
ENGROSSED SUBSTITUTE HOUSE BILL 2409

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Franklin, Heavey, Winsley, R. King, Jones, Orr, Jacobsen, Prentice, G. Cole, Day and Valle)

Read first time 02/03/92.

1 AN ACT Relating to public works contracts; and amending RCW
2 35.22.620, 35.23.352, 36.32.250, 39.04.015, 39.04.155, 56.08.070, and
3 57.08.050.

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

5 **Sec. 1.** RCW 35.22.620 and 1989 c 431 s 59 are each amended to read
6 as follows:

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

9 (2) A first class city may have public works performed by contract
10 pursuant to public notice and call for competitive bids. As limited by
11 subsection (3) of this section, a first class city may have public
12 works performed by city employees in any annual or biennial budget
13 period equal to a dollar value not exceeding ten percent of the public
14 works construction budget, including any amount in a supplemental

1 public works construction budget, over the budget period. The amount
2 of public works that a first class city has a county perform for it
3 under RCW 35.77.020 shall be included within this ten percent
4 limitation.

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

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

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

26 (3) In addition to the percentage limitation provided in subsection
27 (2) of this section, a first class city with a population in excess of
28 one hundred fifty thousand shall not have public employees perform a
29 public works project in excess of fifty thousand dollars if more than
30 a single craft or trade is involved with the public works project, or

1 a public works project in excess of twenty-five thousand dollars if
2 only a single craft or trade is involved with the public works project
3 or the public works project is street signalization or street lighting.
4 In addition to the percentage limitation provided in subsection (2) of
5 this section, a first class city with a population of one hundred fifty
6 thousand or less shall not have public employees perform a public works
7 project in excess of thirty-five thousand dollars if more than one
8 craft or trade is involved with the public works project, or a public
9 works project in excess of twenty thousand dollars if only a single
10 craft or trade is involved with the public works project or the public
11 works project is street signalization or street lighting. A public
12 works project means a complete project. The restrictions in this
13 subsection do not permit the division of the project into units of work
14 or classes of work to avoid the restriction on work that may be
15 performed by day labor on a single project.

16 (4) In addition to the accounting and record-keeping requirements
17 contained in RCW 39.04.070, every first class city annually shall
18 prepare a report for the state auditor indicating the total public
19 works construction budget and supplemental public works construction
20 budget for that year, the total construction costs of public works
21 performed by public employees for that year, and the amount of public
22 works that is performed by public employees above or below ten percent
23 of the total construction budget. However, if a city budgets on a
24 biennial basis, this annual report shall indicate the amount of public
25 works that is performed by public employees within the current biennial
26 period that is above or below ten percent of the total biennial
27 construction budget.

28 After September 1, 1987, each first class city with a population of
29 one hundred fifty thousand or less shall use the form required by RCW

1 43.09.205 to account and record costs of public works in excess of five
2 thousand dollars that are not let by contract.

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

7 (6) When any emergency shall require the immediate execution of
8 such public work, upon the finding of the existence of such emergency
9 by the authority having power to direct such public work to be done and
10 duly entered of record, publication of description and estimate may be
11 made within seven days after the commencement of the work. Within two
12 weeks of the finding that such an emergency existed, the city council
13 shall adopt a resolution certifying the existence of this emergency
14 situation.

15 (7) In lieu of the procedures of subsections (2) and (6) of this
16 section, a first class city may use a small works roster and award
17 contracts under this subsection for contracts of one hundred thousand
18 dollars or less.

19 (a) The city may maintain a small works roster comprised of all
20 contractors who have requested to be on the roster and are, where
21 required by law, properly licensed or registered to perform such work
22 in this state.

23 (b) Whenever work is done by contract, the estimated cost of which
24 is one hundred thousand dollars or less, and the city uses the small
25 works roster, the city shall invite proposals from all appropriate
26 contractors on the small works roster: PROVIDED, That not less than
27 five separate appropriate contractors, if available, shall be invited
28 to submit bids on any one contract: PROVIDED FURTHER, That whenever
29 possible, the city shall invite at least one proposal from a minority
30 or woman contractor who shall otherwise qualify under this section.

1 Once a bidder on the small works roster has been offered an opportunity
2 to bid, that bidder shall not be offered another opportunity until all
3 other appropriate contractors on the small works roster have been
4 afforded an opportunity to submit a bid. Invitations shall include an
5 estimate of the scope and nature of the work to be performed, and
6 materials and equipment to be furnished.

