
HOUSE BILL 2409

State of Washington

52nd Legislature

1992 Regular Session

By Representatives Franklin, Heavey, Winsley, R. King, Jones, Orr, Jacobsen, Prentice, G. Cole, Day and Valle

Read first time 1/16/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to public works contracts; and amending RCW
2 28A.335.190, 35.22.620, 35.23.352, 36.32.250, 39.04.015, and 39.04.155.

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

4 **Sec. 1.** RCW 28A.335.190 and 1990 c 33 s 362 are each amended to
5 read as follows:

6 (1) When, in the opinion of the board of directors of any school
7 district, the cost of any furniture, supplies, equipment, building,
8 improvements, or repairs, or other work or purchases, except books,
9 will equal or exceed the sum of twenty thousand dollars, complete plans
10 and specifications for such work or purchases shall be prepared and
11 notice by publication given in at least one newspaper of general
12 circulation within the district, once each week for two consecutive
13 weeks, of the intention to receive bids therefor and that
14 specifications and other information may be examined at the office of

1 the board or any other officially designated location: PROVIDED, That
2 the board without giving such notice may make improvements or repairs
3 to the property of the district through the shop and repair department
4 of such district when the total of such improvements or repair does not
5 exceed the sum of seventy-five hundred dollars. The cost of any public
6 work, improvement or repair for the purposes of this section shall be
7 the aggregate of all amounts to be paid for labor, material, and
8 equipment on one continuous or interrelated project where work is to be
9 performed simultaneously or in close sequence. The bids shall be in
10 writing and shall be opened and read in public on the date and in the
11 place named in the notice and after being opened shall be filed for
12 public inspection.

13 (2) Every purchase of furniture, equipment or supplies, except
14 books, the cost of which is estimated to be in excess of seventy-five
15 hundred dollars, shall be on a competitive basis. The board of
16 directors shall establish a procedure for securing telephone and/or
17 written quotations for such purchases. Whenever the estimated cost is
18 from seventy-five hundred dollars up to twenty thousand dollars, the
19 procedure shall require quotations from at least three different
20 sources to be obtained in writing or by telephone, and recorded for
21 public perusal. Whenever the estimated cost is in excess of twenty
22 thousand dollars, the public bidding process provided in subsection (1)
23 of this section shall be followed.

24 (3) Every building, improvement, repair or other public works
25 project, the cost of which is estimated to be in excess of seventy-five
26 hundred dollars, shall be on a competitive bid process. All such
27 projects estimated to be less than twenty thousand dollars may be
28 awarded to a contractor on the small works roster. The small works
29 roster shall be comprised of all responsible contractors who have
30 requested to be on the list. The board of directors shall establish a

1 procedure for securing telephone and/or written quotations from the
2 contractors on the small works roster to assure establishment of a
3 competitive price and for awarding contracts to the lowest responsible
4 bidder, except as provided in subsection (5) of this section. Such
5 procedure shall require that a good faith effort be made to request
6 quotations from all contractors on the small works roster who have
7 indicated the capability of performing the kind of public works being
8 contracted. Immediately after an award is made, the bid quotations
9 obtained shall be recorded, open to public inspection, and available by
10 telephone inquiry. The small works roster shall be revised at least
11 once each year by publishing notice of such opportunity in at least one
12 newspaper of general circulation in the district. Responsible
13 contractors shall be added to the list at any time they submit a
14 written request. Whenever the estimated cost of a public works project
15 is twenty thousand dollars or more, the public bidding process provided
16 in subsection (1) of this section shall be followed.

17 (4) The contract for the ((~~work or~~)) purchase shall be awarded to
18 the lowest responsible bidder as defined in RCW 43.19.1911 but the
19 board may by resolution reject any and all bids and make further calls
20 for bids in the same manner as the original call. On any ((~~work or~~))
21 purchase the board shall provide bidding information to any qualified
22 bidder or the bidder's agent, requesting it in person.

23 (5) For public works, the contract shall be awarded to a contractor
24 that can meet its financial obligations, can demonstrate its ability to
25 produce a quality project, shows its ability to participate in a state-
26 approved apprentice program, and has demonstrated its ability to comply
27 with all laws pertaining to minority and female hiring and affirmative
28 action, but the board may by resolution reject any and all bids and
29 make further calls for bids in the same manner as the original call.

1 On any work the board shall provide bidding information to any
2 qualified bidder or the bidder's agent, requesting it in person.

