
ENGROSSED SUBSTITUTE SENATE BILL 5418

State of Washington

66th Legislature

2019 Regular Session

By Senate Local Government (originally sponsored by Senators Takko, Zeiger, and Lias)

READ FIRST TIME 02/20/19.

1 AN ACT Relating to local government procurement modernization and
2 efficiency; amending RCW 39.04.155, 54.04.070, 57.08.050, 35.23.352,
3 35.22.620, 52.14.110, and 39.04.105; reenacting and amending RCW
4 36.32.235; creating a new section; and providing an expiration date.

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

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

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

17 (2) As used in this section:

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

19 (b) "Riverine project" means a project of construction,
20 alteration, repair, replacement, or improvement other than ordinary
21 maintenance, executed at the cost of the state or of any

1 municipality, or which is by law a lien or charge on any property,
2 carried out on a river or stream and its tributaries and associated
3 floodplains, beds, banks, and waters for the purpose of improving
4 aquatic habitat, improving water quality, restoring floodplain
5 function, or providing flood protection.

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

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

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

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

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

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

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

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

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

39 (9) A county may procure public works with a unit priced contract
40 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 hundred fifty
21 thousand dollars to (~~three~~) five hundred thousand dollars, a state
22 agency or local government that chooses to solicit bids from less
23 than all the appropriate contractors on the appropriate small works
24 roster must also notify the remaining contractors on the appropriate
25 small works roster that quotations on the work are being sought. The
26 government has the sole option of determining whether this notice to
27 the remaining contractors is made by: (i) Publishing notice in a
28 legal newspaper in general circulation in the area where the work is
29 to be done; (ii) mailing a notice to these contractors; or (iii)
30 sending a notice to these contractors by facsimile or other
31 electronic means. For purposes of this subsection (2)(c), "equitably
32 distribute" means that a state agency or local government soliciting
33 bids may not favor certain contractors on the appropriate small works
34 roster over other contractors on the appropriate small works roster
35 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.

19 **Sec. 3.** RCW 54.04.070 and 2017 c 85 s 1 are each amended to read
20 as follows:

21 (1) Any item, or items of the same kind of materials, equipment,
22 or supplies purchased, the estimated cost of which is in excess of
23 (~~(fifteen)~~) thirty thousand dollars, exclusive of sales tax, shall be
24 by contract. However, a district may make purchases of the same kind
25 of items of materials, equipment, and supplies not exceeding
26 (~~(seven)~~) twelve thousand (~~(five hundred)~~) dollars in any calendar
27 month without a contract, purchasing any excess thereof over
28 (~~(seven)~~) twelve thousand (~~(five hundred)~~) dollars by contract.

29 (2) Any work ordered by a district commission, the estimated cost
30 of which is in excess of (~~(twenty-five)~~) fifty thousand dollars,
31 exclusive of sales tax, shall be by contract. However, a district
32 commission may have its own regularly employed personnel perform work
33 which is an accepted industry practice under prudent utility
34 management without a contract. For purposes of this section, "prudent
35 utility management" means performing work with regularly employed
36 personnel utilizing material of a worth not exceeding (~~(one)~~) three
37 hundred (~~(fifty)~~) thousand dollars in value without a contract. This
38 limit on the value of material being utilized in work being performed
39 by regularly employed personnel shall not include the value of

1 individual items of equipment (~~(purchased or acquired and used as one~~
2 ~~unit of a project)~~). For the purposes of this section, the term
3 "equipment" includes but is not limited to conductor, cabling, wire,
4 pipe, or lines used for electrical, water, fiber optic, or
5 telecommunications.

6 (3) Before awarding a contract required under subsection (1) or
7 (2) of this section, the commission shall publish a notice once or
8 more in a newspaper of general circulation in the district at least
9 thirteen days before the last date upon which bids will be received,
10 inviting sealed proposals for the work or materials. Plans and
11 specifications for the work or materials shall at the time of
12 publication be on file at the office of the district and subject to
13 public inspection. Any published notice ordering work to be performed
14 for the district shall be mailed at the time of publication to any
15 established trade association which files a written request with the
16 district to receive such notices. The commission may, at the same
17 time and as part of the same notice, invite tenders for the work or
18 materials upon plans and specifications to be submitted by the
19 bidders.

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

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

29 (6) Pursuant to RCW 39.04.280, the commission may waive the
30 competitive bidding requirements of this section and RCW 54.04.080 if
31 an exemption contained within RCW 39.04.280 applies to the purchase
32 or public work.