7 (c) When awarding such a contract for work, the estimated cost of
8 which is one hundred thousand dollars or less, the city shall award the
9 contract to the contractor submitting the lowest responsible bid. In
10 determining the lowest responsible bidder, in addition to price, the
11 city shall give consideration to:

12 (i) The ability of the contractor to complete the contract within
13 the prescribed schedule outlined in the contract specifications; and

14 (ii) The compliance of the contractor with federal, state, and
15 local laws pertaining to the contract.

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

18 (9) This section does not apply to performance-based contracts, as
19 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
20 RCW.

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

24 **Sec. 2.** RCW 35.23.352 and 1989 c 431 s 56 are each amended to read
25 as follows:

26 (1) Any second or third class city or any town may construct any
27 public works, as defined in RCW 39.04.010, by contract or day labor
28 without calling for bids therefor whenever the estimated cost of the
29 work or improvement, including cost of materials, supplies and

1 equipment will not exceed the sum of thirty thousand dollars if more
2 than one craft or trade is involved with the public works, or twenty
3 thousand dollars if a single craft or trade is involved with the public
4 works or the public works project is street signalization or street
5 lighting. A public works project means a complete project. The
6 restrictions in this subsection do not permit the division of the
7 project into units of work or classes of work to avoid the restriction
8 on work that may be performed by day labor on a single project.

9 Whenever the cost of the public work or improvement, including
10 materials, supplies and equipment, will exceed these figures, the same
11 shall be done by contract. All such contracts shall be let at public
12 bidding upon posting notice calling for sealed bids upon the work. The
13 notice thereof shall be posted in a public place in the city or town
14 and by publication in the official newspaper, or a newspaper of general
15 circulation most likely to bring responsive bids, once each week for
16 two consecutive weeks before the date fixed for opening the bids. The
17 notice shall generally state the nature of the work to be done that
18 plans and specifications therefor shall then be on file in the city or
19 town hall for public inspections, and require that bids be sealed and
20 filed with the council or commission within the time specified therein.
21 Each bid shall be accompanied by a bid proposal deposit in the form of
22 a cashier's check, postal money order, or surety bond to the council or
23 commission for a sum of not less than five percent of the amount of the
24 bid, and no bid shall be considered unless accompanied by such bid
25 proposal deposit. The council or commission of the city or town shall
26 let the contract to the lowest responsible bidder or shall have power
27 by resolution to reject any or all bids and to make further calls for
28 bids in the same manner as the original call. In determining the
29 lowest responsible bidder, in addition to price, the city shall give
30 consideration to:

1 (a) The ability of the contractor to complete the contract within
2 the prescribed schedule outlined in the contract specifications;

3 (b) The compliance of the contractor with federal, state, and local
4 laws pertaining to the contract.

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 or
9 commission, in the full amount of the contract price. If the bidder
10 fails to enter into the contract in accordance with his bid and furnish
11 a bond within ten days from the date at which he is notified that he is
12 the successful bidder, the check or postal money order and the amount
13 thereof shall be forfeited to the council or commission or the council
14 or commission shall recover the amount of the surety bond.

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

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

22 (3) In lieu of the procedures of subsection (1) of this section, a
23 second or third class city or a town may use a small works roster and
24 award contracts under this subsection for contracts of one hundred
25 thousand dollars or less.

26 (a) The city or town may maintain a small works roster comprised of
27 all contractors who have requested to be on the roster and are, where
28 required by law, properly licensed or registered to perform such work
29 in this state.

1 (b) Whenever work is done by contract, the estimated cost of which
2 is one hundred thousand dollars or less, and the city uses the small
3 works roster, the city or town shall invite proposals from all
4 appropriate contractors on the small works roster: PROVIDED, That
5 whenever possible, the city or town shall invite at least one proposal
6 from a minority or woman contractor who shall otherwise qualify under
7 this section. The invitation shall include an estimate of the scope
8 and nature of the work to be performed, and materials and equipment to
9 be furnished.

10 (c) When awarding such a contract for work, the estimated cost of
11 which is one hundred thousand dollars or less, the city or town shall
12 award the contract to the contractor submitting the lowest responsible
13 bid.

