

CERTIFICATION OF ENROLLMENT  
**SECOND SUBSTITUTE SENATE BILL 5757**

Chapter 18, Laws of 1996

54th Legislature  
1996 Regular Session

BIDDING REQUIREMENTS

EFFECTIVE DATE: 6/6/96

Passed by the Senate January 17, 1996  
YEAS 47 NAYS 0

JOEL PRITCHARD

**President of the Senate**

Passed by the House February 26, 1996  
YEAS 95 NAYS 0

CLYDE BALLARD

**Speaker of the  
House of Representatives**

Approved March 7, 1996

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5757** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

**Secretary**

FILED

March 7, 1996 - 10:08 a.m.

MIKE LOWRY

**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE SENATE BILL 5757

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Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators McCaslin, Haugen, Winsley, Heavey and Sheldon)

Read first time 01/11/96.

1 AN ACT Relating to bidding requirements; amending RCW 36.32.250,  
2 36.77.040, 39.04.220, 39.10.060, 47.28.100, 47.60.778, 53.08.130,  
3 54.04.080, 56.08.070, 57.08.050, 70.44.140, and 91.08.530; reenacting  
4 and amending RCW 35.23.352; adding a new section to chapter 35.22 RCW;  
5 adding a new section to chapter 43.19 RCW; adding a new section to  
6 chapter 52.14 RCW; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.22 RCW  
9 to read as follows:

10 A low bidder who claims error and fails to enter into a contract  
11 with a city for a public works project is prohibited from bidding on  
12 the same project if a second or subsequent call for bids is made for  
13 the project.

14 **Sec. 2.** RCW 35.23.352 and 1994 c 273 s 9 and 1994 c 81 s 18 are  
15 each reenacted and amended to read as follows:

16 (1) Any second class city or any town may construct any public  
17 works, as defined in RCW 39.04.010, by contract or day labor without  
18 calling for bids therefor whenever the estimated cost of the work or

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

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

29 When the contract is let then all bid proposal deposits shall be  
30 returned to the bidders except that of the successful bidder which  
31 shall be retained until a contract is entered into and a bond to  
32 perform the work furnished, with surety satisfactory to the council or  
33 commission, in accordance with RCW 39.08.030. If the bidder fails to  
34 enter into the contract in accordance with his or her bid and furnish  
35 a bond within ten days from the date at which he or she is notified  
36 that he or she is the successful bidder, the check or postal money  
37 order and the amount thereof shall be forfeited to the council or  
38 commission or the council or commission shall recover the amount of the  
39 surety bond. A low bidder who claims error and fails to enter into a

1 contract is prohibited from bidding on the same project if a second or  
2 subsequent call for bids is made for the project.

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

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

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

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

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

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

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

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

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

35 (9) These requirements for purchasing may be waived by resolution  
36 of the city or town council or commission which declared that the  
37 purchase is clearly and legitimately limited to a single source or  
38 supply within the near vicinity, or the materials, supplies, equipment,

1 or services are subject to special market conditions, and recites why  
2 this situation exists. Such actions are subject to RCW 39.30.020.

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

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

9 **Sec. 3.** RCW 36.32.250 and 1993 c 198 s 8 are each amended to read  
10 as follows:

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

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

20 For advertisement and competitive bidding to be dispensed with as  
21 to public works projects with an estimated value of ten thousand  
22 dollars up to one hundred thousand dollars, a county must use a small  
23 works roster process as provided in RCW 39.04.155.

24 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 **Sec. 4.** RCW 36.77.040 and 1963 c 4 s 36.77.040 are each amended to  
28 read as follows:

29 The board shall proceed to award the contract to the lowest and  
30 best bidder but may reject any or all bids if in its opinion good cause  
31 exists therefor. The board shall require from the successful bidder a  
32 contractor's bond in the amount and with the conditions imposed by law.  
33 Should the bidder to whom the contract is awarded fail to enter into  
34 the contract and furnish the contractor's bond as required within ten  
35 days after notice of the award, exclusive of the day of notice, the  
36 amount of the bid deposit shall be forfeited to the county and placed  
37 in the county road fund and the contract awarded to the next lowest and  
38 best bidder. A low bidder who claims error and fails to enter into a

1 contract is prohibited from bidding on the same project if a second or  
2 subsequent call for bids is made for the project. The bid deposit of  
3 all unsuccessful bidders shall be returned after the contract is  
4 awarded and the required contractor's bond given by the successful  
5 bidder is accepted by the board.

