Each bid shall be accompanied by a certified or cashier's check
16 or postal money order payable to the order of the county treasurer
17 for a sum not less than five percent of the amount of the bid, or
18 accompanied by a bid bond in an amount not less than five percent of
19 the bid with a corporate surety licensed to do business in the state,
20 conditioned that the bidder will pay the district as liquidated
21 damages the amount specified in the bond, unless the bidder enters
22 into a contract in accordance with the bidder's bid, and no bid shall
23 be considered unless accompanied by such check, cash or bid bond. At
24 the time and place named such bids shall be publicly opened and read
25 and the board of commissioners shall proceed to canvass the bids and
26 may let such contract to the lowest responsible bidder upon plans and
27 specifications on file or to the best bidder submitting the bidder's
28 own plans and specifications. The board of commissioners may reject
29 all bids for good cause and readvertise and in such case all checks,
30 cash or bid bonds shall be returned to the bidders. If the contract
31 is let, then all checks, cash, or bid bonds shall be returned to the
32 bidders, except that of the successful bidder, which shall be
33 retained until a contract shall be entered into for doing the work,
34 and a bond to perform such work furnished with sureties satisfactory
35 to the board of commissioners in the full amount of the contract
36 price between the bidder and the commission in accordance with the
37 bid. If the bidder fails to enter into the contract in accordance
38 with the bid and furnish the bond within ten days from the date at
39 which the bidder is notified that the bidder is the successful
40 bidder, the check, cash, or bid bonds and the amount thereof shall be

1 forfeited to the district. If the bidder fails to enter into a
2 contract in accordance with the bidder's bid, and the board of
3 commissioners deems it necessary to take legal action to collect on
4 any bid bond required by this section, then the district shall be
5 entitled to collect from the bidder any legal expenses, including
6 reasonable attorneys' fees occasioned thereby. A low bidder who
7 claims error and fails to enter into a contract is prohibited from
8 bidding on the same project if a second or subsequent call for bids
9 is made for the project.

10 (2) As an alternative to requirements under subsection (1) of
11 this section, a water-sewer district may let contracts using the
12 small works roster process under RCW 39.04.155.

13 (3) Any purchase of materials, supplies, or equipment, with an
14 estimated cost in excess of forty thousand dollars, shall be by
15 contract. Any purchase of materials, supplies, or equipment, with an
16 estimated cost of less than fifty thousand dollars shall be made
17 using the process provided in RCW 39.04.190. Any purchase of
18 materials, supplies, or equipment with an estimated cost of fifty
19 thousand dollars or more shall be made by competitive bidding
20 following the procedure for letting contracts for projects under
21 subsection (1) of this section.

22 (4) As an alternative to requirements under subsection (3) of
23 this section, a water-sewer district may let contracts for purchase
24 of materials, supplies, or equipment with the suppliers designated on
25 current state agency, county, city, or town purchasing rosters for
26 the materials, supplies, or equipment, when the roster has been
27 established in accordance with the competitive bidding law for
28 purchases applicable to the state agency, county, city, or town. The
29 price and terms for purchases shall be as described on the applicable
30 roster.

31 (5) The board may waive the competitive bidding requirements of
32 this section pursuant to RCW 39.04.280 if an exemption contained
33 within that section applies to the purchase or public work.

34 (6) (a) A district may procure public works with a unit priced
35 contract under this section for the purpose of completing anticipated
36 types of work based on hourly rates or unit pricing for one or more
37 categories of work or trades.

38 (b) For the purposes of this section, "unit priced contract"
39 means a competitively bid contract in which public works are
40 anticipated on a recurring basis to meet the business or operational

1 needs of the district, under which the contractor agrees to a fixed
2 period indefinite quantity delivery of work, at a defined unit price
3 for each category of work.

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

8 (d) Invitations for unit price bids must include, for purposes of
9 the bid evaluation, estimated quantities of the anticipated types of
10 work or trades, and specify how the district will issue or release
11 work assignments, work orders, or task authorizations pursuant to a
12 unit priced contract for projects, tasks, or other work based on the
13 hourly rates or unit prices bid by the contractor. Contracts must be
14 awarded to the lowest responsible bidder as (~~per~~) defined in RCW
15 39.04.010, except where consideration of additional criteria is
16 allowed or required under section 3 of this act, if applicable.
17 Whenever possible, the district must invite at least one proposal
18 from a certified minority or woman contractor who otherwise qualifies
19 under this section.

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

29 NEW SECTION. **Sec. 24.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

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