3 (6) In the event of any emergency when the public interest or
4 property of the district would suffer material injury or damage by
5 delay, upon resolution of the board declaring the existence of such an
6 emergency and reciting the facts constituting the same, the board may
7 waive the requirements of this section with reference to any purchase
8 or contract: PROVIDED, That an "emergency", for the purposes of this
9 section, means a condition likely to result in immediate physical
10 injury to persons or to property of the school district in the absence
11 of prompt remedial action.

12 **Sec. 2.** RCW 35.22.620 and 1989 c 431 s 59 are each amended to read
13 as follows:

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

16 (2) A first class city may have public works performed by contract
17 pursuant to public notice and call for competitive bids. As limited by
18 subsection (3) of this section, a first class city may have public
19 works performed by city employees in any annual or biennial budget
20 period equal to a dollar value not exceeding ten percent of the public
21 works construction budget, including any amount in a supplemental
22 public works construction budget, over the budget period. The amount
23 of public works that a first class city has a county perform for it
24 under RCW 35.77.020 shall be included within this ten percent
25 limitation.

26 If a first class city has public works performed by public
27 employees in any budget period that are in excess of this ten percent
28 limitation, the amount in excess of the permitted amount shall be
29 reduced from the otherwise permitted amount of public works that may be

1 performed by public employees for that city in its next budget period.
2 Twenty percent of the motor vehicle fuel tax distributions to that city
3 shall be withheld if two years after the year in which the excess
4 amount of work occurred, the city has failed to so reduce the amount of
5 public works that it has performed by public employees. The amount so
6 withheld shall be distributed to the city when it has demonstrated in
7 its reports to the state auditor that the amount of public works it has
8 performed by public employees has been so reduced.

9 Whenever a first class city has had public works performed in any
10 budget period up to the maximum permitted amount for that budget
11 period, all remaining public works within that budget period shall be
12 done by contract pursuant to public notice and call for competitive
13 bids.

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

18 (3) In addition to the percentage limitation provided in subsection
19 (2) of this section, a first class city with a population in excess of
20 one hundred fifty thousand shall not have public employees perform a
21 public works project in excess of fifty thousand dollars if more than
22 a single craft or trade is involved with the public works project, or
23 a public works project in excess of twenty-five thousand dollars if
24 only a single craft or trade is involved with the public works project
25 or the public works project is street signalization or street lighting.
26 In addition to the percentage limitation provided in subsection (2) of
27 this section, a first class city with a population of one hundred fifty
28 thousand or less shall not have public employees perform a public works
29 project in excess of thirty-five thousand dollars if more than one
30 craft or trade is involved with the public works project, or a public

1 works project in excess of twenty thousand dollars if only a single
2 craft or trade is involved with the public works project or the public
3 works project is street signalization or street lighting. A public
4 works project means a complete project. The restrictions in this
5 subsection do not permit the division of the project into units of work
6 or classes of work to avoid the restriction on work that may be
7 performed by day labor on a single project.

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

20 After September 1, 1987, each first class city with a population of
21 one hundred fifty thousand or less shall use the form required by RCW
22 43.09.205 to account and record costs of public works in excess of five
23 thousand dollars that are not let by contract.

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

28 (6) When any emergency shall require the immediate execution of
29 such public work, upon the finding of the existence of such emergency
30 by the authority having power to direct such public work to be done and

1 duly entered of record, publication of description and estimate may be
2 made within seven days after the commencement of the work. Within two
3 weeks of the finding that such an emergency existed, the city council
4 shall adopt a resolution certifying the existence of this emergency
5 situation.

6 (7) In lieu of the procedures of subsections (2) and (6) of this
7 section, a first class city may use a small works roster and award
8 contracts under this subsection for contracts of one hundred thousand
9 dollars or less.

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

14 (b) Whenever work is done by contract, the estimated cost of which
15 is one hundred thousand dollars or less, and the city uses the small
16 works roster, the city shall invite proposals from all appropriate
17 contractors on the small works roster: PROVIDED, That not less than
18 five separate appropriate contractors, if available, shall be invited
19 to submit bids on any one contract: PROVIDED FURTHER, That whenever
20 possible, the city shall invite at least one proposal from a minority
21 or woman contractor who shall otherwise qualify under this section.
22 Once a bidder on the small works roster has been offered an opportunity
23 to bid, that bidder shall not be offered another opportunity until all
24 other appropriate contractors on the small works roster have been
25 afforded an opportunity to submit a bid. Invitations shall include an
26 estimate of the scope and nature of the work to be performed, and
27 materials and equipment to be furnished.