6 **Sec. 5.** RCW 39.04.220 and 1994 c 80 s 2 are each amended to read  
7 as follows:

8 (1) In addition to currently authorized methods of public works  
9 contracting, and in lieu of the requirements of RCW 39.04.010 and  
10 39.04.020 through 39.04.060, capital projects funded for over ten  
11 million dollars authorized by the legislature for the department of  
12 corrections to construct or repair facilities may be accomplished under  
13 contract using the general contractor/construction manager method  
14 described in this section. In addition, the general contractor/  
15 construction manager method may be used for up to two demonstration  
16 projects under ten million dollars for the department of corrections.  
17 Each demonstration project shall aggregate capital projects authorized  
18 by the legislature at a single site to total no less than three million  
19 dollars with the approval of the office of financial management. The  
20 department of general administration shall present its plan for the  
21 aggregation of projects under each demonstration project to the  
22 oversight advisory committee established under subsection (2) of this  
23 section prior to soliciting proposals for general contractor/  
24 construction manager services for the demonstration project.

25 (2) For the purposes of this section, "general contractor/  
26 construction manager" means a firm with which the department of general  
27 administration has selected and negotiated a maximum allowable  
28 construction cost to be guaranteed by the firm, after competitive  
29 selection through a formal advertisement, and competitive bids to  
30 provide services during the design phase that may include life-cycle  
31 cost design considerations, value engineering, scheduling, cost  
32 estimating, constructability, alternative construction options for cost  
33 savings, and sequencing of work, and to act as the construction manager  
34 and general contractor during the construction phase. The department  
35 of general administration shall establish an independent oversight  
36 advisory committee with representatives of interest groups with an  
37 interest in this subject area, the department of corrections, and the  
38 private sector, to review selection and contracting procedures and

1 contracting documents. The oversight advisory committee shall discuss  
2 and review the progress of the demonstration projects. The general  
3 contractor/construction manager method is limited to projects  
4 authorized on or before July 1, 1997.

5 (3) Contracts for the services of a general contractor/construction  
6 manager awarded under the authority of this section shall be awarded  
7 through a competitive process requiring the public solicitation of  
8 proposals for general contractor/construction manager services.  
9 Minority and women enterprise total project goals shall be specified in  
10 the bid instructions to the general contractor/construction manager  
11 finalists. The director of general administration is authorized to  
12 include an incentive clause in any contract awarded under this section  
13 for savings of either time or cost or both from that originally  
14 negotiated. No incentives granted shall exceed five percent of the  
15 maximum allowable construction cost. The director of general  
16 administration or his or her designee shall establish a committee to  
17 evaluate the proposals considering such factors as: Ability of  
18 professional personnel; past performance in negotiated and complex  
19 projects; ability to meet time and budget requirements; location;  
20 recent, current, and projected work loads of the firm; and the concept  
21 of their proposal. After the committee has selected the most qualified  
22 finalists, these finalists shall submit sealed bids for the percent  
23 fee, which is the percentage amount to be earned by the general  
24 contractor/construction manager as overhead and profit, on the  
25 estimated maximum allowable construction cost and the fixed amount for  
26 the detailed specified general conditions work. The maximum allowable  
27 construction cost may be negotiated between the department of general  
28 administration and the selected firm after the scope of the project is  
29 adequately determined to establish a guaranteed contract cost for which  
30 the general contractor/construction manager will provide a performance  
31 and payment bond. The guaranteed contract cost includes the fixed  
32 amount for the detailed specified general conditions work, the  
33 negotiated maximum allowable construction cost, the percent fee on the  
34 negotiated maximum allowable construction cost, and sales tax. If the  
35 department of general administration is unable to negotiate a  
36 satisfactory maximum allowable construction cost with the firm selected  
37 that the department of general administration determines to be fair,  
38 reasonable, and within the available funds, negotiations with that firm  
39 shall be formally terminated and the department of general



