
SUBSTITUTE SENATE BILL 5757

State of Washington

54th Legislature

1995 Regular Session

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

Read first time 03/01/95.

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; and providing an expiration
6 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 **Sec. 10.** RCW 53.08.130 and 1971 ex.s. c 258 s 2 are each amended
31 to read as follows:

32 The notice shall state generally the nature of the work to be done
33 and require that bids be sealed and filed with the commission at a time
34 specified therein. Each bid shall be accompanied by a bid proposal
35 deposit in the form of a cashier's check, money order, or surety bid
36 bond to the commission for a sum not less than five percent of the
37 amount of the bid, and no bid shall be considered unless accompanied by

1 such bid proposal deposit. At the time and place named the bids shall
2 be publicly opened and read and the commission shall proceed to canvass
3 the bids and, except as otherwise in this section provided, shall let
4 the contract to the lowest responsible bidder upon plans and
5 specifications on file, or to the best bidder submitting his or her own
6 plans and specifications. If, in the opinion of the commission, all
7 bids are unsatisfactory, they may reject all of them and readvertise,
8 and in such case all such bid proposal deposits shall be returned to
9 the bidders; but if the contract is let, then all bid proposal deposits
10 shall be returned to the bidders, except that of the successful bidder
11 which shall be retained until a contract is entered into for the
12 purchase of such materials or doing such work, and a bond given to the
13 port district for the performance of the contract and otherwise
14 conditioned as required by law, with sureties satisfactory to the
15 commission, in an amount to be fixed by the commission, but not in any
16 event less than twenty-five percent of the contract price. If ((said))
17 the bidder fails to enter into the contract in accordance with his or
18 her bid and furnish such bond within ten days from the date at which he
19 or she is notified that he or she is the successful bidder, the check
20 or money order and the amount thereof shall be forfeited to the port
21 district or the port district shall recover the amount of the surety
22 bid bond. A low bidder who claims error and fails to enter into a
23 contract is prohibited from bidding on the same project if a second or
24 subsequent call for bids is made for the project.

25 **Sec. 11.** RCW 54.04.080 and 1972 ex.s. c 41 s 1 are each amended to
26 read as follows:

27 Any notice inviting sealed bids shall state generally the work to
28 be done, or the material to be purchased and shall call for proposals
29 for furnishing it, to be sealed and filed with the commission on or
30 before the time named therein. Each bid shall be accompanied by a
31 certified or cashier's check, payable to the order of the commission,
32 for a sum not less than five percent of the amount of the bid, or
33 accompanied by a bid bond in an amount not less than five percent of
34 the bid with a corporate surety licensed to do business in the state,
35 conditioned that the bidder will pay the district as liquidated damages
36 the amount specified in the bond unless he or she enters into a
37 contract in accordance with his or her bid and furnishes the
38 performance bond ((~~herein mentioned~~)) within ten days from the date on

1 which he or she is notified that he or she is the successful bidder.
2 A low bidder who claims error and fails to enter into a contract is
3 prohibited from bidding on the same project if a second or subsequent
4 call for bids is made for the project.

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

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

33 The term "construction or improvement of any electrical facility"
34 as used in this section and in RCW 54.04.085, shall mean the
35 construction, the moving, maintenance, modification, or enlargement of
36 facilities primarily used or to be used for the transmission or
37 distribution of electricity at voltages above seven hundred fifty
38 volts, including structures directly supporting transmission or
39 distribution conductors but not including site preparation, housing, or

1 protective fencing associated with but not included in a contract for
2 such construction, moving, modification, maintenance, or enlargement of
3 such facilities.

