
HOUSE BILL 2946

State of Washington

54th Legislature

1996 Regular Session

By Representatives Hymes, Scott, Reams and Thompson

Read first time 02/01/96. Referred to Committee on Government Operations.

1 AN ACT Relating to competitive bidding; amending RCW 35.22.620,
2 36.32.270, 52.14.110, 53.08.120, 54.04.070, 56.08.070, 57.08.050, and
3 70.44.140; reenacting and amending RCW 35.23.352; and adding a new
4 section to chapter 39.04 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW
7 to read as follows:

8 This section provides uniform exemptions to competitive bidding
9 procedures utilized by municipalities when awarding contracts for
10 public works and contracts for purchases. The statutes governing a
11 specific type of municipality may also include other exemptions from
12 competitive bidding procedures. The purpose of this section is to
13 supplement and not to limit the current powers of any municipality to
14 provide exemptions from competitive bidding procedures.

15 (1) Competitive bidding procedures for public works may be waived:

16 (a) In the event of an emergency; or

17 (b) For public works contracts under twenty thousand dollars.

18 (2) If any emergency exists, the person or persons designated by
19 the governing body of the municipality to act in the event of an

1 emergency may declare an emergency situation exists, waive competitive
2 bidding requirements, and award all necessary contracts on behalf of
3 the municipality to address the emergency situation. If a contract is
4 awarded without competitive bidding due to an emergency, the written
5 declaration of an emergency must recite the factual basis and
6 justification for the emergency consistent with the definition of
7 "emergency" as included in subsection (3) of this section.

8 (3) For purposes of this section, "emergency" means unforeseen
9 circumstances beyond the control of the municipality that either: (a)
10 Present a real, immediate threat to the proper performance of essential
11 functions; or (b) likely will result in material loss or damage to
12 property, bodily injury, or loss of life if immediate action is not
13 taken.

14 (4) The competitive bidding procedures for public works contracts
15 under twenty thousand dollars may be waived by the person or persons
16 designated by the governing body of the municipality to award such
17 contracts when:

18 (a) The governing body has adopted a resolution pledging that the
19 municipality, in the absence of requiring bonds from contractors and
20 withholding retainage from the contractors, will pay any liens filed
21 against the municipality pursuant to the procedures of chapters 39.08
22 and 60.28 RCW when ordered by the superior court of the county where
23 filed; and

24 (b) The authorized authority for the municipality has publicly and
25 formally adopted rules or guidelines establishing a process for
26 ensuring competitive prices on such projects.

27 (5) For purposes of subsection (1)(b) of this section, "competitive
28 bidding procedures" means, in addition to advertising requirements:

29 (a) The requirement for a municipality to require a contractor's
30 bond pursuant to RCW 39.08.010; and

31 (b) The requirement for a municipality to withhold retainage
32 pursuant to RCW 60.28.011.

33 **Sec. 2.** RCW 35.22.620 and 1993 c 198 s 9 are each amended to read
34 as follows:

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

37 (2) A first class city may have public works performed by contract
38 pursuant to public notice and call for competitive bids. As limited by

1 subsection (3) of this section, a first class city may have public
2 works performed by city employees in any annual or biennial budget
3 period equal to a dollar value not exceeding ten percent of the public
4 works construction budget, including any amount in a supplemental
5 public works construction budget, over the budget period. The amount
6 of public works that a first class city has a county perform for it
7 under RCW 35.77.020 shall be included within this ten percent
8 limitation.

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

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

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

30 (3) In addition to the percentage limitation provided in subsection
31 (2) of this section, a first class city with a population in excess of
32 one hundred fifty thousand shall not have public employees perform a
33 public works project in excess of fifty thousand dollars if more than
34 a single craft or trade is involved with the public works project, or
35 a public works project in excess of twenty-five thousand dollars if
36 only a single craft or trade is involved with the public works project
37 or the public works project is street signalization or street lighting.
38 In addition to the percentage limitation provided in subsection (2) of
39 this section, a first class city with a population of one hundred fifty

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

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

23 After September 1, 1987, each first class city with a population of
24 one hundred fifty thousand or less shall use the form required by RCW
25 43.09.205 to account and record costs of public works in excess of five
26 thousand dollars that are not let by contract.

