
SUBSTITUTE HOUSE BILL 2409

State of Washington

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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 quality of the contractor's past performance on contracts
13 if the contractor has performed public works contracts of a similar
14 nature with the city;

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

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

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

21 (9) 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 (10) Nothing in this section shall prohibit any first class city
25 from allowing for preferential purchase of products made from recycled
26 materials or products that may be recycled or reused.

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

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

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

1 by resolution to reject any or all bids and to make further calls for
2 bids in the same manner as the original call. In determining the
3 lowest responsible bidder, in addition to price, the city shall give
4 consideration to:

5 (a) The quality of the contractor's past performance on contracts
6 if the contractor has performed public works contracts of a similar
7 nature with the city;

8 (b) The ability of the contractor to complete the contract within
9 the prescribed schedule outlined in the contract specifications;

10 (c) The compliance of the contractor with federal, state, and local
11 laws pertaining to the contract.

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

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

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

29 (3) In lieu of the procedures of subsection (1) of this section, a
30 second or third class city or a town may use a small works roster and

1 award contracts under this subsection for contracts of one hundred
2 thousand dollars or less.

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

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

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

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

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

27 (6) Any purchase of supplies, material, equipment or services other
28 than professional services, except for public work or improvement,
29 where the cost thereof exceeds seven thousand five hundred dollars
30 shall be made upon call for bids: PROVIDED, That the limitations

1 herein shall not apply to any purchases of materials at auctions
2 conducted by the government of the United States, any agency thereof or
3 by the state of Washington or a political subdivision thereof.

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

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

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

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

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

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

3 No contract for public works may be entered into by the county
4 legislative authority or by any elected or appointed officer of the
5 county until after bids have been submitted to the county upon
6 specifications therefor. Such specifications shall be in writing and
7 shall be filed with the clerk of the county legislative authority for
8 public inspection. An advertisement shall be published in the county
9 official newspaper stating the time and place where bids will be
10 opened, the time after which bids will not be received, the character
11 of the work to be done, the materials and equipment to be furnished,
12 and that specifications therefor may be seen at the office of the clerk
13 of the county legislative authority. An advertisement shall also be
14 published in a legal newspaper of general circulation in or as near as
15 possible to that part of the county in which such work is to be done.
16 If the county official newspaper is a newspaper of general circulation
17 covering at least forty percent of the residences in that part of the
18 county in which such public works are to be done, then the publication
19 of an advertisement of the applicable specifications in the county
20 official newspaper shall be sufficient. Such advertisements shall be
21 published at least once at least ten days prior to the last date upon
22 which bids will be received. The bids shall be in writing, shall be
23 filed with the clerk, shall be opened and read in public at the time
24 and place named therefor in the advertisements, and after being opened,
25 shall be filed for public inspection. No bid may be considered for
26 public work unless it is accompanied by a bid deposit in the form of a
27 surety bond, postal money order, cash, cashier's check, or certified
28 check in an amount equal to five percent of the amount of the bid
29 proposed. The contract for the public work shall be awarded to the

1 lowest responsible bidder. In determining the lowest responsible
2 bidder, in addition to price, the county shall give consideration to:

3 (1) The quality of the contractor's past performance on contracts
4 if the contractor has performed public works contracts of a similar
5 nature with the county;

6 (2) The ability of the contractor to complete the contract within
7 the prescribed schedule outlined in the contract specifications; and

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

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

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

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

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

6 Notwithstanding the provisions of RCW 39.04.010, a state
7 contracting authority is authorized to negotiate an adjustment to a bid
8 price, based upon agreed changes to the contract plans and
9 specifications, with a low responsive and responsible bidder under the
10 following conditions:

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

14 (2) The (~~apparent low responsive~~) bid does not exceed the
15 available funds by: (a) Five percent on projects valued under one
16 million dollars; (b) the greater of fifty thousand dollars or two and
17 one-half percent for projects valued between one million dollars and
18 five million dollars; or (c) the greater of one hundred twenty-five
19 thousand dollars or one percent for projects valued over five million
20 dollars; (~~and~~)

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

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

25 (a) The quality of the contractor's past performance on contracts
26 if the contractor has performed public works contracts of a similar
27 nature with the state contracting authority;

28 (b) The ability of the contractor to complete the contract within
29 the prescribed schedule outlined in the contract specifications; and

1 (c) The compliance of the contractor with federal, state, and local
2 laws pertaining to the contract.