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

9 **Sec. 12.** RCW 56.08.070 and 1994 c 31 s 1 are each amended to read
10 as follows:

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

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

1 the cost of the materials or work. The board of sewer commissioners
2 may reject all bids for good cause and readvertise and in such case all
3 checks, cash or bid bonds shall be returned to the bidders. If such
4 contract be let, then all checks, cash or bid bonds shall be returned
5 to the bidders, except that of the successful bidder, which shall be
6 retained until a contract shall be entered into for the purchase of
7 such materials or doing such work, and a bond to perform such work
8 furnished with sureties satisfactory to the board of sewer
9 commissioners in the full amount of the contract price between the
10 bidder and the commission in accordance with bid. If the bidder fails
11 to enter into the contract in accordance with the bid and furnish such
12 bond within ten days from the date at which the bidder is notified that
13 he or she is the successful bidder, the check, cash, or bid bonds and
14 the amount thereof shall be forfeited to the sewer district. A low
15 bidder who claims error and fails to enter into a contract is
16 prohibited from bidding on the same project if a second or subsequent
17 call for bids is made for the project.

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

31 **Sec. 13.** RCW 57.08.050 and 1994 c 31 s 2 are each amended to read
32 as follows:

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

36 (2) All materials purchased and work ordered, the estimated cost of
37 which is in excess of five thousand dollars shall be let by contract.
38 All contract projects, the estimated cost of which is less than fifty

1 thousand dollars, may be awarded to a contractor using a small works
2 roster process provided in RCW 39.04.155 or the process provided in RCW
3 39.04.190 for purchases. The board of water commissioners may set up
4 uniform procedures to prequalify contractors for inclusion on the small
5 works roster. All contract projects equal to or in excess of fifty
6 thousand dollars shall be let by competitive bidding. Before awarding
7 any such contract the board of water commissioners shall publish a
8 notice in a newspaper of general circulation where the district is
9 located at least once thirteen days before the last date upon which
10 bids will be received, inviting sealed proposals for such work, plans
11 and specifications which must at the time of publication of such notice
12 be on file in the office of the board of water commissioners subject to
13 public inspection. Such notice shall state generally the work to be
14 done and shall call for proposals for doing the same to be sealed and
15 filed with the board of water commissioners on or before the day and
16 hour named therein.

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

1 bidder and the commission in accordance with the bid. If the bidder
2 fails to enter into the contract in accordance with the bid and furnish
3 such bond within ten days from the date at which the bidder is notified
4 that he or she is the successful bidder, the check, cash or bid bonds
5 and the amount thereof shall be forfeited to the water district:
6 PROVIDED, That if the bidder fails to enter into a contract in
7 accordance with his or her bid, and the board of water commissioners
8 deems it necessary to take legal action to collect on any bid bond
9 required ((herein)) in this section, then the water district shall be
10 entitled to collect from the bidder any legal expenses, including
11 reasonable attorneys' fees occasioned thereby. A low bidder who claims
12 error and fails to enter into a contract is prohibited from bidding on
13 the same project if a second or subsequent call for bids is made for
14 the project.

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

28 **Sec. 14.** RCW 70.44.140 and 1993 c 198 s 22 are each amended to
29 read as follows:

30 (1) All materials purchased and work ordered, the estimated cost of
31 which is in excess of five thousand dollars, shall be by contract.
32 Before awarding any such contract, the commission shall publish a
33 notice at least thirteen days before the last date upon which bids will
34 be received, inviting sealed proposals for such work. The plans and
35 specifications must at the time of the publication of such notice be on
36 file at the office of the public hospital district, subject to public
37 inspection: PROVIDED, HOWEVER, That the commission may at the same
38 time, and as part of the same notice, invite tenders for the work or