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

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

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

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

7 (d) Invitations for unit price bids shall include, for purposes
8 of the bid evaluation, estimated quantities of the anticipated types
9 of work or trades, and specify how the district will issue or release
10 work assignments, work orders, or task authorizations pursuant to a
11 unit priced contract for projects, tasks, or other work based on the
12 hourly rates or unit prices bid by the contractor. Where electrical
13 facility construction or improvement work is anticipated, contractors
14 on a unit priced contract shall comply with the requirements under
15 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
16 lowest responsible bidder as per RCW 39.04.010.

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

27 **Sec. 4.** RCW 57.08.050 and 2015 c 136 s 1 are each amended to
28 read as follows:

29 (1) All work ordered, the estimated cost of which is in excess of
30 fifty thousand dollars, shall be let by contract and competitive
31 bidding. Before awarding any such contract the board of commissioners
32 shall publish a notice in a newspaper of general circulation where
33 the district is located at least once thirteen days before the last
34 date upon which bids will be received, inviting sealed proposals for
35 such work, plans and specifications which must at the time of
36 publication of such notice be on file in the office of the board of
37 commissioners subject to the public inspection. The notice shall
38 state generally the work to be done and shall call for proposals for

1 doing the same to be sealed and filed with the board of commissioners
2 on or before the day and hour named therein.

3 Each bid shall be accompanied by a certified or cashier's check
4 or postal money order payable to the order of the county treasurer
5 for a sum not less than five percent of the amount of the bid, or
6 accompanied by a bid bond in an amount not less than five percent of
7 the bid with a corporate surety licensed to do business in the state,
8 conditioned that the bidder will pay the district as liquidated
9 damages the amount specified in the bond, unless the bidder enters
10 into a contract in accordance with the bidder's bid, and no bid shall
11 be considered unless accompanied by such check, cash or bid bond. At
12 the time and place named such bids shall be publicly opened and read
13 and the board of commissioners shall proceed to canvass the bids and
14 may let such contract to the lowest responsible bidder upon plans and
15 specifications on file or to the best bidder submitting the bidder's
16 own plans and specifications. The board of commissioners may reject
17 all bids for good cause and readvertise and in such case all checks,
18 cash or bid bonds shall be returned to the bidders. If the contract
19 is let, then all checks, cash, or bid bonds shall be returned to the
20 bidders, except that of the successful bidder, which shall be
21 retained until a contract shall be entered into for doing the work,
22 and a bond to perform such work furnished with sureties satisfactory
23 to the board of commissioners in the full amount of the contract
24 price between the bidder and the commission in accordance with the
25 bid. If the bidder fails to enter into the contract in accordance
26 with the bid and furnish the bond within ten days from the date at
27 which the bidder is notified that the bidder is the successful
28 bidder, the check, cash, or bid bonds and the amount thereof shall be
29 forfeited to the district. If the bidder fails to enter into a
30 contract in accordance with the bidder's bid, and the board of
31 commissioners deems it necessary to take legal action to collect on
32 any bid bond required by this section, then the district shall be
33 entitled to collect from the bidder any legal expenses, including
34 reasonable attorneys' fees occasioned thereby. A low bidder who
35 claims error and fails to enter into a contract is prohibited from
36 bidding on the same project if a second or subsequent call for bids
37 is made for the project.

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

1 (3) Any purchase of materials, supplies, or equipment, with an
2 estimated cost in excess of forty thousand dollars, shall be by
3 contract. Any purchase of materials, supplies, or equipment, with an
4 estimated cost of less than fifty thousand dollars shall be made
5 using the process provided in RCW 39.04.190. Any purchase of
6 materials, supplies, or equipment with an estimated cost of fifty
7 thousand dollars or more shall be made by competitive bidding
8 following the procedure for letting contracts for projects under
9 subsection (1) of this section.

10 (4) As an alternative to requirements under subsection (3) of
11 this section, a water-sewer district may let contracts for purchase
12 of materials, supplies, or equipment with the suppliers designated on
13 current state agency, county, city, or town purchasing rosters for
14 the materials, supplies, or equipment, when the roster has been
15 established in accordance with the competitive bidding law for
16 purchases applicable to the state agency, county, city, or town. The
17 price and terms for purchases shall be as described on the applicable
18 roster.

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

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

26 (b) For the purposes of this section, "unit priced contract"
27 means a competitively bid contract in which public works are
28 anticipated on a recurring basis to meet the business or operational
29 needs of the district, under which the contractor agrees to a fixed
30 period indefinite quantity delivery of work, at a defined unit price
31 for each category of work.