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

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

12 (2) Counties may create a single general small works roster, or may
13 create a small works roster for different categories of anticipated
14 work. The small works roster or rosters shall consist of all
15 responsible contractors who have requested to be on the list, and where
16 required by law are properly licensed or registered to perform such
17 work in this state. At least once a year, the county shall publish in
18 a newspaper of general circulation within the jurisdiction a notice of
19 the existence of the roster or rosters and solicit the names of
20 contractors for such roster or rosters.

21 The governing body of the county shall establish a procedure for
22 securing telephone or written quotations from the contractors on the
23 general small works roster, or a specific small works roster for the
24 appropriate category of work, to assure that a competitive price is
25 established and to award contracts to the lowest responsible bidder(~~(~~
26 ~~as defined in RCW 43.19.1911)~~). In determining the lowest responsible
27 bidder, in addition to price, the county shall give consideration to:

1 (a) The quality of the contractor's past performance on contracts
2 if the contractor has performed public works contracts of a similar
3 nature with the county;

4 (b) The ability of the contractor to complete the contract within
5 the prescribed schedule outlined in the contract specifications; and

6 (c) The compliance of the contractor with federal, state, and local
7 laws pertaining to the contract.

8 Such invitations for quotations shall include an estimate of the
9 scope and nature of the work to be performed as well as materials and
10 equipment to be furnished. Whenever possible at least five contractors
11 shall be invited to submit bids. Once a contractor has been afforded
12 an opportunity to submit a proposal, that contractor shall not be
13 offered another opportunity until all other appropriate contractors on
14 the small works roster have been afforded an opportunity to submit a
15 proposal on a contract.

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

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

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

23 (1) 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 sewer
29 commissioners may set up uniform procedures to prequalify contractors

1 for inclusion on the small works roster. The board of sewer
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 competitive contract the board of sewer
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 sewer 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 sewer
21 commissioners on or before the day and hour named therein.

22 (2) Each bid shall be accompanied by a bid proposal deposit in the
23 form of a certified check, cashier's check, postal money order, or
24 surety bond payable to the order of the county treasurer for a sum not
25 less than five percent of the amount of the bid and no bid shall be
26 considered unless accompanied by such bid proposal deposit. At the
27 time and place named such bids shall be publicly opened and read and
28 the board of sewer commissioners shall proceed to canvass the bids and
29 may let such contract to the lowest responsible bidder upon plans and
30 specifications: PROVIDED, That no contract shall be let in excess of

1 the cost of said materials or work, or if in the opinion of the board
2 of sewer commissioners all bids are unsatisfactory they may reject all
3 of them and readvertise and in such case all checks, cash or bid bonds
4 shall be returned to the bidders. If such contract be let, then all
5 checks, cash or bid bonds shall be returned to the bidders, except that
6 of the successful bidder, which shall be retained until a contract
7 shall be entered into for the purchase of such materials or doing such
8 work, and a bond to perform such work furnished with sureties
9 satisfactory to the board of sewer commissioners in the full amount of
10 the contract price between the bidder and the commission in accordance
11 with bid. If said bidder fails to enter into said contract in
12 accordance with said bid and furnish such bond within ten days from the
13 date at which he is notified that he is the successful bidder, the said
14 check, cash or bid bonds and the amount thereof shall be forfeited to
15 the sewer district.

16 (3) In the event of an emergency when the public interest or
17 property of the sewer district would suffer material injury or damage
18 by delay, upon resolution of the board of sewer commissioners, or
19 proclamation of an official designated by the board to act for the
20 board during such emergencies, declaring the existence of such
21 emergency and reciting the facts constituting the same, the board, or
22 the official acting for the board, may waive the requirements of this
23 chapter with reference to any purchase or contract. In addition, these
24 requirements may be waived for purchases which are clearly and
25 legitimately limited to a single source of supply and purchases
26 involving special facilities, services, or market conditions, in which
27 instances the purchase price may be best established by direct
28 negotiation.

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

1 (a) The quality of the contractor's past performance on contracts
2 if the contractor has performed public works contracts of a similar
3 nature with the board;

4 (b) The ability of the contractor to complete the contract within
5 the prescribed schedule outlined in the contract specifications; and

6 (c) The compliance of the contractor with federal, state, and local
7 laws pertaining to the contract.