1 administration shall negotiate with the next low bidder and continue  
2 until an agreement is reached or the process is terminated. If the  
3 maximum allowable construction cost varies more than fifteen percent  
4 from the bid estimated maximum allowable construction cost due to  
5 requested and approved changes in the scope by the state, the percent  
6 fee shall be renegotiated. All subcontract work shall be competitively  
7 bid with public bid openings. Specific contract requirements for women  
8 and minority enterprise participation shall be specified in each  
9 subcontract bid package that exceeds ten percent of the department's  
10 estimated project cost. All subcontractors who bid work over two  
11 hundred thousand dollars shall post a bid bond and the awarded  
12 subcontractor shall provide a performance and payment bond for their  
13 contract amount if required by the general contractor/construction  
14 manager. A low bidder who claims error and fails to enter into a  
15 contract is prohibited from bidding on the same project if a second or  
16 subsequent call for bids is made for the project. Bidding on  
17 subcontract work by the general contractor/construction manager or its  
18 subsidiaries is prohibited. The general contractor/construction  
19 manager may negotiate with the low-responsive bidder only in accordance  
20 with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

21 (4) If the project is completed for less than the agreed upon  
22 maximum allowable construction cost, any savings not otherwise  
23 negotiated as part of an incentive clause shall accrue to the state.  
24 If the project is completed for more than the agreed upon maximum  
25 allowable construction cost, excepting increases due to any contract  
26 change orders approved by the state, the additional cost shall be the  
27 responsibility of the general contractor/construction manager.

28 (5) The powers and authority conferred by this section shall be  
29 construed as in addition and supplemental to powers or authority  
30 conferred by any other law, and nothing contained (~~herein shall~~) in  
31 this section may be construed as limiting any other powers or authority  
32 of the department of general administration. However, all actions  
33 taken pursuant to the powers and authority granted to the director or  
34 the department of general administration under this section may only be  
35 taken with the concurrence of the department of corrections.

36 **Sec. 6.** RCW 39.10.060 and 1994 c 132 s 6 are each amended to read  
37 as follows:

1 (1) Notwithstanding any other provision of law, and after complying  
2 with RCW 39.10.030, the following public bodies may utilize the general  
3 contractor/construction manager procedure of public works contracting  
4 for public works projects authorized under subsection (2) of this  
5 section: The state department of general administration; the  
6 University of Washington; Washington State University; every city with  
7 a population greater than one hundred fifty thousand; every county with  
8 a population greater than four hundred fifty thousand; and every port  
9 district with a population greater than five hundred thousand. For the  
10 purposes of this section, "general contractor/construction manager"  
11 means a firm with which a public body has selected and negotiated a  
12 maximum allowable construction cost to be guaranteed by the firm, after  
13 competitive selection through formal advertisement and competitive  
14 bids, to provide services during the design phase that may include  
15 life-cycle cost design considerations, value engineering, scheduling,  
16 cost estimating, constructability, alternative construction options for  
17 cost savings, and sequencing of work, and to act as the construction  
18 manager and general contractor during the construction phase.

19 (2) Public bodies authorized under this section may utilize the  
20 general contractor/construction manager procedure for public works  
21 projects valued over ten million dollars where:

22 (a) Implementation of the project involves complex scheduling  
23 requirements;

24 (b) The project involves construction at an existing facility which  
25 must continue to operate during construction; or

26 (c) The involvement of the general contractor/construction manager  
27 during the design stage is critical to the success of the project.

28 (3) Contracts for the services of a general contractor/construction  
29 manager under this section shall be awarded through a competitive  
30 process requiring the public solicitation of proposals for general  
31 contractor/construction manager services. Minority and women business  
32 enterprise total project goals shall be specified in the public  
33 solicitation of proposals and the bid instructions to the general  
34 contractor/construction manager finalists. A public body is authorized  
35 to include an incentive clause in any contract awarded under this  
36 section for savings of either time or cost or both from that originally  
37 negotiated. No incentives granted shall exceed five percent of the  
38 maximum allowable construction cost. A public body shall establish a  
39 committee to evaluate the proposals considering such factors as:

1 Ability of professional personnel; past performance in negotiated and  
2 complex projects; ability to meet time and budget requirements;  
3 location; recent, current, and projected work loads of the firm; and  
4 the concept of their proposal. After the committee has selected the  
5 most qualified finalists, these finalists shall submit sealed bids for  
6 the percent fee, which is the percentage amount to be earned by the  
7 general contractor/construction manager as overhead and profit, on the  
8 estimated maximum allowable construction cost and the fixed amount for  
9 the detailed specified general conditions work. The maximum allowable  
10 construction cost may be negotiated between the public body and the  
11 selected firm after the scope of the project is adequately determined  
12 to establish a guaranteed contract cost for which the general  
13 contractor/construction manager will provide a performance and payment  
14 bond. The guaranteed contract cost includes the fixed amount for the  
15 detailed specified general conditions work, the negotiated maximum  
16 allowable construction cost, the percent fee on the negotiated maximum  
17 allowable construction cost, and sales tax. If the public body is  
18 unable to negotiate a satisfactory maximum allowable construction cost  
19 with the firm selected that the public body determines to be fair,  
20 reasonable, and within the available funds, negotiations with that firm  
21 shall be formally terminated and the public body shall negotiate with  
22 the next low bidder and continue until an agreement is reached or the  
23 process is terminated. If the maximum allowable construction cost  
24 varies more than fifteen percent from the bid estimated maximum  
25 allowable construction cost due to requested and approved changes in  
26 the scope by the public body, the percent fee shall be renegotiated.  
27 All subcontract work shall be competitively bid with public bid  
28 openings. Specific contract requirements for women and minority  
29 enterprise participation shall be specified in each subcontract bid  
30 package that exceeds ten percent of the public body's estimated project  
31 cost. All subcontractors who bid work over two hundred thousand  
32 dollars shall post a bid bond and all subcontractors who are awarded a  
33 contract over two hundred thousand dollars shall provide a performance  
34 and payment bond for their contract amount. A low bidder who claims  
35 error and fails to enter into a contract is prohibited from bidding on  
36 the same project if a second or subsequent call for bids is made for  
37 the project. All other subcontractors shall provide a performance and  
38 payment bond if required by the general contractor/construction  
39 manager. Bidding on subcontract work by the general contractor/

1 construction manager or its subsidiaries is prohibited. The general  
2 contractor/construction manager may negotiate with the low-responsive  
3 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
4 negotiations, rebid.

5 (4) If the project is completed for less than the agreed upon  
6 maximum allowable construction cost, any savings not otherwise  
7 negotiated as part of an incentive clause shall accrue to the public  
8 body. If the project is completed for more than the agreed upon  
9 maximum allowable construction cost, excepting increases due to any  
10 contract change orders approved by the public body, the additional cost  
11 shall be the responsibility of the general contractor/construction  
12 manager.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.19 RCW  
14 to read as follows:

15 A low bidder who claims error and fails to enter into a contract is  
16 prohibited from bidding on the same purchase or project if a second or  
17 subsequent call for bids is made for the project.

18 **Sec. 8.** RCW 47.28.100 and 1984 c 7 s 171 are each amended to read  
19 as follows:

20 If the successful bidder fails to enter into the contract and  
21 furnish satisfactory bond as provided by law within twenty days from  
22 the award, exclusive of the day of the award, his or her deposit shall  
23 be forfeited to the state and deposited by the state treasurer to the  
24 credit of the motor vehicle fund, and the department may award the  
25 contract to the second lowest responsible bidder. If the second lowest  
26 responsible bidder fails to enter into the contract and furnish bond  
27 within twenty days after award to him or her, forfeiture of his or her  
28 deposit shall also be made, and the contract may be awarded to the  
29 third lowest responsible bidder, and in like manner until the contract  
30 and bond are executed by a responsible bidder to whom award is made, or  
31 further bid proposals are rejected, or the number of bid proposals are  
32 exhausted. If the contract is not executed or no contractor's bond  
33 provided within the time required, and there appear circumstances that  
34 are deemed to warrant an extension of time, the department may extend  
35 the time for execution of the contract or furnishing bond for not to  
36 exceed twenty additional days. After awarding the contract the  
37 deposits of unsuccessful bidders shall be returned, but the department

1 may retain the deposit of the next lowest responsible bidder or bidders  
2 as it desires until such time as the contract is entered into and  
3 satisfactory bond is provided by the bidder to whom the award is  
4 ultimately made. A low bidder who claims error and fails to enter into  
5 a contract is prohibited from bidding on the same project if a second  
6 or subsequent call for bids is made for the project.