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

36 (d) Invitations for unit price bids must include, for purposes of
37 the bid evaluation, estimated quantities of the anticipated types of
38 work or trades, and specify how the district will issue or release
39 work assignments, work orders, or task authorizations pursuant to a
40 unit priced contract for projects, tasks, or other work based on the

1 hourly rates or unit prices bid by the contractor. Contracts must be
2 awarded to the lowest responsible bidder as per RCW 39.04.010.
3 Whenever possible, the district must invite at least one proposal
4 from a minority or woman contractor who otherwise qualifies under
5 this section.

6 (e) Unit price contractors shall pay prevailing wages for all
7 work that would otherwise be subject to the requirements of chapter
8 39.12 RCW. Prevailing wages for all work performed pursuant to each
9 work order must be the prevailing wage rates in effect at the
10 beginning date for each contract year. Unit priced contracts must
11 have prevailing wage rates updated annually. Intents and affidavits
12 for prevailing wages paid must be submitted annually for all work
13 completed within the previous twelve-month period of the unit priced
14 contract.

15 **Sec. 5.** RCW 35.23.352 and 2018 c 74 s 2 are each amended to read
16 as follows:

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

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

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

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

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

29 (2) Until July 28, 2022, for the purposes of this section,
30 "lowest responsible bidder" means a bid that meets the criteria under
31 RCW 39.04.350; and has the lowest bid, or has a bid that is within
32 five percent of the lowest bid and meets the following supplemental
33 criteria:

34 (a) The bidder has delivered at least one project of similar size
35 and scope within the last five years for the city on time, within
36 budget, and according to required specifications; and

37 (b) The bidder has not delivered a project to the city within the
38 last five years that was late, over budget, or did not meet
39 specifications.

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

4 ~~((3))~~ (4) In lieu of the procedures of subsection (1) of this
5 section, a second-class city or a town may let contracts using the
6 small works roster process provided in RCW 39.04.155.

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

10 ~~((4))~~ (5) The form required by RCW 43.09.205 shall be to
11 account and record costs of public works in excess of five thousand
12 dollars that are not let by contract.

13 ~~((5))~~ (6) The cost of a separate public works project shall be
14 the costs of the materials, equipment, supplies, and labor on that
15 construction project.

16 ~~((6))~~ (7) Any purchase of supplies, material, or equipment,
17 except for public work or improvement, where the cost thereof exceeds
18 seven thousand five hundred dollars shall be made upon call for bids.

19 ~~((7))~~ (8) Bids shall be called annually and at a time and in
20 the manner prescribed by ordinance for the publication in a newspaper
21 of general circulation in the city or town of all notices or
22 newspaper publications required by law. The contract shall be awarded
23 to the lowest responsible bidder.

24 ~~((8))~~ (9) For advertisement and formal sealed bidding to be
25 dispensed with as to purchases with an estimated value of fifteen
26 thousand dollars or less, the council or commission must authorize by
27 resolution, use of the uniform procedure provided in RCW 39.04.190.

28 ~~((9))~~ (10) The city or town legislative authority may waive the
29 competitive bidding requirements of this section pursuant to RCW
30 39.04.280 if an exemption contained within that section applies to
31 the purchase or public work.

32 ~~((10))~~ (11) This section does not apply to performance-based
33 contracts, as defined in RCW 39.35A.020(4), that are negotiated under
34 chapter 39.35A RCW.

35 ~~((11))~~ (12) Nothing in this section shall prohibit any second
36 class city or any town from allowing for preferential purchase of
37 products made from recycled materials or products that may be
38 recycled or reused.

39 ~~((12))~~ (13)(a) Any second-class city or any town may procure
40 public works with a unit priced contract under this section 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"
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 city or town, under which the contractor agrees to a
7 fixed period indefinite quantity delivery of work, at a defined unit
8 price for 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 city or town having
11 the option of extending or renewing the unit priced contract for one
12 additional year.

13 (d) 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 city or town 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 RCW
20 39.04.010. Whenever possible, the city or town must invite at least
21 one proposal from a minority or woman contractor who otherwise
22 qualifies under this section.

23 (e) 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 **Sec. 6.** RCW 35.22.620 and 2018 c 74 s 1 are each amended to read
33 as follows:

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

36 (2) A first-class city may have public works performed by
37 contract pursuant to public notice and call for competitive bids. As
38 limited by subsection (3) of this section, a first-class city may
39 have public works performed by city employees in any annual or

1 biennial budget period equal to a dollar value not exceeding ten
2 percent of the public works construction budget, including any amount
3 in a supplemental public works construction budget, over the budget
4 period. The amount of public works that a first-class city has a
5 county perform for it under RCW 35.77.020 shall be included within
6 this ten percent limitation.

