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**SENATE BILL 5757**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators McCaslin, Haugen, Winsley, Heavey and Sheldon

Read first time 02/06/95. Referred to Committee on Government Operations.

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

14 (2) The city may require deposit from potential bidders for the use  
15 of plans or drawings. The deposit shall be refunded if the potential  
16 bidder submits a responsive bid and the plans or drawings are returned  
17 in usable condition. No other fee may be charged for the use of plans  
18 or drawings by potential bidders.

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

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

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

34       When the contract is let then all bid proposal deposits shall be  
35 returned to the bidders except that of the successful bidder which  
36 shall be retained until a contract is entered into and a bond to  
37 perform the work furnished, with surety satisfactory to the council or  
38 commission, in accordance with RCW 39.08.030. If the bidder fails to  
39 enter into the contract in accordance with his or her bid and furnish

1 a bond within ten days from the date at which he or she is notified  
2 that he or she is the successful bidder, the check or postal money  
3 order and the amount thereof shall be forfeited to the council or  
4 commission or the council or commission shall recover the amount of the  
5 surety bond. A low bidder who claims error and fails to enter into a  
6 contract is prohibited from bidding on the same project if a second or  
7 subsequent call for bids is made for the project.

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

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

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

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

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

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

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

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

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

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

7 (10) The city or town may require a deposit from potential bidders  
8 for the use of plans or drawings. The deposit shall be refunded if the  
9 potential bidder submits a responsive bid and the plans or drawings are  
10 returned in usable condition. No other fee may be charged for the use  
11 of plans or drawings by potential bidders.

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

15 (~~(11)~~) (12) Nothing in this section shall prohibit any second  
16 class city or any town from allowing for preferential purchase of  
17 products made from recycled materials or products that may be recycled  
18 or reused.

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

21 No contract for public works may be entered into by the county  
22 legislative authority or by any elected or appointed officer of the  
23 county until after bids have been submitted to the county upon  
24 specifications therefor. Such specifications shall be in writing and  
25 shall be filed with the clerk of the county legislative authority for  
26 public inspection. An advertisement shall be published in the county  
27 official newspaper stating the time and place where bids will be  
28 opened, the time after which bids will not be received, the character  
29 of the work to be done, the materials and equipment to be furnished,  
30 and that specifications therefor may be seen at the office of the clerk  
31 of the county legislative authority. An advertisement shall also be  
32 published in a legal newspaper of general circulation in or as near as  
33 possible to that part of the county in which such work is to be done.  
34 If the county official newspaper is a newspaper of general circulation  
35 covering at least forty percent of the residences in that part of the  
36 county in which such public works are to be done, then the publication  
37 of an advertisement of the applicable specifications in the county  
38 official newspaper shall be sufficient. Such advertisements shall be

1 published at least once at least thirteen days prior to the last date  
2 upon which bids will be received. The bids shall be in writing, shall  
3 be filed with the clerk, shall be opened and read in public at the time  
4 and place named therefor in the advertisements, and after being opened,  
5 shall be filed for public inspection. No bid may be considered for  
6 public work unless it is accompanied by a bid deposit in the form of a  
7 surety bond, postal money order, cash, cashier's check, or certified  
8 check in an amount equal to five percent of the amount of the bid  
9 proposed. The contract for the public work shall be awarded to the  
10 lowest responsible bidder. Any or all bids may be rejected for good  
11 cause. The county legislative authority shall require from the  
12 successful bidder for such public work a contractor's bond in the  
13 amount and with the conditions imposed by law. If the bidder to whom  
14 the contract is awarded fails to enter into the contract and furnish  
15 the contractor's bond as required within ten days after notice of the  
16 award, exclusive of the day of notice, the amount of the bid deposit  
17 shall be forfeited to the county and the contract awarded to the next  
18 lowest and best bidder. A low bidder who claims error and fails to  
19 enter into a contract is prohibited from bidding on the same project if  
20 a second or subsequent call for bids is made for the project. The bid  
21 deposit of all unsuccessful bidders shall be returned after the  
22 contract is awarded and the required contractor's bond given by the  
23 successful bidder is accepted by the county legislative authority. In  
24 the letting of any contract for public works involving less than ten  
25 thousand dollars, advertisement and competitive bidding may be  
26 dispensed with on order of the county legislative authority.  
27 Immediately after the award is made, the bid quotations obtained shall  
28 be recorded and open to public inspection and shall be available by  
29 telephone inquiry.