1 materials upon plans and specifications to be submitted by bidders.
2 The notice shall state generally the work to be done, and shall call
3 for proposals for doing the same, to be sealed and filed with the
4 commission on or before the day and hour named therein. Each bid shall
5 be accompanied by bid proposal security in the form of a certified
6 check, cashier's check, postal money order, or surety bond made payable
7 to the order of the commission, for a sum not less than five percent of
8 the amount of the bid, and no bid shall be considered unless
9 accompanied by such bid proposal security. At the time and place
10 named, such bids shall be publicly opened and read, and the commission
11 shall proceed to canvass the bids, and may let such contract to the
12 lowest responsible bidder upon plans and specifications on file, or to
13 the best bidder submitting his or her own plans and specifications:
14 PROVIDED, HOWEVER, That no contract shall be let in excess of the
15 estimated cost of the materials or work, or if, in the opinion of the
16 commission, all bids are unsatisfactory, they may reject all of them
17 and readvertise, and in such case all bid proposal security shall be
18 returned to the bidders; but if such contract be let, then and in such
19 case all bid proposal security shall be returned to the bidders, except
20 that of the successful bidder, which shall be retained until a contract
21 shall be entered into for the purchase of such materials for doing such
22 work, and a bond to perform such work furnished, with sureties
23 satisfactory to the commission, in an amount to be fixed by the
24 commission, not less than twenty-five percent of contract price in any
25 case, between the bidder and commission, in accordance with the bid.
26 If such bidder fails to enter into the contract in accordance with the
27 bid and furnish such bond within ten days from the date at which the
28 bidder is notified that he or she is the successful bidder, the bid
29 proposal security and the amount thereof shall be forfeited to the
30 public hospital district. A low bidder who claims error and fails to
31 enter into a contract is prohibited from bidding on the same project if
32 a second or subsequent call for bids is made for the project.

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

37 (3) For advertisement and formal sealed bidding to be dispensed
38 with as to purchases between five thousand and fifteen thousand

1 dollars, the commission must authorize by resolution a procedure as
2 provided in RCW 39.04.190.

3 **Sec. 15.** RCW 91.08.530 and 1911 c 23 s 52 are each amended to read
4 as follows:

5 After the confirmation of the assessment roll of any improvement
6 district provided for herein, the board shall proceed at once with the
7 construction of the improvement, and in carrying on ~~((said))~~ the
8 construction it shall have full charge and management thereof and the
9 power to employ such assistants as it may deem necessary, and purchase
10 all material required in such construction; and it shall have power to
11 let the whole or any part of the work of ~~((said))~~ the improvement to
12 the lowest and best bidder therefor, after public advertisement and
13 call for bids; and in case of such letting of a contract it shall have
14 the power also to enter into all necessary agreements with the
15 contractor in the premises: PROVIDED, That in the case of the letting
16 of a contract the board shall require the contractor to give a bond in
17 the amount of the contract price, with sureties to be approved by the
18 board and running to the board as obligee therein, conditioned for the
19 faithful and accurate performance of his or her contract by ~~((said))~~
20 the contractor, and that he or she will pay, or cause to be paid, all
21 just claims of all persons performing labor upon or rendering services
22 in doing ~~((said))~~ the work, or furnishing materials, merchandise or
23 provisions used by ~~((said))~~ the contractor in the construction of
24 ~~((said))~~ the improvement. ~~((Said))~~ The bond shall be filed and
25 recorded in the office of the auditor of the county and every
26 subcontractor on any such work shall file and record a like bond in the
27 full amount of his or her subcontract. Unless otherwise paid their
28 claims for labor or services, materials, merchandise or provisions, the
29 claimants may have recourse by suit upon such bond in their own names:
30 PROVIDED, That no such claim or suit shall be maintained unless the
31 persons making ~~((said))~~ the claim shall within thirty days after the
32 completion of ~~((said))~~ the improvement, file their claims, duly
33 verified, to the effect that the amounts thereof are just and due and
34 are unpaid, with the clerk of the board. Each bidder for a contract to
35 be let under this section shall deliver with his or her bid a check for
36 five percent of the amount of the bid, drawn upon a bank in this state
37 and certified by the bank, as surety to the board that the bidder will
38 enter into the contract with the board. The checks of unsuccessful

1 bidders will be returned to them when an award of the contract has been
2 made by the board. A low bidder who claims error and fails to enter
3 into a contract is prohibited from bidding on the same project if a
4 second or subsequent call for bids is made for the project.

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

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