7 If in the opinion of the department the acceptance of the bid of  
8 the lowest responsible bidder or bidders, or on prior failure of the  
9 lowest responsible bidder or bidders the acceptance of the bid of the  
10 remaining lowest responsible bidder or bidders, will not be for the  
11 best interest of the state, it may reject all bids or all remaining  
12 bids and republish a call for bids in the same manner as for an  
13 original publication thereof.

14 **Sec. 9.** RCW 47.60.778 and 1993 c 493 s 6 are each amended to read  
15 as follows:

16 Bids submitted by firms under this section constitute an offer and  
17 shall remain open for ninety days. When submitted, each bid shall be  
18 accompanied by a deposit in cash, certified check, cashier's check, or  
19 surety bond in an amount equal to five percent of the bid amount, and  
20 no bid may be considered unless the deposit is enclosed. If the  
21 department awards a contract to a firm and the firm fails to enter into  
22 a contract or fails to furnish a satisfactory contract security as  
23 required by RCW 39.08.100, its deposit shall be forfeited to the state  
24 and be deposited by the state treasurer to the credit of the Puget  
25 Sound capital construction account. A low bidder who claims error and  
26 fails to enter into a contract is prohibited from bidding on the same  
27 project if a second or subsequent call for bids is made for the  
28 project. Upon the execution of a ferry construction contract for the  
29 construction of new jumbo ferries, all bid deposits shall be returned.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 52.14 RCW  
31 to read as follows:

32 A low bidder who claims error and fails to enter into a contract  
33 with a fire protection district for a public works project is  
34 prohibited from bidding on the same project if a second or subsequent  
35 call for bids is made for the project.

1       **Sec. 11.** RCW 53.08.130 and 1971 ex.s. c 258 s 2 are each amended  
2 to read as follows:

3       The notice shall state generally the nature of the work to be done  
4 and require that bids be sealed and filed with the commission at a time  
5 specified therein. Each bid shall be accompanied by a bid proposal  
6 deposit in the form of a cashier's check, money order, or surety bid  
7 bond to the commission for a sum not less than five percent of the  
8 amount of the bid, and no bid shall be considered unless accompanied by  
9 such bid proposal deposit. At the time and place named the bids shall  
10 be publicly opened and read and the commission shall proceed to canvass  
11 the bids and, except as otherwise in this section provided, shall let  
12 the contract to the lowest responsible bidder upon plans and  
13 specifications on file, or to the best bidder submitting his or her own  
14 plans and specifications. If, in the opinion of the commission, all  
15 bids are unsatisfactory, they may reject all of them and readvertise,  
16 and in such case all such bid proposal deposits shall be returned to  
17 the bidders; but if the contract is let, then all bid proposal deposits  
18 shall be returned to the bidders, except that of the successful bidder  
19 which shall be retained until a contract is entered into for the  
20 purchase of such materials or doing such work, and a bond given to the  
21 port district for the performance of the contract and otherwise  
22 conditioned as required by law, with sureties satisfactory to the  
23 commission, in an amount to be fixed by the commission, but not in any  
24 event less than twenty-five percent of the contract price. If ((said))  
25 the bidder fails to enter into the contract in accordance with his or  
26 her bid and furnish such bond within ten days from the date at which he  
27 or she is notified that he or she is the successful bidder, the check  
28 or money order and the amount thereof shall be forfeited to the port  
29 district or the port district shall recover the amount of the surety  
30 bid bond. A low bidder who claims error and fails to enter into a  
31 contract is prohibited from bidding on the same project if a second or  
32 subsequent call for bids is made for the project.

33       **Sec. 12.** RCW 54.04.080 and 1972 ex.s. c 41 s 1 are each amended to  
34 read as follows:

35       Any notice inviting sealed bids shall state generally the work to  
36 be done, or the material to be purchased and shall call for proposals  
37 for furnishing it, to be sealed and filed with the commission on or  
38 before the time named therein. Each bid shall be accompanied by a

1 certified or cashier's check, payable to the order of the commission,  
2 for a sum not less than five percent of the amount of the bid, or  
3 accompanied by a bid bond in an amount not less than five percent of  
4 the bid with a corporate surety licensed to do business in the state,  
5 conditioned that the bidder will pay the district as liquidated damages  
6 the amount specified in the bond unless he or she enters into a  
7 contract in accordance with his or her bid and furnishes the  
8 performance bond (~~herein mentioned~~) within ten days from the date on  
9 which he or she is notified that he or she is the successful bidder.  
10 A low bidder who claims error and fails to enter into a contract is  
11 prohibited from bidding on the same project if a second or subsequent  
12 call for bids is made for the project.