28 (c) When awarding such a contract for work, the estimated cost of
29 which is one hundred thousand dollars or less, the city shall award the
30 contract to ~~((the))~~ a contractor ~~((submitting the lowest responsible~~

1 ~~bid~~) that can meet its financial obligations, can demonstrate its
2 ability to produce a quality project, shows its ability to participate
3 in a state-approved apprentice program, and has demonstrated its
4 ability to comply with all laws pertaining to minority and female
5 hiring and affirmative action.

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

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

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

14 **Sec. 3.** RCW 35.23.352 and 1989 c 431 s 56 are each amended to read
15 as follows:

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

28 Whenever the cost of the public work or improvement, including
29 materials, supplies and equipment, will exceed these figures, the same

1 shall be done by contract. All such contracts shall be let at public
2 bidding upon posting notice calling for sealed bids upon the work. The
3 notice thereof shall be posted in a public place in the city or town
4 and by publication in the official newspaper, or a newspaper of general
5 circulation most likely to bring responsive bids, once each week for
6 two consecutive weeks before the date fixed for opening the bids. The
7 notice shall generally state the nature of the work to be done that
8 plans and specifications therefor shall then be on file in the city or
9 town hall for public inspections, and require that bids be sealed and
10 filed with the council or commission within the time specified therein.
11 Each bid shall be accompanied by a bid proposal deposit in the form of
12 a cashier's check, postal money order, or surety bond to the council or
13 commission for a sum of not less than five percent of the amount of the
14 bid, and no bid shall be considered unless accompanied by such bid
15 proposal deposit. The council or commission of the city or town shall
16 let the contract to (~~the lowest responsible~~) a bidder that can meet
17 its financial obligations, can demonstrate its ability to produce a
18 quality project, shows its ability to participate in a state-approved
19 apprentice program or has demonstrated its ability to comply with all
20 laws pertaining to minority and female hiring and affirmative action,
21 or shall have power by resolution to reject any or all bids and to make
22 further calls for bids in the same manner as the original call.

23 When the contract is let then all bid proposal deposits shall be
24 returned to the bidders except that of the successful bidder which
25 shall be retained until a contract is entered into and a bond to
26 perform the work furnished, with surety satisfactory to the council or
27 commission, in the full amount of the contract price. If the bidder
28 fails to enter into the contract in accordance with his bid and furnish
29 a bond within ten days from the date at which he is notified that he is
30 the successful bidder, the check or postal money order and the amount

1 thereof shall be forfeited to the council or commission or the council
2 or commission shall recover the amount of the surety bond.

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 or third class city or a town may use a small works roster and
12 award contracts under this subsection for contracts of one hundred
13 thousand dollars or less.

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

18 (b) Whenever work is done by contract, the estimated cost of which
19 is one hundred thousand dollars or less, and the city uses the small
20 works roster, the city or town shall invite proposals from all
21 appropriate contractors on the small works roster: PROVIDED, That
22 whenever possible, the city or town shall invite at least one proposal
23 from a minority or woman contractor who shall otherwise qualify under
24 this section. The invitation shall include an estimate of the scope
25 and nature of the work to be performed, and materials and equipment to
26 be furnished.

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

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

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

8 (6) Any purchase of supplies, material, equipment or services other
9 than professional services, except for public work or improvement,
10 where the cost thereof exceeds seven thousand five hundred dollars
11 shall be made upon call for bids: PROVIDED, That the limitations
12 herein shall not apply to any purchases of materials at auctions
13 conducted by the government of the United States, any agency thereof or
14 by the state of Washington or a political subdivision thereof.

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

20 (8) For advertisement and competitive bidding to be dispensed with
21 as to purchases between seven thousand five hundred and fifteen
22 thousand dollars, the city legislative authority must authorize by
23 resolution a procedure for securing telephone and/or written quotations
24 from enough vendors to assure establishment of a competitive price and
25 for awarding the contracts for purchase of materials, equipment, or
26 services to the lowest responsible bidder. Immediately after the award
27 is made, the bid quotations obtained shall be recorded and open to
28 public inspection and shall be available by telephone inquiry.