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

31 ~~(6) ((When any emergency shall require the immediate execution of
32 such public work, upon the finding of the existence of such emergency
33 by the authority having power to direct such public work to be done and
34 duly entered of record, publication of description and estimate may be
35 made within seven days after the commencement of the work. Within two
36 weeks of the finding that such an emergency existed, the city council
37 shall adopt a resolution certifying the existence of this emergency
38 situation.)) The competitive bidding procedures for public works may be
39 waived pursuant to section 1 of this act.~~

1 (7) In lieu of the procedures of subsections (2) and (6) of this
2 section, a first class city may use ((a)) the small works roster
3 process ((and)) in RCW 39.04.155 to award contracts for public works
4 projects with an estimated value of one hundred thousand dollars or
5 less ((as provided in RCW 39.04.155)).

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

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

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

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

17 **Sec. 3.** RCW 35.23.352 and 1994 c 273 s 9 and 1994 c 81 s 18 are
18 each reenacted and amended to read as follows:

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

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

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

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

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

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

30 (3) In lieu of the procedures of subsection (1) of this section, a
31 second class city or a town may use the small works roster process
32 provided in RCW 39.04.155 to award public works contracts with an
33 estimated value of one hundred thousand dollars or less.

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

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

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

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

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

12 (8) For advertisement and formal sealed bidding to be dispensed
13 with as to purchases between seven thousand five hundred and fifteen
14 thousand dollars, the council or commission must authorize by
15 resolution, use of the uniform procedure provided in RCW 39.04.190.

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

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

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

28 (12) The competitive bidding procedures for public works may be
29 waived pursuant to section 1 of this act.

30 **Sec. 4.** RCW 36.32.270 and 1963 c 4 s 36.32.270 are each amended to
31 read as follows:

32 In the event of an emergency when the public interest or property
33 of the county would suffer material injury or damage by delay, upon
34 resolution of the ((board of)) county ((commissioners)) legislative
35 authority declaring the existence of such emergency and reciting the
36 facts constituting the same, the ((board)) county legislative authority
37 may waive the requirements of this chapter with reference to any

1 purchase ((~~or contract~~)). The competitive bidding procedures for
2 public works may be waived pursuant to section 1 of this act.

3 **Sec. 5.** RCW 52.14.110 and 1993 c 198 s 11 are each amended to read
4 as follows:

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

10 (1) Emergency purchases if the sealed bidding procedure would
11 prevent or hinder the emergency from being addressed appropriately.
12 The term emergency means an occurrence that creates an immediate threat
13 to life or property;

14 (2) The purchase of any materials, supplies, or equipment if the
15 cost will not exceed the sum of four thousand five hundred dollars.
16 However, whenever the estimated cost is from four thousand five hundred
17 dollars up to ten thousand dollars, the commissioners may by resolution
18 use the process provided in RCW 39.04.190 to award contracts;

19 (3) Contracting for work to be done involving the construction or
20 improvement of a fire station or other buildings where the estimated
21 cost will not exceed the sum of two thousand five hundred dollars,
22 which includes the costs of labor, material, and equipment. However,
23 whenever the estimated cost is from two thousand five hundred dollars
24 up to ten thousand dollars, the commissioner may by resolution use the
25 small works roster process provided in RCW 39.04.155;

26 (4) Purchases which are clearly and legitimately limited to a
27 single source of supply, or services, in which instances the purchase
28 price may be best established by direct negotiation: PROVIDED, That
29 this subsection shall not apply to purchases or contracts relating to
30 public works as defined in chapter 39.04 RCW; ((and))

31 (5) Purchases of insurance and bonds; and

32 (6) Public works executed pursuant to section 1 of this act.

33 **Sec. 6.** RCW 53.08.120 and 1993 c 198 s 13 are each amended to read
34 as follows:

35 All material required by a port district may be procured in the
36 open market or by contract and all work ordered may be done by contract
37 or day labor. All such contracts for work, the estimated cost of which

1 exceeds one hundred thousand dollars, shall be let at public bidding
2 upon notice published in a newspaper of general circulation in the
3 district at least thirteen days before the last date upon which bids
4 will be received, calling for sealed bids upon the work, plans and
5 specifications for which shall then be on file in the office of the
6 commission for public inspection. The same notice may call for bids on
7 such work or material based upon plans and specifications submitted by
8 the bidder. The competitive bidding procedures for public works may be
9 waived pursuant to section 1 of this act.

10 Each port district shall maintain a small works roster, as provided
11 in RCW 39.04.155, and may use the small works roster process to award
12 contracts in lieu of calling for sealed bids whenever work is done by
13 contract, the estimated cost of which is one hundred thousand dollars
14 or less. Whenever possible, the managing official shall invite at
15 least one proposal from a minority contractor who shall otherwise
16 qualify under this section.

