

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2077

Chapter 278, Laws of 1998

55th Legislature
1998 Regular Session

PUBLIC WORKS CONTRACTS--COMPETITIVE BIDDING REVISIONS

EFFECTIVE DATE: 6/11/98

Passed by the House March 11, 1998
Yeas 98 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 11, 1998
Yeas 45 Nays 1

BRAD OWEN
President of the Senate

Approved April 2, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2077** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 2, 1998 - 2:15 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2077

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Government Administration (originally sponsored by Representatives D. Schmidt, Scott and D. Sommers)

Read first time 03/05/97.

1 AN ACT Relating to competitive bidding; amending RCW 35.22.620,
2 35.23.352, 36.32.270, 52.14.110, 53.08.120, 54.04.070, 57.08.050,
3 70.44.140, and 39.04.155; reenacting and amending RCW 39.04.150; adding
4 a new section to chapter 39.04 RCW; and adding a new section to chapter
5 36.34 RCW.

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

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

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

16 (1) Competitive bidding requirements may be waived by the governing
17 body of the municipality for:

18 (a) Purchases that are clearly and legitimately limited to a single
19 source of supply;

- 1 (b) Purchases involving special facilities or market conditions;
- 2 (c) Purchases in the event of an emergency;
- 3 (d) Purchases of insurance or bonds; and
- 4 (e) Public works in the event of an emergency.

5 (2)(a) The waiver of competitive bidding requirements under
6 subsection (1) of this section may be by resolution or by the terms of
7 written policies adopted by the municipality, at the option of the
8 governing body of the municipality. If the governing body elects to
9 waive competitive bidding requirements by the terms of written policies
10 adopted by the municipality, immediately after the award of any
11 contract, the contract and the factual basis for the exception must be
12 recorded and open to public inspection.

13 If a resolution is adopted by a governing body to waive competitive
14 bidding requirements under (b) of this subsection, the resolution must
15 recite the factual basis for the exception. This subsection (2)(a)
16 does not apply in the event of an emergency.

17 (b) If an emergency exists, the person or persons designated by the
18 governing body of the municipality to act in the event of an emergency
19 may declare an emergency situation exists, waive competitive bidding
20 requirements, and award all necessary contracts on behalf of the
21 municipality to address the emergency situation. If a contract is
22 awarded without competitive bidding due to an emergency, a written
23 finding of the existence of an emergency must be made by the governing
24 body or its designee and duly entered of record no later than two weeks
25 following the award of the contract.

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

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

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

36 (2) A first class city may have public works performed by contract
37 pursuant to public notice and call for competitive bids. As limited by
38 subsection (3) of this section, a first class city may have public

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

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

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

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

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

1 project in excess of thirty-five thousand dollars if more than one
2 craft or trade is involved with the public works project, or a public
3 works project in excess of twenty thousand dollars if only a single
4 craft or trade is involved with the public works project 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 (4) In addition to the accounting and record-keeping requirements
11 contained in RCW 39.04.070, every first class city annually shall
12 prepare a report for the state auditor indicating the total public
13 works construction budget and supplemental public works construction
14 budget for that year, the total construction costs of public works
15 performed by public employees for that year, and the amount of public
16 works that is performed by public employees above or below ten percent
17 of the total construction budget. However, if a city budgets on a
18 biennial basis, this annual report shall indicate the amount of public
19 works that is performed by public employees within the current biennial
20 period that is above or below ten percent of the total biennial
21 construction budget.

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

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

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

1 this act if an exemption contained within that section applies to the
2 work or contract.