14 (4) After September 1, 1987, each second class city, third class
15 city, and town shall use the form required by RCW 43.09.205 to account
16 and record costs of public works in excess of five thousand dollars
17 that are not let by contract.

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

21 (6) Any purchase of supplies, material, equipment or services other
22 than professional services, except for public work or improvement,
23 where the cost thereof exceeds seven thousand five hundred dollars
24 shall be made upon call for bids: PROVIDED, That the limitations
25 herein shall not apply to any purchases of materials at auctions
26 conducted by the government of the United States, any agency thereof or
27 by the state of Washington or a political subdivision thereof.

28 (7) Bids shall be called annually and at a time and in the manner
29 prescribed by ordinance for the publication in a newspaper published or
30 of general circulation in the city or town of all notices or newspaper

1 publications required by law. The contract shall be awarded to the
2 lowest responsible bidder.

3 (8) For advertisement and competitive bidding to be dispensed with
4 as to purchases between seven thousand five hundred and fifteen
5 thousand dollars, the city legislative authority must authorize by
6 resolution a procedure for securing telephone and/or written quotations
7 from enough vendors to assure establishment of a competitive price and
8 for awarding the contracts for purchase of materials, equipment, or
9 services to the lowest responsible bidder. Immediately after the award
10 is made, the bid quotations obtained shall be recorded and open to
11 public inspection and shall be available by telephone inquiry.

12 (9) These requirements for purchasing may be waived by resolution
13 of the city or town council which declared that the purchase is clearly
14 and legitimately limited to a single source or supply within the near
15 vicinity, or the materials, supplies, equipment, or services are
16 subject to special market conditions, and recites why this situation
17 exists. Such actions are subject to RCW 39.30.020.

18 (10) This section does not apply to performance-based contracts, as
19 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
20 RCW.

21 (11) Nothing in this section shall prohibit any second or third
22 class city or any town from allowing for preferential purchase of
23 products made from recycled materials or products that may be recycled
24 or reused.

25 **Sec. 3.** RCW 36.32.250 and 1991 c 363 s 58 are each amended to read
26 as follows:

27 No contract for public works may be entered into by the county
28 legislative authority or by any elected or appointed officer of the
29 county until after bids have been submitted to the county upon

1 specifications therefor. Such specifications shall be in writing and
2 shall be filed with the clerk of the county legislative authority for
3 public inspection. An advertisement shall be published in the county
4 official newspaper stating the time and place where bids will be
5 opened, the time after which bids will not be received, the character
6 of the work to be done, the materials and equipment to be furnished,
7 and that specifications therefor may be seen at the office of the clerk
8 of the county legislative authority. An advertisement shall also be
9 published in a legal newspaper of general circulation in or as near as
10 possible to that part of the county in which such work is to be done.
11 If the county official newspaper is a newspaper of general circulation
12 covering at least forty percent of the residences in that part of the
13 county in which such public works are to be done, then the publication
14 of an advertisement of the applicable specifications in the county
15 official newspaper shall be sufficient. Such advertisements shall be
16 published at least once at least ten days prior to the last date upon
17 which bids will be received. The bids shall be in writing, shall be
18 filed with the clerk, shall be opened and read in public at the time
19 and place named therefor in the advertisements, and after being opened,
20 shall be filed for public inspection. No bid may be considered for
21 public work unless it is accompanied by a bid deposit in the form of a
22 surety bond, postal money order, cash, cashier's check, or certified
23 check in an amount equal to five percent of the amount of the bid
24 proposed. The contract for the public work shall be awarded to the
25 lowest responsible bidder. In determining the lowest responsible
26 bidder, in addition to price, the county shall give consideration to:
27 (1) The ability of the contractor to complete the contract within
28 the prescribed schedule outlined in the contract specifications; and
29 (2) The compliance of the contractor with federal, state, and local
30 laws pertaining to the contract.

1 Any or all bids may be rejected for good cause. The county
2 legislative authority shall require from the successful bidder for such
3 public work a contractor's bond in the amount and with the conditions
4 imposed by law. If the bidder to whom the contract is awarded fails to
5 enter into the contract and furnish the contractor's bond as required
6 within ten days after notice of the award, exclusive of the day of
7 notice, the amount of the bid deposit shall be forfeited to the county
8 and the contract awarded to the next lowest and best bidder. The bid
9 deposit of all unsuccessful bidders shall be returned after the
10 contract is awarded and the required contractor's bond given by the
11 successful bidder is accepted by the county legislative authority. In
12 the letting of any contract involving less than ten thousand dollars,
13 advertisement and competitive bidding may be dispensed with on order of
14 the county legislative authority. Immediately after the award is made,
15 the bid quotations obtained shall be recorded and open to public
16 inspection and shall be available by telephone inquiry.