13 At the time and place named, the bids shall be publicly opened and  
14 read, and the commission shall canvass the bids, and may let the  
15 contract to the lowest responsible bidder upon the plans and  
16 specifications on file, or to the best bidder submitting his or her own  
17 plans or specifications; or if the contract to be let is to construct  
18 or improve electrical facilities, the contract may be let to the lowest  
19 bidder prequalified according to the provisions of RCW 54.04.085 upon  
20 the plans and specifications on file, or to the best bidder submitting  
21 his or her own plans and specifications: PROVIDED, That no contract  
22 shall be let for more than fifteen percent in excess of the estimated  
23 cost of the materials or work. The commission may reject all bids and  
24 readvertise, and in such case all checks shall be returned to the  
25 bidders. The commission may procure materials in the open market, have  
26 its own personnel perform the work or negotiate a contract for such  
27 work to be performed by others, in lieu of readvertising, if it  
28 receives no bid. If the contract is let, all checks shall be returned  
29 to the bidders, except that of the successful bidder, which shall be  
30 retained until a contract is entered into and a bond to perform the  
31 work furnished, with sureties satisfactory to the commission, in an  
32 amount to be fixed by the commission, not less than twenty-five percent  
33 of the contract price, in accordance with the bid. If the bidder fails  
34 to enter into the contract and furnish the bond within ten days from  
35 the date at which he or she is notified that he or her is the  
36 successful bidder, his or her check and the amount thereof shall be  
37 forfeited to the district.

1 The commission shall, by resolution, define the term "same kind of  
2 materials, equipment, and supplies" with respect to purchase of items  
3 under the provisions of RCW 54.04.070.

4 The term "construction or improvement of any electrical facility"  
5 as used in this section and in RCW 54.04.085, shall mean the  
6 construction, the moving, maintenance, modification, or enlargement of  
7 facilities primarily used or to be used for the transmission or  
8 distribution of electricity at voltages above seven hundred fifty  
9 volts, including structures directly supporting transmission or  
10 distribution conductors but not including site preparation, housing, or  
11 protective fencing associated with but not included in a contract for  
12 such construction, moving, modification, maintenance, or enlargement of  
13 such facilities.

14 The commission shall be the final authority with regard to whether  
15 a bid is responsive to the call for bids and as to whether a bidder is  
16 a responsible bidder under the conditions of his or her bid. No award  
17 of contract shall be invalidated solely because of the failure of any  
18 prospective bidder to receive an invitation to bid.

19 **Sec. 13.** RCW 56.08.070 and 1994 c 31 s 1 are each amended to read  
20 as follows:

21 (1) All materials purchased and work ordered, the estimated cost of  
22 which is in excess of five thousand dollars shall be let by contract.  
23 All contract projects, the estimated cost of which is less than fifty  
24 thousand dollars, may be awarded to a contractor using the small works  
25 roster process provided in RCW 39.04.155 or the process provided in RCW  
26 39.04.190 for purchases. The board of sewer commissioners may set up  
27 uniform procedures to prequalify contractors for inclusion on the small  
28 works roster. All contract projects equal to or in excess of fifty  
29 thousand dollars shall be let by competitive bidding. Before awarding  
30 any competitive contract the board of sewer commissioners shall publish  
31 a notice in a newspaper of general circulation where the district is  
32 located at least once, thirteen days before the last date upon which  
33 bids will be received, inviting sealed proposals for such work, plans  
34 and specifications which must at the time of publication of such notice  
35 be on file in the office of the board of sewer commissioners subject to  
36 public inspection. Such notice shall state generally the work to be  
37 done and shall call for proposals for doing the same to be sealed and



1 filed with the board of sewer commissioners on or before the day and  
2 hour named therein.