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

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

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

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

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

19 **Sec. 3.** RCW 35.23.352 and 1996 c 18 s 2 are each amended to read
20 as follows:

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

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

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

14 When the contract is let then all bid proposal deposits shall be
15 returned to the bidders except that of the successful bidder which
16 shall be retained until a contract is entered into and a bond to
17 perform the work furnished, with surety satisfactory to the council or
18 commission, in accordance with RCW 39.08.030. If the bidder fails to
19 enter into the contract in accordance with his or her bid and furnish
20 a bond within ten days from the date at which he or she is notified
21 that he or she is the successful bidder, the check or postal money
22 order and the amount thereof shall be forfeited to the council or
23 commission or the council or commission shall recover the amount of the
24 surety bond. A low bidder who claims error and fails to enter into a
25 contract is prohibited from bidding on the same project if a second or
26 subsequent call for bids is made for the project.

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

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

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

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

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

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

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

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

18 (8) For advertisement and formal sealed bidding to be dispensed
19 with as to purchases (~~between seven thousand five hundred and~~) with
20 an estimated value of fifteen thousand dollars or less, the council or
21 commission must authorize by resolution, use of the uniform procedure
22 provided in RCW 39.04.190.

23 (9) (~~These requirements for purchasing may be waived by resolution~~
24 ~~of the city or town council or commission which declared that the~~
25 ~~purchase is clearly and legitimately limited to a single source or~~
26 ~~supply within the near vicinity, or the materials, supplies, equipment,~~
27 ~~or services are subject to special market conditions, and recites why~~
28 ~~this situation exists. Such actions are subject to RCW 39.30.020.))
29 The city or town legislative authority may waive the competitive
30 bidding requirements of this section pursuant to section 1 of this act
31 if an exemption contained within that section applies to the purchase
32 or public work.~~

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

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

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

3 (~~In the event of an emergency when the public interest or property~~
4 ~~of the county would suffer material injury or damage by delay, upon~~
5 ~~resolution of the board of county commissioners declaring the existence~~
6 ~~of such emergency and reciting the facts constituting the same, the~~
7 ~~board~~)) The county legislative authority may waive the competitive
8 bidding requirements of this chapter ((with reference to any)) pursuant
9 to section 1 of this act if an exemption contained within that section
10 applies to the purchase or ((contract)) public work.

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

13 Insofar as practicable, purchases and any public works by the
14 district shall be based on competitive bids. A formal sealed bid
15 procedure shall be used as standard procedure for purchases and
16 contracts for purchases executed by the board of commissioners. Formal
17 sealed bidding shall not be required for:

18 (1) (~~Emergency purchases if the sealed bidding procedure would~~
19 ~~prevent or hinder the emergency from being addressed appropriately.~~
20 ~~The term emergency means an occurrence that creates an immediate threat~~
21 ~~to life or property;~~

22 ~~(2))~~ The purchase of any materials, supplies, or equipment if the
23 cost will not exceed the sum of four thousand five hundred dollars.
24 However, whenever the estimated cost ((is from four thousand five
25 hundred dollars up to)) does not exceed ten thousand dollars, the
26 commissioners may by resolution use the process provided in RCW
27 39.04.190 to award contracts;

28 ~~((3))~~ (2) Contracting for work to be done involving the
29 construction or improvement of a fire station or other buildings where
30 the estimated cost will not exceed the sum of two thousand five hundred
31 dollars, which includes the costs of labor, material, and equipment.
32 However, whenever the estimated cost ((is from two thousand five
33 hundred dollars up to)) does not exceed ten thousand dollars, the
34 commissioner may by resolution use the small works roster process
35 provided in RCW 39.04.155; and

36 ~~((4) Purchases which are clearly and legitimately limited to a~~
37 ~~single source of supply, or services, in which instances the purchase~~
38 ~~price may be best established by direct negotiation: PROVIDED, That~~

1 ~~this subsection shall not apply to purchases or contracts relating to~~
2 ~~public works as defined in chapter 39.04 RCW; and~~

3 ~~(5) Purchases of insurance and bonds.))~~ (3) Any contract for
4 purchases or public work pursuant to section 1 of this act if an
5 exemption contained within that section applies to the purchase or
6 public work.