29 (9) These requirements for purchasing may be waived by resolution
30 of the city or town council which declared that the purchase is clearly

1 and legitimately limited to a single source or supply within the near
2 vicinity, or the materials, supplies, equipment, or services are
3 subject to special market conditions, and recites why this situation
4 exists. Such actions are subject to RCW 39.30.020.

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

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

12 **Sec. 4.** RCW 36.32.250 and 1991 c 363 s 58 are each amended to read
13 as follows:

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

1 of an advertisement of the applicable specifications in the county
2 official newspaper shall be sufficient. Such advertisements shall be
3 published at least once at least ten days prior to the last date upon
4 which bids will be received. The bids shall be in writing, shall be
5 filed with the clerk, shall be opened and read in public at the time
6 and place named therefor in the advertisements, and after being opened,
7 shall be filed for public inspection. No bid may be considered for
8 public work unless it is accompanied by a bid deposit in the form of a
9 surety bond, postal money order, cash, cashier's check, or certified
10 check in an amount equal to five percent of the amount of the bid
11 proposed. The contract for the public work shall be awarded to (~~the~~
12 ~~lowest responsible~~) a bidder that can meet its financial obligations,
13 can demonstrate its ability to produce a quality project, shows its
14 ability to participate in a state-approved apprentice program, and has
15 demonstrated its ability to comply with all laws pertaining to minority
16 and female hiring and affirmative action. Any or all bids may be
17 rejected for good cause. The county legislative authority shall
18 require from the successful bidder for such public work a contractor's
19 bond in the amount and with the conditions imposed by law. If the
20 bidder to whom the contract is awarded fails to enter into the contract
21 and furnish the contractor's bond as required within ten days after
22 notice of the award, exclusive of the day of notice, the amount of the
23 bid deposit shall be forfeited to the county and the contract awarded
24 to the next lowest and best bidder. The bid deposit of all
25 unsuccessful bidders shall be returned after the contract is awarded
26 and the required contractor's bond given by the successful bidder is
27 accepted by the county legislative authority. In the letting of any
28 contract involving less than ten thousand dollars, advertisement and
29 competitive bidding may be dispensed with on order of the county
30 legislative authority. Immediately after the award is made, the bid

1 quotations obtained shall be recorded and open to public inspection and
2 shall be available by telephone inquiry.

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

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

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

12 Notwithstanding the provisions of RCW 39.04.010, a state
13 contracting authority is authorized to negotiate an adjustment to a bid
14 price, based upon agreed changes to the contract plans and
15 specifications, with a ~~((low responsive))~~ bidder that can meet its
16 financial obligations, can demonstrate its ability to produce a quality
17 project, shows its ability to participate in a state-approved
18 apprentice program, and has demonstrated its ability to comply with all
19 laws pertaining to minority and female hiring and affirmative action,
20 under the following conditions:

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

24 (2) The ~~((apparent low responsive))~~ bid does not exceed the
25 available funds by: (a) Five percent on projects valued under one
26 million dollars; (b) the greater of fifty thousand dollars or two and
27 one-half percent for projects valued between one million dollars and
28 five million dollars; or (c) the greater of one hundred twenty-five

1 thousand dollars or one percent for projects valued over five million
2 dollars; and

3 (3) The negotiated adjustment will bring the bid price within the
4 amount of available funds.

5 **Sec. 6.** RCW 39.04.155 and 1991 c 363 s 109 are each amended to
6 read as follows:

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

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

23 The governing body of the county shall establish a procedure for
24 securing telephone or written quotations from the contractors on the
25 general small works roster, or a specific small works roster for the
26 appropriate category of work, to assure that a competitive price is
27 established and to award contracts to ~~((the lowest responsible))~~ a
28 bidder(~~(, as defined in RCW 43.19.1911)~~) that can meet its financial
29 obligations, can demonstrate its ability to produce a quality project,

1 shows its ability to participate in a state-approved apprentice
2 program, and has demonstrated its ability to comply with all laws
3 pertaining to minority and female hiring and affirmative action. Such
4 invitations for quotations shall include an estimate of the scope and
5 nature of the work to be performed as well as materials and equipment
6 to be furnished. Whenever possible at least five contractors shall be
7 invited to submit bids. Once a contractor has been afforded an
8 opportunity to submit a proposal, that contractor shall not be offered
9 another opportunity until all other appropriate contractors on the
10 small works roster have been afforded an opportunity to submit a
11 proposal on a contract.

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

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