17 For advertisement and competitive bidding to be dispensed with as
18 to public works projects with an estimated value of one hundred
19 thousand dollars or less, a county must use a small works roster
20 process as provided in RCW 39.04.155.

21 This section does not apply to performance-based contracts, as
22 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
23 RCW.

24 **Sec. 4.** RCW 39.04.015 and 1989 c 59 s 1 are each amended to read
25 as follows:

26 Notwithstanding the provisions of RCW 39.04.010, a state
27 contracting authority is authorized to negotiate an adjustment to a bid
28 price, based upon agreed changes to the contract plans and

1 specifications, with a low responsive and responsible bidder under the
2 following conditions:

3 (1) All bids for a state public works project involving buildings
4 and any associated building utilities and appendants exceed the
5 available funds, as certified by the appropriate fiscal officer;

6 (2) The (~~apparent low responsive~~) bid does not exceed the
7 available funds by: (a) Five percent on projects valued under one
8 million dollars; (b) the greater of fifty thousand dollars or two and
9 one-half percent for projects valued between one million dollars and
10 five million dollars; or (c) the greater of one hundred twenty-five
11 thousand dollars or one percent for projects valued over five million
12 dollars; (~~and~~)

13 (3) The negotiated adjustment will bring the bid price within the
14 amount of available funds(~~(-)~~); and

15 (4) In determining the lowest responsible bidder, in addition to
16 price, the state contracting authority shall give consideration to:

17 (a) The ability of the contractor to complete the contract within
18 the prescribed schedule outlined in the contract specifications; and

19 (b) The compliance of the contractor with federal, state, and local
20 laws pertaining to the contract.

21 **Sec. 5.** RCW 39.04.155 and 1991 c 363 s 109 are each amended to
22 read as follows:

23 (1) This section provides a uniform process to award contracts for
24 public works projects by those counties that are authorized to use a
25 small works roster in lieu of the requirements for formal sealed
26 bidding. The state statutes governing counties shall establish the
27 maximum dollar thresholds of the contracts that can be awarded under
28 this process, and may include other matters concerning the small works
29 roster process, for the county.

1 (2) Counties may create a single general small works roster, or may
2 create a small works roster for different categories of anticipated
3 work. The small works roster or rosters shall consist of all
4 responsible contractors who have requested to be on the list, and where
5 required by law are properly licensed or registered to perform such
6 work in this state. At least once a year, the county shall publish in
7 a newspaper of general circulation within the jurisdiction a notice of
8 the existence of the roster or rosters and solicit the names of
9 contractors for such roster or rosters.

10 The governing body of the county shall establish a procedure for
11 securing telephone or written quotations from the contractors on the
12 general small works roster, or a specific small works roster for the
13 appropriate category of work, to assure that a competitive price is
14 established and to award contracts to the lowest responsible bidder(~~(7~~
15 ~~as defined in RCW 43.19.1911)~~). In determining the lowest responsible
16 bidder, in addition to price, the county shall give consideration to:

17 (a) The ability of the contractor to complete the contract within
18 the prescribed schedule outlined in the contract specifications; and

19 (b) The compliance of the contractor with federal, state, and local
20 laws pertaining to the contract.

21 Such invitations for quotations shall include an estimate of the
22 scope and nature of the work to be performed as well as materials and
23 equipment to be furnished. Whenever possible at least five contractors
24 shall be invited to submit bids. Once a contractor has been afforded
25 an opportunity to submit a proposal, that contractor shall not be
26 offered another opportunity until all other appropriate contractors on
27 the small works roster have been afforded an opportunity to submit a
28 proposal on a contract.

29 A contract awarded from a small works roster under this section
30 need not be advertised.

1 Immediately after an award is made, the bid quotations obtained
2 shall be recorded, open to public inspection, and available by
3 telephone inquiry.