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

9 All material required by a port district may be procured in the
10 open market or by contract and all work ordered may be done by contract
11 or day labor. All such contracts for work, the estimated cost of which
12 exceeds one hundred thousand dollars, shall be let at public bidding
13 upon notice published in a newspaper of general circulation in the
14 district at least thirteen days before the last date upon which bids
15 will be received, calling for sealed bids upon the work, plans and
16 specifications for which shall then be on file in the office of the
17 commission for public inspection. The same notice may call for bids on
18 such work or material based upon plans and specifications submitted by
19 the bidder. The competitive bidding requirements for purchases or
20 public works may be waived pursuant to section 1 of this act if an
21 exemption contained within that section applies to the purchase or
22 public work.

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

30 When awarding such a contract for work, when utilizing proposals
31 from the small works roster, the managing official shall give weight to
32 the contractor submitting the lowest and best proposal, and whenever it
33 would not violate the public interest, such contracts shall be
34 distributed equally among contractors, including minority contractors,
35 on the small works roster.

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

1 Any item, or items of the same kind of materials, equipment, or
2 supplies purchased, the estimated cost of which is in excess of five
3 thousand dollars, exclusive of sales tax shall be by contract:
4 PROVIDED, That a district may make purchases of the same kind of items
5 of materials, equipment and supplies not exceeding five thousand
6 dollars in any calendar month without a contract, purchasing any excess
7 thereof over five thousand dollars by contract. Any work ordered by a
8 district commission, the estimated cost of which is in excess of ten
9 thousand dollars exclusive of sales tax, shall be by contract, except
10 that a district commission may have its own regularly employed
11 personnel perform work which is an accepted industry practice under
12 prudent utility management without a contract. Prudent utility
13 management means performing work with regularly employed personnel
14 utilizing material of a worth not exceeding fifty thousand dollars in
15 value without a contract: PROVIDED, That such limit on the value of
16 material being utilized in work being performed by regularly employed
17 personnel shall not include the value of individual items of equipment
18 purchased or acquired and used as one unit of a project. Before
19 awarding such a contract, the commission shall publish a notice once or
20 more in a newspaper of general circulation in the district at least
21 thirteen days before the last date upon which bids will be received,
22 inviting sealed proposals for the work or materials; plans and
23 specifications of which shall at the time of the publication be on file
24 at the office of the district subject to public inspection. Any
25 published notice ordering work to be performed for the district shall
26 be mailed at the time of publication to any established trade
27 association which files a written request with the district to receive
28 such notices. The commission may at the same time and as part of the
29 same notice, invite tenders for the work or materials upon plans and
30 specifications to be submitted by the bidders.

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

36 Whenever equipment or materials required by a district are held by
37 a governmental agency and are available for sale but such agency is
38 unwilling to submit a proposal, the commission may ascertain the price
39 of such items and file a statement of such price supported by the sworn

1 affidavit of one member of the commission and may consider such price
2 as a bid without a deposit or bond. ((In the event of an emergency
3 when the public interest or property of the district would suffer
4 material injury or damage by delay, upon resolution of the commission,
5 or proclamation of an official designated by the board to act for the
6 board during such emergencies, declaring the existence of such
7 emergency and reciting the facts constituting the same, the board, or
8 the official acting for the board, may waive the requirements of this
9 chapter with reference to any purchase or contract, after having taken
10 precautions to secure the lowest price practicable under the
11 circumstances.

12 After determination by the commission during a public meeting that
13 a particular purchase is available clearly and legitimately only from
14 a single source of supply, the bidding requirements of this section may
15 be waived by the commission.))

16 The commission may waive the competitive bidding requirements of
17 this section pursuant to section 1 of this act if an exemption
18 contained within that section applies to the purchase or public work.