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

34 The county may require a deposit from potential bidders for the use  
35 of plans or drawings. The deposit shall be refunded if the potential  
36 bidder submits a responsive bid and the plans or drawings are returned  
37 in usable condition. No other fee may be charged for the use of plans  
38 or drawings by potential bidders.

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

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

6 The board shall proceed to award the contract to the lowest and  
7 best bidder but may reject any or all bids if in its opinion good cause  
8 exists therefor. The board shall require from the successful bidder a  
9 contractor's bond in the amount and with the conditions imposed by law.  
10 Should the bidder to whom the contract is awarded fail to enter into  
11 the contract and furnish the contractor's bond as required within ten  
12 days after notice of the award, exclusive of the day of notice, the  
13 amount of the bid deposit shall be forfeited to the county and placed  
14 in the county road fund and the contract awarded to the next lowest and  
15 best bidder. A low bidder who claims error and fails to enter into a  
16 contract is prohibited from bidding on the same project if a second or  
17 subsequent call for bids is made for the project. The bid deposit of  
18 all unsuccessful bidders shall be returned after the contract is  
19 awarded and the required contractor's bond given by the successful  
20 bidder is accepted by the board.

21 The board may require a deposit from potential bidders for the use  
22 of plans or drawings. The deposit shall be refunded if the potential  
23 bidder submits a responsive bid and the plans or drawings are returned  
24 in usable condition. No other fee may be charged for the use of plans  
25 or drawings by potential bidders.

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

28 (1) In addition to currently authorized methods of public works  
29 contracting, and in lieu of the requirements of RCW 39.04.010 and  
30 39.04.020 through 39.04.060, capital projects funded for over ten  
31 million dollars authorized by the legislature for the department of  
32 corrections to construct or repair facilities may be accomplished under  
33 contract using the general contractor/construction manager method  
34 described in this section. In addition, the general contractor/  
35 construction manager method may be used for up to two demonstration  
36 projects under ten million dollars for the department of corrections.  
37 Each demonstration project shall aggregate capital projects authorized

1 by the legislature at a single site to total no less than three million  
2 dollars with the approval of the office of financial management. The  
3 department of general administration shall present its plan for the  
4 aggregation of projects under each demonstration project to the  
5 oversight advisory committee established under subsection (2) of this  
6 section prior to soliciting proposals for general contractor/  
7 construction manager services for the demonstration project.

8 (2) For the purposes of this section, "general contractor/  
9 construction manager" means a firm with which the department of general  
10 administration has selected and negotiated a maximum allowable  
11 construction cost to be guaranteed by the firm, after competitive  
12 selection through a formal advertisement, and competitive bids to  
13 provide services during the design phase that may include life-cycle  
14 cost design considerations, value engineering, scheduling, cost  
15 estimating, constructability, alternative construction options for cost  
16 savings, and sequencing of work, and to act as the construction manager  
17 and general contractor during the construction phase. The department  
18 of general administration shall establish an independent oversight  
19 advisory committee with representatives of interest groups with an  
20 interest in this subject area, the department of corrections, and the  
21 private sector, to review selection and contracting procedures and  
22 contracting documents. The oversight advisory committee shall discuss  
23 and review the progress of the demonstration projects. The general  
24 contractor/construction manager method is limited to projects  
25 authorized on or before July 1, 1997.