4 **Sec. 6.** RCW 56.08.070 and 1989 c 105 s 1 are each amended to read
5 as follows:

6 (1) All materials purchased and work ordered, the estimated cost of
7 which is in excess of five thousand dollars shall be let by contract.
8 All contract projects, the estimated cost of which is less than fifty
9 thousand dollars, may be awarded to a contractor on the small works
10 roster. The small works roster shall be comprised of all responsible
11 contractors who have requested to be on the list. The board of sewer
12 commissioners may set up uniform procedures to prequalify contractors
13 for inclusion on the small works roster. The board of sewer
14 commissioners shall authorize by resolution a procedure for securing
15 telephone and/or written quotations from the contractors on the small
16 works roster to assure establishment of a competitive price and for
17 awarding contracts to the lowest responsible bidder. Such procedure
18 shall require that a good faith effort be made to request quotations
19 from all contractors on the small works roster. Immediately after an
20 award is made, the bid quotations obtained shall be recorded, open to
21 public inspection, and available by telephone inquiry. The small works
22 roster shall be revised once a year. All contract projects equal to or
23 in excess of fifty thousand dollars shall be let by competitive
24 bidding. Before awarding any competitive contract the board of sewer
25 commissioners shall cause a notice to be published in a newspaper in
26 general circulation where the district is located at least once, ten
27 days before the letting of such contract, inviting sealed proposals for
28 such work, plans and specifications which must at the time of
29 publication of such notice be on file in the office of the board of

1 sewer commissioners subject to public inspection. Such notice shall
2 state generally the work to be done and shall call for proposals for
3 doing the same to be sealed and filed with the board of sewer
4 commissioners on or before the day and hour named therein.

5 (2) Each bid shall be accompanied by a bid proposal deposit in the
6 form of a certified check, cashier's check, postal money order, or
7 surety bond payable to the order of the county treasurer for a sum not
8 less than five percent of the amount of the bid and no bid shall be
9 considered unless accompanied by such bid proposal deposit. At the
10 time and place named such bids shall be publicly opened and read and
11 the board of sewer commissioners shall proceed to canvass the bids and
12 may let such contract to the lowest responsible bidder upon plans and
13 specifications: PROVIDED, That no contract shall be let in excess of
14 the cost of said materials or work, or if in the opinion of the board
15 of sewer commissioners all bids are unsatisfactory they may reject all
16 of them and readvertise and in such case all checks, cash or bid bonds
17 shall be returned to the bidders. If such contract be let, then all
18 checks, cash or bid bonds shall be returned to the bidders, except that
19 of the successful bidder, which shall be retained until a contract
20 shall be entered into for the purchase of such materials or doing such
21 work, and a bond to perform such work furnished with sureties
22 satisfactory to the board of sewer commissioners in the full amount of
23 the contract price between the bidder and the commission in accordance
24 with bid. If said bidder fails to enter into said contract in
25 accordance with said bid and furnish such bond within ten days from the
26 date at which he is notified that he is the successful bidder, the said
27 check, cash or bid bonds and the amount thereof shall be forfeited to
28 the sewer district.

29 (3) In the event of an emergency when the public interest or
30 property of the sewer district would suffer material injury or damage

1 by delay, upon resolution of the board of sewer commissioners, or
2 proclamation of an official designated by the board to act for the
3 board during such emergencies, declaring the existence of such
4 emergency and reciting the facts constituting the same, the board, or
5 the official acting for the board, may waive the requirements of this
6 chapter with reference to any purchase or contract. In addition, these
7 requirements may be waived for purchases which are clearly and
8 legitimately limited to a single source of supply and purchases
9 involving special facilities, services, or market conditions, in which
10 instances the purchase price may be best established by direct
11 negotiation.

12 (4) In determining the lowest responsible bidder, in addition to
13 price, the board of sewer commissioners shall give consideration to:

14 (a) The ability of the contractor to complete the contract within
15 the prescribed schedule outlined in the contract specifications; and

16 (b) The compliance of the contractor with federal, state, and local
17 laws pertaining to the contract.

18 **Sec. 7.** RCW 57.08.050 and 1989 c 105 s 2 are each amended to read
19 as follows:

20 (1) The board of water commissioners shall have authority to create
21 and fill such positions and fix salaries and bonds thereof as it may by
22 resolution provide.