19 **Sec. 8.** RCW 57.08.050 and 1997 c 245 s 4 are each amended to read
20 as follows:

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

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

36 (2) Any purchase of materials, supplies, or equipment, with an
37 estimated cost in excess of ten thousand dollars, shall be by contract.
38 Any purchase of materials, supplies, or equipment, with an estimated
39 cost of (~~from five thousand dollars to~~) less than fifty thousand

1 dollars shall be made using the process provided in RCW ((39.04.155 or
2 by competitive bidding following the procedure for letting contracts
3 for projects under subsection (1) of this section)) 39.04.190. Any
4 purchase of materials, supplies, or equipment with an estimated cost of
5 fifty thousand dollars or more shall be made by competitive bidding
6 following the procedure for letting contracts for projects under
7 subsection (1) of this section.

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

23 **Sec. 9.** RCW 70.44.140 and 1996 c 18 s 15 are each amended to read
24 as follows:

25 (1) All materials purchased and work ordered, the estimated cost of
26 which is in excess of five thousand dollars, shall be by contract.
27 Before awarding any such contract, the commission shall publish a
28 notice at least thirteen days before the last date upon which bids will
29 be received, inviting sealed proposals for such work. The plans and
30 specifications must at the time of the publication of such notice be on
31 file at the office of the public hospital district, subject to public
32 inspection: PROVIDED, HOWEVER, That the commission may at the same
33 time, and as part of the same notice, invite tenders for the work or
34 materials upon plans and specifications to be submitted by bidders.
35 The notice shall state generally the work to be done, and shall call
36 for proposals for doing the same, to be sealed and filed with the
37 commission on or before the day and hour named therein. Each bid shall
38 be accompanied by bid proposal security in the form of a certified

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

29 (2) In lieu of the procedures of subsection (1) of this section, a
30 public hospital district may use ((a)) the small works roster process
31 provided in RCW 39.04.155 and award public works contracts for projects
32 ((in excess of five thousand dollars up to)) with an estimated value in
33 excess of fifty thousand dollars ((as provided in RCW 39.04.155)).

34 (3) ((For advertisement and formal sealed bidding to be dispensed
35 with as to)) Any purchases ((between five thousand and)) with an
36 estimated cost of up to fifteen thousand dollars((, the commission must
37 authorize by resolution a procedure as)) may be made using the process
38 provided in RCW 39.04.190.

1 (4) The commission may waive the competitive bidding requirements
2 of this section pursuant to section 1 of this act if an exemption
3 contained within that section applies to the purchase or public work.

4 **NEW SECTION. Sec. 10.** A new section is added to chapter 36.34 RCW
5 to read as follows:

6 In accordance with RCW 35.42.010 through 35.42.220, a county with
7 a population of one million or more may lease space and provide for the
8 leasing of such space through leases with an option to purchase and the
9 acquisition of buildings erected upon land owned by the county upon the
10 expiration of lease of such land. For the purposes of this section,
11 "building," as defined in RCW 35.42.020 shall be construed to include
12 any building or buildings used as part of, or in connection with, the
13 operation of the county. The authority conferred by this section is in
14 addition to and not in lieu of any other provision authorizing counties
15 to lease property.

16 **Sec. 11.** RCW 39.04.150 and 1994 c 264 s 12 and 1994 c 243 s 2 are
17 each reenacted and amended to read as follows:

18 (1) As used in this section, "agency" means the department of
19 general administration, the department of fish and wildlife, the
20 department of natural resources, the department of transportation, and
21 the state parks and recreation commission.

22 (2) In addition to any other power or authority that an agency may
23 have, each agency, alone or in concert, may establish a small works
24 roster consisting of all qualified contractors who have requested to be
25 included on the roster.

26 (3) The small works roster may make distinctions between
27 contractors based on the geographic areas served and the nature of the
28 work the contractor is qualified to perform. At least once every year,
29 the agency shall advertise in a newspaper of general circulation the
30 existence of the small works roster and shall add to the roster those
31 contractors who request to be included on the roster.