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

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  
31 by delay, upon resolution of the board of sewer commissioners, or  
32 proclamation of an official designated by the board to act for the  
33 board during such emergencies, declaring the existence of such  
34 emergency and reciting the facts constituting the same, the board, or  
35 the official acting for the board, may waive the requirements of this  
36 chapter with reference to any purchase or contract. In addition, these  
37 requirements may be waived for purchases which are clearly and  
38 legitimately limited to a single source of supply and purchases  
39 involving special facilities, services, or market conditions, in which

1 instances the purchase price may be best established by direct  
2 negotiation.

3 **Sec. 14.** RCW 57.08.050 and 1994 c 31 s 2 are each amended to read  
4 as follows:

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

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

27 (3) Each bid shall be accompanied by a certified or cashier's check  
28 or postal money order payable to the order of the county treasurer for  
29 a sum not less than five percent of the amount of the bid, or  
30 accompanied by a bid bond in an amount not less than five percent of  
31 the bid with a corporate surety licensed to do business in the state,  
32 conditioned that the bidder will pay the district as liquidated damages  
33 the amount specified in the bond, unless the bidder enters into a  
34 contract in accordance with his or her bid, and no bid shall be  
35 considered unless accompanied by such check, cash or bid bond. At the  
36 time and place named such bids shall be publicly opened and read and  
37 the board of water commissioners shall proceed to canvass the bids and  
38 may let such contract to the lowest responsible bidder upon plans and

1 specifications on file or to the best bidder submitting his or her own  
2 plans and specifications: PROVIDED, That no contract shall be let in  
3 excess of the cost of the materials or work. The board of water  
4 commissioners may reject all bids for good cause and readvertise and in  
5 such case all checks, cash or bid bonds shall be returned to the  
6 bidders. If such contract be let, then all checks, cash or bid bonds  
7 shall be returned to the bidders, except that of the successful bidder,  
8 which shall be retained until a contract shall be entered into for the  
9 purchase of such materials or doing such work, and a bond to perform  
10 such work furnished with sureties satisfactory to the board of water  
11 commissioners in the full amount of the contract price between the  
12 bidder and the commission in accordance with the bid. If the bidder  
13 fails to enter into the contract in accordance with the bid and furnish  
14 such bond within ten days from the date at which the bidder is notified  
15 that he or she is the successful bidder, the check, cash or bid bonds  
16 and the amount thereof shall be forfeited to the water district:  
17 PROVIDED, That if the bidder fails to enter into a contract in  
18 accordance with his or her bid, and the board of water commissioners  
19 deems it necessary to take legal action to collect on any bid bond  
20 required (~~herein~~) in this section, then the water district shall be  
21 entitled to collect from the bidder any legal expenses, including  
22 reasonable attorneys' fees occasioned thereby. A low bidder who claims  
23 error and fails to enter into a contract is prohibited from bidding on  
24 the same project if a second or subsequent call for bids is made for  
25 the project.

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  
31 emergency and reciting the facts constituting the same, the board, or  
32 official acting for the board, may waive the requirements of this  
33 chapter with reference to any purchase or contract. In addition, these  
34 requirements may be waived for purchases which are clearly and  
35 legitimately limited to a single source of supply and purchases  
36 involving special facilities, services, or market conditions, in which  
37 instances the purchase price may be best established by direct  
38 negotiation.

1       **Sec. 15.** RCW 70.44.140 and 1993 c 198 s 22 are each amended to  
2 read as follows:

3       (1) All materials purchased and work ordered, the estimated cost of  
4 which is in excess of five thousand dollars, shall be by contract.  
5 Before awarding any such contract, the commission shall publish a  
6 notice at least thirteen days before the last date upon which bids will  
7 be received, inviting sealed proposals for such work. The plans and  
8 specifications must at the time of the publication of such notice be on  
9 file at the office of the public hospital district, subject to public  
10 inspection: PROVIDED, HOWEVER, That the commission may at the same  
11 time, and as part of the same notice, invite tenders for the work or  
12 materials upon plans and specifications to be submitted by bidders.  
13 The notice shall state generally the work to be done, and shall call  
14 for proposals for doing the same, to be sealed and filed with the  
15 commission on or before the day and hour named therein. Each bid shall  
16 be accompanied by bid proposal security in the form of a certified  
17 check, cashier's check, postal money order, or surety bond made payable  
18 to the order of the commission, for a sum not less than five percent of  
19 the amount of the bid, and no bid shall be considered unless  
20 accompanied by such bid proposal security. At the time and place  
21 named, such bids shall be publicly opened and read, and the commission  
22 shall proceed to canvass the bids, and may let such contract to the  
23 lowest responsible bidder upon plans and specifications on file, or to  
24 the best bidder submitting his or her own plans and specifications:  
25 PROVIDED, HOWEVER, That no contract shall be let in excess of the  
26 estimated cost of the materials or work, or if, in the opinion of the  
27 commission, all bids are unsatisfactory, they may reject all of them  
28 and readvertise, and in such case all bid proposal security shall be  
29 returned to the bidders; but if such contract be let, then and in such  
30 case all bid proposal security shall be returned to the bidders, except  
31 that of the successful bidder, which shall be retained until a contract  
32 shall be entered into for the purchase of such materials for doing such  
33 work, and a bond to perform such work furnished, with sureties  
34 satisfactory to the commission, in an amount to be fixed by the  
35 commission, not less than twenty-five percent of contract price in any  
36 case, between the bidder and commission, in accordance with the bid.  
37 If such bidder fails to enter into the contract in accordance with the  
38 bid and furnish such bond within ten days from the date at which the  
39 bidder is notified that he or she is the successful bidder, the bid

1 proposal security and the amount thereof shall be forfeited to the  
2 public hospital district. A low bidder who claims error and fails to  
3 enter into a contract is prohibited from bidding on the same project if  
4 a second or subsequent call for bids is made for the project.

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

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

13 **Sec. 16.** RCW 91.08.530 and 1911 c 23 s 52 are each amended to read  
14 as follows:

15 After the confirmation of the assessment roll of any improvement  
16 district provided for herein, the board shall proceed at once with the  
17 construction of the improvement, and in carrying on ~~((said))~~ the  
18 construction it shall have full charge and management thereof and the  
19 power to employ such assistants as it may deem necessary, and purchase  
20 all material required in such construction; and it shall have power to  
21 let the whole or any part of the work of ~~((said))~~ the improvement to  
22 the lowest and best bidder therefor, after public advertisement and  
23 call for bids; and in case of such letting of a contract it shall have  
24 the power also to enter into all necessary agreements with the  
25 contractor in the premises: PROVIDED, That in the case of the letting  
26 of a contract the board shall require the contractor to give a bond in  
27 the amount of the contract price, with sureties to be approved by the  
28 board and running to the board as obligee therein, conditioned for the  
29 faithful and accurate performance of his or her contract by ~~((said))~~  
30 the contractor, and that he or she will pay, or cause to be paid, all  
31 just claims of all persons performing labor upon or rendering services  
32 in doing ~~((said))~~ the work, or furnishing materials, merchandise or  
33 provisions used by ~~((said))~~ the contractor in the construction of  
34 ~~((said))~~ the improvement. ~~((said))~~ The bond shall be filed and  
35 recorded in the office of the auditor of the county and every  
36 subcontractor on any such work shall file and record a like bond in the  
37 full amount of his or her subcontract. Unless otherwise paid their  
38 claims for labor or services, materials, merchandise or provisions, the

1 claimants may have recourse by suit upon such bond in their own names:  
2 PROVIDED, That no such claim or suit shall be maintained unless the  
3 persons making ((said)) the claim shall within thirty days after the  
4 completion of ((said)) the improvement, file their claims, duly  
5 verified, to the effect that the amounts thereof are just and due and  
6 are unpaid, with the clerk of the board. Each bidder for a contract to  
7 be let under this section shall deliver with his or her bid a check for  
8 five percent of the amount of the bid, drawn upon a bank in this state  
9 and certified by the bank, as surety to the board that the bidder will  
10 enter into the contract with the board. The checks of unsuccessful  
11 bidders will be returned to them when an award of the contract has been  
12 made by the board. A low bidder who claims error and fails to enter  
13 into a contract is prohibited from bidding on the same project if a  
14 second or subsequent call for bids is made for the project.

15 NEW SECTION. Sec. 17. Section 6 of this act shall expire July 1,  
16 1997.

Passed the Senate January 17, 1996.

Passed the House February 26, 1996.

Approved by the Governor March 7, 1996.

Filed in Office of Secretary of State March 7, 1996.