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

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

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

29 (3) In addition to the percentage limitation provided in
30 subsection (2) of this section, a first-class city shall not have
31 public employees perform a public works project in excess of
32 (~~ninety~~) one hundred sixteen thousand one hundred fifty-five
33 thousand dollars if more than a single craft or trade is involved
34 with the public works project, or a public works project in excess of
35 (~~forty-five thousand~~) seventy-five thousand five hundred dollars if
36 only a single craft or trade is involved with the public works
37 project or the public works project is street signalization or street
38 lighting. A public works project means a complete project. The
39 restrictions in this subsection do not permit the division of the
40 project into units of work or classes of work to avoid the

1 restriction on work that may be performed by day labor on a single
2 project.

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

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

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

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

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

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

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

37 (9) This section does not apply to performance-based contracts,
38 as defined in RCW 39.35A.020(4), that are negotiated under chapter
39 39.35A RCW.

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

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

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

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

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

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

37 **Sec. 7.** RCW 52.14.110 and 2009 c 229 s 9 are each amended to
38 read as follows:

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

6 (1) The purchase of any materials, supplies, or equipment if the
7 cost will not exceed the sum of (~~ten~~) forty thousand dollars.
8 However, whenever the estimated cost does not exceed (~~fifty~~)
9 seventy-five thousand dollars, the commissioners may by resolution
10 use the process provided in RCW 39.04.190 to award contracts;

11 (2) Contracting for work to be done involving the construction or
12 improvement of a fire station or other buildings where the estimated
13 cost will not exceed the sum of (~~twenty~~) thirty thousand dollars,
14 which includes the costs of labor, material, and equipment;

15 (3) Contracts using the small works roster process under RCW
16 39.04.155; and

17 (4) Any contract for purchases or public work pursuant to RCW
18 39.04.280 if an exemption contained within that section applies to
19 the purchase or public work.

20 **Sec. 8.** RCW 39.04.105 and 2003 c 300 s 1 are each amended to
21 read as follows:

22 (1) Within two business days of the bid opening on a public works
23 project that is the subject of competitive bids, the municipality
24 must provide, if requested by a bidder, copies of the bids the
25 municipality received for the project. The municipality shall then
26 allow at least two full business days after providing bidders with
27 copies of all bids before executing a contract for the project.
28 Intermediate Saturdays, Sundays, and legal holidays are not counted.

29 (2) When a municipality receives a written protest from a bidder
30 for a public works project (~~which~~) that is the subject of
31 competitive bids, the municipality (~~shall~~) must not execute a
32 contract for the project with anyone other than the protesting bidder
33 without first providing at least two full business days' written
34 notice of the municipality's intent to execute a contract for the
35 project; provided that the protesting bidder submits notice in
36 writing of its protest no later than:

37 (a) Two full business days following bid opening, if no bidder
38 requested copies of the bids received for the project under
39 subsection (1) of this section; or

1 (b) Two full business days following when the municipality
2 provided copies of the bids to those bidders requesting bids under
3 subsection (1) of this section. Intermediate Saturdays, Sundays, and
4 legal holidays are not counted.

5 NEW SECTION. **Sec. 9.** (1) The capital projects advisory review
6 board must review the public works contracting processes for local
7 governments, including the small works roster and limited public
8 works processes provided in RCW 39.04.155, and report to the governor
9 and appropriate committees of the legislature by November 1, 2020.
10 The report must include the following:

11 (a) Identification of the most common contracting procedures used
12 by local governments;

13 (b) Identification of the dollar amounts set for local government
14 public works contracting processes;

15 (c) Analysis of whether the dollar amounts identified in (b) of
16 this subsection comport with estimated project costs within the
17 relevant industries;

18 (d) An analysis of the potential application of an inflation-
19 based increaser to the dollar amounts identified in (b) of this
20 subsection, for example, applying the implicit price deflator for
21 state and local government purchases of goods and services for the
22 United States as published by the bureau of economic analysis of the
23 federal department of commerce;

24 (e) Recommendations to increase uniformity and efficiency for
25 local government public works contracting and procurement processes;

26 (f) Rates of participation of all contractor types, including
27 qualified minority and women-owned and controlled businesses, in the
28 small works roster and limited public works contracting processes;
29 and

30 (g) Barriers to improving the participation rate in the small
31 works roster and limited public works contracting processes.

32 (2) For purposes of this section, "local governments" refers to
33 all counties, cities, towns, other political subdivisions, and
34 special purpose districts.

35 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act expire
36 on March 31, 2021.

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