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

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

1 manager may negotiate with the low-responsive bidder only in accordance  
2 with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

3 The general contractor/construction manager may require a deposit  
4 from potential bidders for the use of plans or drawings. The deposit  
5 shall be refunded if the potential bidder submits a responsive bid and  
6 the plans or drawings are returned in usable condition. No other fee  
7 may be charged for the use of plans or drawings by potential bidders.

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

15 (5) The powers and authority conferred by this section shall be  
16 construed as in addition and supplemental to powers or authority  
17 conferred by any other law, and nothing contained (~~herein shall~~) in  
18 this section may be construed as limiting any other powers or authority  
19 of the department of general administration. However, all actions  
20 taken pursuant to the powers and authority granted to the director or  
21 the department of general administration under this section may only be  
22 taken with the concurrence of the department of corrections.

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

25 (1) Notwithstanding any other provision of law, and after complying  
26 with RCW 39.10.030, the following public bodies may utilize the general  
27 contractor/construction manager procedure of public works contracting  
28 for public works projects authorized under subsection (2) of this  
29 section: The state department of general administration; the  
30 University of Washington; Washington State University; every city with  
31 a population greater than one hundred fifty thousand; every county with  
32 a population greater than four hundred fifty thousand; and every port  
33 district with a population greater than five hundred thousand. For the  
34 purposes of this section, "general contractor/construction manager"  
35 means a firm with which a public body has selected and negotiated a  
36 maximum allowable construction cost to be guaranteed by the firm, after  
37 competitive selection through formal advertisement and competitive  
38 bids, to provide services during the design phase that may include

1 life-cycle cost design considerations, value engineering, scheduling,  
2 cost estimating, constructability, alternative construction options for  
3 cost savings, and sequencing of work, and to act as the construction  
4 manager and general contractor during the construction phase.

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

8 (a) Implementation of the project involves complex scheduling  
9 requirements;

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

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

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

1 detailed specified general conditions work, the negotiated maximum  
2 allowable construction cost, the percent fee on the negotiated maximum  
3 allowable construction cost, and sales tax. If the public body is  
4 unable to negotiate a satisfactory maximum allowable construction cost  
5 with the firm selected that the public body determines to be fair,  
6 reasonable, and within the available funds, negotiations with that firm  
7 shall be formally terminated and the public body shall negotiate with  
8 the next low bidder and continue until an agreement is reached or the  
9 process is terminated. If the maximum allowable construction cost  
10 varies more than fifteen percent from the bid estimated maximum  
11 allowable construction cost due to requested and approved changes in  
12 the scope by the public body, the percent fee shall be renegotiated.  
13 All subcontract work shall be competitively bid with public bid  
14 openings. Specific contract requirements for women and minority  
15 enterprise participation shall be specified in each subcontract bid  
16 package that exceeds ten percent of the public body's estimated project  
17 cost. All subcontractors who bid work over two hundred thousand  
18 dollars shall post a bid bond and all subcontractors who are awarded a  
19 contract over two hundred thousand dollars shall provide a performance  
20 and payment bond for their contract amount. A low bidder who claims  
21 error and fails to enter into a contract is prohibited from bidding on  
22 the same project if a second or subsequent call for bids is made for  
23 the project. All other subcontractors shall provide a performance and  
24 payment bond if required by the general contractor/construction  
25 manager. Bidding on subcontract work by the general contractor/  
26 construction manager or its subsidiaries is prohibited. The general  
27 contractor/construction manager may negotiate with the low-responsive  
28 bidder in accordance with RCW 39.10.080 or, if unsuccessful in such  
29 negotiations, rebid.

30 The general contractor/construction manager may require a deposit  
31 from potential bidders for the use of plans or drawings. The deposit  
32 shall be refunded if the potential bidder submits a responsive bid and  
33 the plans or drawings are returned in usable condition. No other fee  
34 may be charged for the use of plans or drawings by potential bidders.