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

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

13 (2) All materials purchased and work ordered, the estimated cost of
14 which is in excess of five thousand dollars shall be let by contract.
15 All contract projects, the estimated cost of which is less than fifty
16 thousand dollars, may be awarded to a contractor on the small works
17 roster. The small works roster shall be comprised of all responsible
18 contractors who have requested to be on the list. The board of water
19 commissioners may set up uniform procedures to prequalify contractors
20 for inclusion on the small works roster. The board of water
21 commissioners shall authorize by resolution a procedure for securing
22 telephone and/or written quotations from the contractors on the small
23 works roster to assure establishment of a competitive price and for
24 awarding contracts to the lowest responsible bidder. Such procedure
25 shall require that a good faith effort be made to request quotations
26 from all contractors on the small works roster. Immediately after an
27 award is made, the bid quotations obtained shall be recorded, open to
28 public inspection, and available by telephone inquiry. The small works
29 roster shall be revised once a year. All contract projects equal to or

1 in excess of fifty thousand dollars shall be let by competitive
2 bidding. Before awarding any such contract the board of water
3 commissioners shall cause a notice to be published in a newspaper in
4 general circulation where the district is located at least once ten
5 days before the letting of such contract, inviting sealed proposals for
6 such work, plans and specifications which must at the time of
7 publication of such notice be on file in the office of the board of
8 water commissioners subject to public inspection. Such notice shall
9 state generally the work to be done and shall call for proposals for
10 doing the same to be sealed and filed with the board of water
11 commissioners on or before the day and hour named therein.

12 (3) Each bid shall be accompanied by a certified or cashier's check
13 or postal money order payable to the order of the county treasurer for
14 a sum not less than five percent of the amount of the bid, or
15 accompanied by a bid bond in an amount not less than five percent of
16 the bid with a corporate surety licensed to do business in the state,
17 conditioned that the bidder will pay the district as liquidated damages
18 the amount specified in the bond, unless he enters into a contract in
19 accordance with his bid, and no bid shall be considered unless
20 accompanied by such check, cash or bid bond. At the time and place
21 named such bids shall be publicly opened and read and the board of
22 water commissioners shall proceed to canvass the bids and may let such
23 contract to the lowest responsible bidder upon plans and specifications
24 on file or to the best bidder submitting his own plans and
25 specifications: PROVIDED, That no contract shall be let in excess of
26 the cost of said materials or work, or if in the opinion of the board
27 of water commissioners all bids are unsatisfactory they may reject all
28 of them and readvertise and in such case all checks, cash or bid bonds
29 shall be returned to the bidders. If such contract be let, then all
30 checks, cash or bid bonds shall be returned to the bidders, except that

1 of the successful bidder, which shall be retained until a contract
2 shall be entered into for the purchase of such materials or doing such
3 work, and a bond to perform such work furnished with sureties
4 satisfactory to the board of water commissioners in the full amount of
5 the contract price between the bidder and the commission in accordance
6 with the bid. If said bidder fails to enter into said contract in
7 accordance with said bid and furnish such bond within ten days from the
8 date at which he is notified that he is the successful bidder, the said
9 check, cash or bid bonds and the amount thereof shall be forfeited to
10 the water district: PROVIDED, That if the bidder fails to enter into
11 a contract in accordance with his bid, and the board of water
12 commissioners deems it necessary to take legal action to collect on any
13 bid bond required herein, then the water district shall be entitled to
14 collect from said bidder any legal expenses, including reasonable
15 attorneys' fees occasioned thereby.

16 (4) In the event of an emergency when the public interest or
17 property of the water district would suffer material injury or damage
18 by delay, upon resolution of the board of water commissioners, or
19 proclamation of an official designated by the board to act for the
20 board during such emergencies, declaring the existence of such
21 emergency and reciting the facts constituting the same, the board, or
22 official acting for the board, may waive the requirements of this
23 chapter with reference to any purchase or contract. In addition, these
24 requirements may be waived for purchases which are clearly and
25 legitimately limited to a single source of supply and purchases
26 involving special facilities, services, or market conditions, in which
27 instances the purchase price may be best established by direct
28 negotiation.

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

1 (a) The quality of the contractor's past performance on contracts
2 if the contractor has performed public works contracts of a similar
3 nature with the board;

4 (b) The ability of the contractor to complete the contract within
5 the prescribed schedule outlined in the contract specifications; and

6 (c) The compliance of the contractor with federal, state, and local
7 laws pertaining to the contract.