17 When awarding such a contract for work, when utilizing proposals
18 from the small works roster, the managing official shall give weight to
19 the contractor submitting the lowest and best proposal, and whenever it
20 would not violate the public interest, such contracts shall be
21 distributed equally among contractors, including minority contractors,
22 on the small works roster.

23 **Sec. 7.** RCW 54.04.070 and 1993 c 198 s 14 are each amended to read
24 as follows:

25 Any item, or items of the same kind of materials, equipment, or
26 supplies purchased, the estimated cost of which is in excess of five
27 thousand dollars, exclusive of sales tax shall be by contract:
28 PROVIDED, That a district may make purchases of the same kind of items
29 of materials, equipment and supplies not exceeding five thousand
30 dollars in any calendar month without a contract, purchasing any excess
31 thereof over five thousand dollars by contract. Any work ordered by a
32 district commission, the estimated cost of which is in excess of ten
33 thousand dollars exclusive of sales tax, shall be by contract, except
34 that a district commission may have its own regularly employed
35 personnel perform work which is an accepted industry practice under
36 prudent utility management without a contract. Prudent utility
37 management means performing work with regularly employed personnel
38 utilizing material of a worth not exceeding fifty thousand dollars in

1 value without a contract: PROVIDED, That such limit on the value of
2 material being utilized in work being performed by regularly employed
3 personnel shall not include the value of individual items of equipment
4 purchased or acquired and used as one unit of a project. Before
5 awarding such a contract, the commission shall publish a notice once or
6 more in a newspaper of general circulation in the district at least
7 thirteen days before the last date upon which bids will be received,
8 inviting sealed proposals for the work or materials; plans and
9 specifications of which shall at the time of the publication be on file
10 at the office of the district subject to public inspection. Any
11 published notice ordering work to be performed for the district shall
12 be mailed at the time of publication to any established trade
13 association which files a written request with the district to receive
14 such notices. The commission may at the same time and as part of the
15 same notice, invite tenders for the work or materials upon plans and
16 specifications to be submitted by the bidders.

17 Notwithstanding any other provisions herein, all contract projects,
18 the estimated cost of which is less than one hundred thousand dollars,
19 may be awarded to a contractor using the small works roster process
20 provided in RCW 39.04.155. All contract projects equal to or in excess
21 of one hundred thousand dollars shall be let by competitive bidding.

22 Whenever equipment or materials required by a district are held by
23 a governmental agency and are available for sale but such agency is
24 unwilling to submit a proposal, the commission may ascertain the price
25 of such items and file a statement of such price supported by the sworn
26 affidavit of one member of the commission and may consider such price
27 as a bid without a deposit or bond. In the event of an emergency when
28 the public interest or property of the district would suffer material
29 injury or damage by delay, upon resolution of the commission, or
30 proclamation of an official designated by the board to act for the
31 board during such emergencies, declaring the existence of such
32 emergency and reciting the facts constituting the same, the board, or
33 the official acting for the board, may waive the requirements of this
34 chapter with reference to any purchase or contract, after having taken
35 precautions to secure the lowest price practicable under the
36 circumstances. However, competitive bidding procedures for public
37 works may be waived only pursuant to section 1 of this act.

38 After determination by the commission during a public meeting that
39 a particular purchase is available clearly and legitimately only from

1 a single source of supply, the bidding requirements of this section may
2 be waived by the commission.

3 **Sec. 8.** RCW 56.08.070 and 1994 c 31 s 1 are each amended to read
4 as follows:

5 (1) All materials purchased and work ordered, the estimated cost of
6 which is in excess of five thousand dollars shall be let by contract.
7 All contract projects, the estimated cost of which is less than fifty
8 thousand dollars, may be awarded to a contractor using the small works
9 roster process provided in RCW 39.04.155 or the process provided in RCW
10 39.04.190 for purchases. The board of sewer commissioners may set up
11 uniform procedures to prequalify contractors for inclusion on the small
12 works roster. All contract projects equal to or in excess of fifty
13 thousand dollars shall be let by competitive bidding. Before awarding
14 any competitive contract the board of sewer commissioners shall publish
15 a notice in a newspaper of general circulation where the district is
16 located at least once, thirteen days before the last date upon which
17 bids will be received, inviting sealed proposals for such work, plans
18 and specifications which must at the time of publication of such notice
19 be on file in the office of the board of sewer commissioners subject to
20 public inspection. Such notice shall state generally the work to be
21 done and shall call for proposals for doing the same to be sealed and
22 filed with the board of sewer commissioners on or before the day and
23 hour named therein.