35 (4) If the project is completed for less than the agreed upon  
36 maximum allowable construction cost, any savings not otherwise  
37 negotiated as part of an incentive clause shall accrue to the public  
38 body. If the project is completed for more than the agreed upon  
39 maximum allowable construction cost, excepting increases due to any

1 contract change orders approved by the public body, the additional cost  
2 shall be the responsibility of the general contractor/construction  
3 manager.

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

6 (1) A low bidder who claims error and fails to enter into a  
7 contract is prohibited from bidding on the same purchase or project if  
8 a second or subsequent call for bids is made for the project.

9 (2) The department or any other state agency may require a deposit  
10 from potential bidders for the use of plans or drawings. The deposit  
11 shall be refunded if the potential bidder submits a responsive bid and  
12 the plans or drawings are returned in usable condition. No other fee  
13 may be charged for the use of plans or drawings by potential bidders.

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

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

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

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

10 The department may require a deposit from potential bidders for the  
11 use of plans or drawings. The deposit shall be refunded if the  
12 potential bidder submits a responsive bid and the plans or drawings are  
13 returned in usable condition. No other fee may be charged for the use  
14 of plans or drawings by potential bidders.

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

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

31 The department may require a deposit from potential bidders for the  
32 use of plans or drawings. The deposit shall be refunded if the  
33 potential bidder submits a responsive bid and the plans or drawings are  
34 returned in usable condition. No other fee may be charged for the use  
35 of plans or drawings by potential bidders.

36 **Sec. 10.** RCW 53.08.130 and 1971 ex.s. c 258 s 2 are each amended  
37 to read as follows:

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

31       The commission may require a deposit from potential bidders for the  
32 use of plans or drawings. The deposit shall be refunded if the  
33 potential bidder submits a responsive bid and the plans or drawings are  
34 returned in usable condition. No other fee may be charged for the use  
35 of plans or drawings by potential bidders.

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

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

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

1 successful bidder, his or her check and the amount thereof shall be  
2 forfeited to the district.

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

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

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

21 The commission may require a deposit from potential bidders for the  
22 use of plans or drawings. The deposit shall be refunded if the  
23 potential bidder submits a responsive bid and the plans or drawings are  
24 returned in usable condition. No other fee may be charged for the use  
25 of plans or drawings by potential bidders.

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

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

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

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

35 (3) In the event of an emergency when the public interest or  
36 property of the sewer district would suffer material injury or damage  
37 by delay, upon resolution of the board of sewer commissioners, or  
38 proclamation of an official designated by the board to act for the  
39 board during such emergencies, declaring the existence of such

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

9 (4) The board may require a deposit from potential bidders for the  
10 use of plans or drawings. The deposit shall be refunded if the  
11 potential bidder submits a responsive bid and the plans or drawings are  
12 returned in usable condition. No other fee may be charged for the use  
13 of plans or drawings by potential bidders.

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

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

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

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

38 (4) In the event of an emergency when the public interest or  
39 property of the water district would suffer material injury or damage

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

12 (5) The board may require a deposit from potential bidders for the  
13 use of plans or drawings. The deposit shall be refunded if the  
14 potential bidder submits a responsive bid and the plans or drawings are  
15 returned in usable condition. No other fee may be charged for the use  
16 of plans or drawings by potential bidders.

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

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

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

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

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

30 (4) The commission may require a deposit from potential bidders for  
31 the use of plans or drawings. The deposit shall be refunded if the  
32 potential bidder submits a responsive bid and the plans or drawings are  
33 returned in usable condition. No other fee may be charged for the use  
34 of plans or drawings by potential bidders.

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

37 After the confirmation of the assessment roll of any improvement  
38 district provided for herein, the board shall proceed at once with the

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

37 The board may require a deposit from potential bidders for the use  
38 of plans or drawings. The deposit shall be refunded if the potential  
39 bidder submits a responsive bid and the plans or drawings are returned

1 in usable condition. No other fee may be charged for the use of plans  
2 or drawings by potential bidders.

3 NEW SECTION. **Sec. 16.** Section 6 of this act shall expire July 1,  
4 1997.

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