32 (4) Construction, repair, or alteration projects estimated to cost
33 less than one hundred thousand dollars are exempt from the requirement
34 that the contracts be awarded after advertisement and competitive bid
35 as defined by RCW 39.04.010. In lieu of advertisement and competitive
36 bid, ~~((the agency shall solicit at least five quotations, confirmed in~~
37 ~~writing, from contractors chosen from the small works roster for the~~

1 category of job type involved and shall award the work to the party
2 with the lowest quotation or reject all quotations. If the agency does
3 not receive at least two responsive quotations for a particular
4 project, then the project shall be advertised and competitively bid.
5 The agency shall solicit quotations from contractors selected randomly
6 from the small works roster in a manner which will equitably distribute
7 the opportunity for these contracts among contractors on the roster.
8 The agency shall invite at least one proposal each from a certified
9 minority and a certified women-owned contractor who shall otherwise
10 qualify to perform such work. Immediately after an award is made, the
11 bid quotations obtained shall be recorded, open to public inspection,
12 and available by telephone request. If the work is executed by
13 competitive bid, the agency shall invite at least one proposal each
14 from a certified minority and a certified women-owned contractor who
15 shall otherwise qualify to perform such work)) each agency alone or in
16 concert shall establish a procedure for securing telephone, electronic,
17 or written quotations from the contractors on the small works roster to
18 assure establishment of a competitive price and for awarding contracts
19 to the lowest responsive and responsible bidder. This procedure shall
20 require either that the agency make a good faith effort to request
21 quotations from all contractors on the small works roster who have
22 indicated the capability of performing the kind of public works being
23 contracted or that the agency solicit quotations from at least five
24 contractors in a manner that will equitably distribute the opportunity
25 among contractors willing to perform in the geographic area of the
26 work. The agency shall invite at least one proposal from a certified
27 minority or women-owned contractor, if available, who is otherwise
28 qualified to perform such work. Immediately after an award is made,
29 the bid quotations obtained shall be recorded, open to public
30 inspection, and available by telephone inquiry.

31 (5) The breaking down of any public work or improvement into units
32 or accomplishing any public work or improvement by phases for the
33 purpose of avoiding the minimum dollar amount for bidding is contrary
34 to public policy and is prohibited.

35 (6) The director of general administration shall adopt by rule a
36 procedure to ((prequalify)) qualify contractors for inclusion on the
37 small works roster. Each agency shall follow the procedure adopted by
38 the director of general administration. No agency shall be required to
39 make available for public inspection or copying under chapter 42.17 RCW

1 financial information required to be provided by the
2 ((prequalification)) qualification procedure.

3 (7) An agency may adopt by rule procedures to implement this
4 section which shall not be inconsistent with the procedures adopted by
5 the director of the department of general administration pursuant to
6 subsection (6) of this section.

7 **Sec. 12.** RCW 39.04.155 and 1993 c 198 s 1 are each amended to read
8 as follows:

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

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

25 The governing body of the municipality shall establish a procedure
26 for securing telephone or written quotations from the contractors on
27 the general small works roster, or a specific small works roster for
28 the appropriate category of work, to assure that a competitive price is
29 established and to award contracts to the lowest responsible bidder, as
30 defined in RCW 43.19.1911. Such invitations for quotations shall
31 include an estimate of the scope and nature of the work to be performed
32 as well as materials and equipment to be furnished. However, detailed
33 plans and specifications need not be included in the invitation. This
34 section does not eliminate other requirements for architectural or
35 engineering approvals as to quality and compliance with building codes.
36 Whenever possible at least five contractors shall be invited to submit
37 bids. Once a contractor has been afforded an opportunity to submit a
38 proposal, that contractor shall not be offered another opportunity

1 until all other appropriate contractors on the small works roster have
2 been afforded an opportunity to submit a proposal on a contract.
3 Proposals may be invited from all appropriate contractors on the small
4 works roster.

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

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

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