24 (2) Each bid shall be accompanied by a bid proposal deposit in the
25 form of a certified check, cashier's check, postal money order, or
26 surety bond payable to the order of the county treasurer for a sum not
27 less than five percent of the amount of the bid and no bid shall be
28 considered unless accompanied by such bid proposal deposit. At the
29 time and place named such bids shall be publicly opened and read and
30 the board of sewer commissioners shall proceed to canvass the bids and
31 may let such contract to the lowest responsible bidder upon plans and
32 specifications: PROVIDED, That no contract shall be let in excess of
33 the cost of the materials or work. The board of sewer commissioners
34 may reject all bids for good cause and readvertise and in such case all
35 checks, cash or bid bonds shall be returned to the bidders. If such
36 contract be let, then all checks, cash or bid bonds shall be returned
37 to the bidders, except that of the successful bidder, which shall be
38 retained until a contract shall be entered into for the purchase of

1 such materials or doing such work, and a bond to perform such work
2 furnished with sureties satisfactory to the board of sewer
3 commissioners in the full amount of the contract price between the
4 bidder and the commission in accordance with bid. If the bidder fails
5 to enter into the contract in accordance with the bid and furnish such
6 bond within ten days from the date at which the bidder is notified that
7 he or she is the successful bidder, the check, cash, or bid bonds and
8 the amount thereof shall be forfeited to the sewer district.

9 (3) In the event of an emergency when the public interest or
10 property of the sewer district would suffer material injury or damage
11 by delay, upon resolution of the board of sewer commissioners, or
12 proclamation of an official designated by the board to act for the
13 board during such emergencies, declaring the existence of such
14 emergency and reciting the facts constituting the same, the board, or
15 the official acting for the board, may waive the requirements of this
16 chapter with reference to any purchase or contract. However,
17 competitive bidding procedures for public works may be waived only
18 pursuant to section 1 of this act. In addition, these requirements may
19 be waived for purchases which are clearly and legitimately limited to
20 a single source of supply and purchases involving special facilities,
21 services, or market conditions, in which instances the purchase price
22 may be best established by direct negotiation.

23 **Sec. 9.** RCW 57.08.050 and 1994 c 31 s 2 are each amended to read
24 as follows:

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

28 (2) All materials purchased and work ordered, the estimated cost of
29 which is in excess of five thousand dollars shall be let by contract.
30 All contract projects, the estimated cost of which is less than fifty
31 thousand dollars, may be awarded to a contractor using a small works
32 roster process provided in RCW 39.04.155 or the process provided in RCW
33 39.04.190 for purchases. The board of water commissioners may set up
34 uniform procedures to prequalify contractors for inclusion on the small
35 works roster. All contract projects equal to or in excess of fifty
36 thousand dollars shall be let by competitive bidding. Before awarding
37 any such contract the board of water commissioners shall publish a
38 notice in a newspaper of general circulation where the district is

1 located at least once thirteen days before the last date upon which
2 bids will be received, inviting sealed proposals for such work, plans
3 and specifications which must at the time of publication of such notice
4 be on file in the office of the board of water commissioners subject to
5 public inspection. Such notice shall state generally the work to be
6 done and shall call for proposals for doing the same to be sealed and
7 filed with the board of water commissioners on or before the day and
8 hour named therein.

9 (3) Each bid shall be accompanied by a certified or cashier's check
10 or postal money order payable to the order of the county treasurer for
11 a sum not less than five percent of the amount of the bid, or
12 accompanied by a bid bond in an amount not less than five percent of
13 the bid with a corporate surety licensed to do business in the state,
14 conditioned that the bidder will pay the district as liquidated damages
15 the amount specified in the bond, unless the bidder enters into a
16 contract in accordance with his or her bid, and no bid shall be
17 considered unless accompanied by such check, cash or bid bond. At the
18 time and place named such bids shall be publicly opened and read and
19 the board of water commissioners shall proceed to canvass the bids and
20 may let such contract to the lowest responsible bidder upon plans and
21 specifications on file or to the best bidder submitting his or her own
22 plans and specifications: PROVIDED, That no contract shall be let in
23 excess of the cost of the materials or work. The board of water
24 commissioners may reject all bids for good cause and readvertise and in
25 such case all checks, cash or bid bonds shall be returned to the
26 bidders. If such contract be let, then all checks, cash or bid bonds
27 shall be returned to the bidders, except that of the successful bidder,
28 which shall be retained until a contract shall be entered into for the
29 purchase of such materials or doing such work, and a bond to perform
30 such work furnished with sureties satisfactory to the board of water
31 commissioners in the full amount of the contract price between the
32 bidder and the commission in accordance with the bid. If the bidder
33 fails to enter into the contract in accordance with the bid and furnish
34 such bond within ten days from the date at which the bidder is notified
35 that he or she is the successful bidder, the check, cash or bid bonds
36 and the amount thereof shall be forfeited to the water district:
37 PROVIDED, That if the bidder fails to enter into a contract in
38 accordance with his or her bid, and the board of water commissioners
39 deems it necessary to take legal action to collect on any bid bond