23 (2) All materials purchased and work ordered, the estimated cost of
24 which is in excess of five thousand dollars shall be let by contract.
25 All contract projects, the estimated cost of which is less than fifty
26 thousand dollars, may be awarded to a contractor on the small works
27 roster. The small works roster shall be comprised of all responsible
28 contractors who have requested to be on the list. The board of water
29 commissioners may set up uniform procedures to prequalify contractors

1 for inclusion on the small works roster. The board of water
2 commissioners shall authorize by resolution a procedure for securing
3 telephone and/or written quotations from the contractors on the small
4 works roster to assure establishment of a competitive price and for
5 awarding contracts to the lowest responsible bidder. Such procedure
6 shall require that a good faith effort be made to request quotations
7 from all contractors on the small works roster. Immediately after an
8 award is made, the bid quotations obtained shall be recorded, open to
9 public inspection, and available by telephone inquiry. The small works
10 roster shall be revised once a year. All contract projects equal to or
11 in excess of fifty thousand dollars shall be let by competitive
12 bidding. Before awarding any such contract the board of water
13 commissioners shall cause a notice to be published in a newspaper in
14 general circulation where the district is located at least once ten
15 days before the letting of such contract, inviting sealed proposals for
16 such work, plans and specifications which must at the time of
17 publication of such notice be on file in the office of the board of
18 water commissioners subject to public inspection. Such notice shall
19 state generally the work to be done and shall call for proposals for
20 doing the same to be sealed and filed with the board of water
21 commissioners on or before the day and hour named therein.

22 (3) Each bid shall be accompanied by a certified or cashier's check
23 or postal money order payable to the order of the county treasurer for
24 a sum not less than five percent of the amount of the bid, or
25 accompanied by a bid bond in an amount not less than five percent of
26 the bid with a corporate surety licensed to do business in the state,
27 conditioned that the bidder will pay the district as liquidated damages
28 the amount specified in the bond, unless he enters into a contract in
29 accordance with his bid, and no bid shall be considered unless
30 accompanied by such check, cash or bid bond. At the time and place

1 named such bids shall be publicly opened and read and the board of
2 water commissioners shall proceed to canvass the bids and may let such
3 contract to the lowest responsible bidder upon plans and specifications
4 on file or to the best bidder submitting his own plans and
5 specifications: PROVIDED, That no contract shall be let in excess of
6 the cost of said materials or work, or if in the opinion of the board
7 of water commissioners all bids are unsatisfactory they may reject all
8 of them and readvertise and in such case all checks, cash or bid bonds
9 shall be returned to the bidders. If such contract be let, then all
10 checks, cash or bid bonds shall be returned to the bidders, except that
11 of the successful bidder, which shall be retained until a contract
12 shall be entered into for the purchase of such materials or doing such
13 work, and a bond to perform such work furnished with sureties
14 satisfactory to the board of water commissioners in the full amount of
15 the contract price between the bidder and the commission in accordance
16 with the bid. If said bidder fails to enter into said contract in
17 accordance with said bid and furnish such bond within ten days from the
18 date at which he is notified that he is the successful bidder, the said
19 check, cash or bid bonds and the amount thereof shall be forfeited to
20 the water district: PROVIDED, That if the bidder fails to enter into
21 a contract in accordance with his bid, and the board of water
22 commissioners deems it necessary to take legal action to collect on any
23 bid bond required herein, then the water district shall be entitled to
24 collect from said bidder any legal expenses, including reasonable
25 attorneys' fees occasioned thereby.

26 (4) In the event of an emergency when the public interest or
27 property of the water district would suffer material injury or damage
28 by delay, upon resolution of the board of water commissioners, or
29 proclamation of an official designated by the board to act for the
30 board during such emergencies, declaring the existence of such

1 emergency and reciting the facts constituting the same, the board, or
2 official acting for the board, may waive the requirements of this
3 chapter with reference to any purchase or contract. In addition, these
4 requirements may be waived for purchases which are clearly and
5 legitimately limited to a single source of supply and purchases
6 involving special facilities, services, or market conditions, in which
7 instances the purchase price may be best established by direct
8 negotiation.

9 (5) In determining the lowest responsible bidder, in addition to
10 price, the board of water commissioners shall give consideration to:

11 (a) The ability of the contractor to complete the contract within
12 the prescribed schedule outlined in the contract specifications; and

13 (b) The compliance of the contractor with federal, state, and local
14 laws pertaining to the contract.