
SENATE BILL 5958

State of Washington

66th Legislature

2019 Regular Session

By Senators Lovelett and Nguyen

1 AN ACT Relating to public works contracts and interlocal
2 agreements by second-class cities and towns; and amending RCW
3 35.23.352.

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

5 **Sec. 1.** RCW 35.23.352 and 2018 c 74 s 2 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (13) Nothing in this section prohibits any second-class city or
29 any town from purchasing or otherwise contracting through a bid,
30 proposal, or contract awarded by another public agency or group of
31 public agencies under chapter 39.34 RCW. Any obligation to provide
32 notice for bids and proposals arising from a local ordinance, local
33 policy, or charter requirement is satisfied if the requirements of
34 RCW 39.34.030(5) are met.

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