1 required (~~herein~~) in this section, then the water district shall be
2 entitled to collect from the bidder any legal expenses, including
3 reasonable attorneys' fees (~~occasioned thereby~~).

4 (4) In the event of an emergency when the public interest or
5 property of the water district would suffer material injury or damage
6 by delay, upon resolution of the board of water commissioners, or
7 proclamation of an official designated by the board to act for the
8 board during such emergencies, declaring the existence of such
9 emergency and reciting the facts constituting the same, the board, or
10 official acting for the board, may waive the requirements of this
11 chapter with reference to any purchase or contract. However,
12 competitive bidding procedures for public works may be waived only
13 pursuant to section 1 of this act. In addition, these requirements may
14 be waived for purchases which are clearly and legitimately limited to
15 a single source of supply and purchases involving special facilities,
16 services, or market conditions, in which instances the purchase price
17 may be best established by direct negotiation.

18 **Sec. 10.** RCW 70.44.140 and 1993 c 198 s 22 are each amended to
19 read as follows:

20 (1) All materials purchased and work ordered, the estimated cost of
21 which is in excess of five thousand dollars, shall be by contract.
22 Before awarding any such contract, the commission shall publish a
23 notice at least thirteen days before the last date upon which bids will
24 be received, inviting sealed proposals for such work. The plans and
25 specifications must at the time of the publication of such notice be on
26 file at the office of the public hospital district, subject to public
27 inspection: PROVIDED, HOWEVER, That the commission may at the same
28 time, and as part of the same notice, invite tenders for the work or
29 materials upon plans and specifications to be submitted by bidders.
30 The notice shall state generally the work to be done, and shall call
31 for proposals for doing the same, to be sealed and filed with the
32 commission on or before the day and hour named therein. Each bid shall
33 be accompanied by bid proposal security in the form of a certified
34 check, cashier's check, postal money order, or surety bond made payable
35 to the order of the commission, for a sum not less than five percent of
36 the amount of the bid, and no bid shall be considered unless
37 accompanied by such bid proposal security. At the time and place
38 named, such bids shall be publicly opened and read, and the commission

1 shall proceed to canvass the bids, and may let such contract to the
2 lowest responsible bidder upon plans and specifications on file, or to
3 the best bidder submitting his or her own plans and specifications:
4 PROVIDED, HOWEVER, That no contract shall be let in excess of the
5 estimated cost of the materials or work, or if, in the opinion of the
6 commission, all bids are unsatisfactory, they may reject all of them
7 and readvertise, and in such case all bid proposal security shall be
8 returned to the bidders; but if such contract be let, then and in such
9 case all bid proposal security shall be returned to the bidders, except
10 that of the successful bidder, which shall be retained until a contract
11 shall be entered into for the purchase of such materials for doing such
12 work, and a bond to perform such work furnished, with sureties
13 satisfactory to the commission, in an amount to be fixed by the
14 commission, not less than twenty-five percent of contract price in any
15 case, between the bidder and commission, in accordance with the bid.
16 If such bidder fails to enter into the contract in accordance with the
17 bid and furnish such bond within ten days from the date at which the
18 bidder is notified that he or she is the successful bidder, the bid
19 proposal security and the amount thereof shall be forfeited to the
20 public hospital district.

21 (2) In lieu of the procedures of subsection (1) of this section, a
22 public hospital district may use a small works roster process and award
23 public works contracts for projects in excess of five thousand dollars
24 up to fifty thousand dollars as provided in RCW 39.04.155.

25 (3) For advertisement and formal sealed bidding to be dispensed
26 with as to purchases between five thousand and fifteen thousand
27 dollars, the commission must authorize by resolution a procedure as
28 provided in RCW 39.04.190.

29 (4) The competitive bidding procedures for public works may be
30 waived pursuant to section 1 of this act.

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