
SENATE BILL 5618

State of Washington

66th Legislature

2019 Regular Session

By Senator Wagoner

1 AN ACT Relating to public works bid limits; and amending RCW
2 39.04.155 and 35.23.352.

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

4 **Sec. 1.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to
5 read as follows:

6 (1) This section provides uniform small works roster provisions
7 to award contracts for construction, building, renovation,
8 remodeling, alteration, repair, or improvement of real property that
9 may be used by state agencies and by any local government that is
10 expressly authorized to use these provisions. These provisions may be
11 used in lieu of other procedures to award contracts for such work
12 with an estimated cost of (~~three~~) five hundred thousand dollars or
13 less. The small works roster process includes the limited public
14 works process authorized under subsection (3) of this section and any
15 local government authorized to award contracts using the small works
16 roster process under this section may award contracts using the
17 limited public works process under subsection (3) of this section.

18 (2)(a) A state agency or authorized local government may create a
19 single general small works roster, or may create a small works roster
20 for different specialties or categories of anticipated work. Where
21 applicable, small works rosters may make distinctions between

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

20 (b) A state agency establishing a small works roster or rosters
21 shall adopt rules implementing this subsection. A local government
22 establishing a small works roster or rosters shall adopt an ordinance
23 or resolution implementing this subsection. Procedures included in
24 rules adopted by the department of enterprise services in
25 implementing this subsection must be included in any rules providing
26 for a small works roster or rosters that is adopted by another state
27 agency, if the authority for that state agency to engage in these
28 activities has been delegated to it by the department of enterprise
29 services under chapter 43.19 RCW. An interlocal contract or agreement
30 between two or more state agencies or local governments establishing
31 a small works roster or rosters to be used by the parties to the
32 agreement or contract must clearly identify the lead entity that is
33 responsible for implementing the provisions of this subsection.

34 (c) Procedures shall be established for securing telephone,
35 written, or electronic quotations from contractors on the appropriate
36 small works roster to assure that a competitive price is established
37 and to award contracts to the lowest responsible bidder, as defined
38 in RCW 39.04.010. Invitations for quotations shall include an
39 estimate of the scope and nature of the work to be performed as well
40 as materials and equipment to be furnished. However, detailed plans

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

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

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

31 (3) In lieu of awarding contracts under subsection (2) of this
32 section, a state agency or authorized local government may award a
33 contract for work, construction, alteration, repair, or improvement
34 projects estimated to cost less than thirty-five thousand dollars
35 using the limited public works process provided under this
36 subsection. Public works projects awarded under this subsection are
37 exempt from the other requirements of the small works roster process
38 provided under subsection (2) of this section and are exempt from the
39 requirement that contracts be awarded after advertisement as provided
40 under RCW 39.04.010.

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

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

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

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

1 (6) As used in this section, "state agency" means the department
2 of enterprise services, the state parks and recreation commission,
3 the department of natural resources, the department of fish and
4 wildlife, the department of transportation, any institution of higher
5 education as defined under RCW 28B.10.016, and any other state agency
6 delegated authority by the department of enterprise services to
7 engage in construction, building, renovation, remodeling, alteration,
8 improvement, or repair activities.

9 (7) (a) The office of financial management must adjust the dollar
10 amounts in this section every five years, beginning July 1, 2024,
11 based on the percentage change in the implicit price deflator for
12 state and local government purchases of goods and services for the
13 United States as published by the bureau of economic analysis of the
14 federal department of commerce during the previous five-year period.

15 (b) The office of financial management must notify the
16 appropriate standing committees of the legislature of the new dollar
17 thresholds upon each adjustment. Unless the legislature acts to
18 change or otherwise alter the new dollar amounts, they will take
19 effect at the end of the regular legislative session in the next
20 year.

21 **Sec. 2.** RCW 35.23.352 and 2018 c 74 s 2 are each amended to read
22 as follows:

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

37 Whenever the cost of the public work or improvement, including
38 materials, supplies and equipment, will exceed these figures, the
39 same shall be done by contract. All such contracts shall be let at

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

18 When the contract is let then all bid proposal deposits shall be
19 returned to the bidders except that of the successful bidder which
20 shall be retained until a contract is entered into and a bond to
21 perform the work furnished, with surety satisfactory to the council
22 or commission, in accordance with RCW 39.08.030. If the bidder fails
23 to enter into the contract in accordance with his or her bid and
24 furnish a bond within ten days from the date at which he or she is
25 notified that he or she is the successful bidder, the check or postal
26 money order and the amount thereof shall be forfeited to the council
27 or commission or the council or commission shall recover the amount
28 of the surety bond. 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.

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

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

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

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

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

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

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

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

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

22 (9) The city or town legislative authority may waive the
23 competitive bidding requirements of this section pursuant to RCW
24 39.04.280 if an exemption contained within that section applies to
25 the purchase or public work.

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

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

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

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

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

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

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

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

26 (13)(a) The office of financial management must adjust the dollar
27 amounts in this section every five years, beginning July 1, 2024,
28 based on the percentage change in the implicit price deflator for
29 state and local government purchases of goods and services for the
30 United States as published by the bureau of economic analysis of the
31 federal department of commerce during the previous five-year period.

32 (b) The office of financial management must notify the
33 appropriate standing committees of the legislature of the new dollar
34 thresholds upon each adjustment. Unless the legislature acts to
35 change or otherwise alter the new dollar amounts, they will take
36 effect at the end of the regular legislative session in the next
37 year.

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