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House Bill 3030

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State of Washington                      60th Legislature                      2008 Regular Session  
By Representatives Hunt, Takko, and Armstrong

1            AN ACT Relating to bid limits on public works contracts; amending  
2 RCW 35.22.620, 35.23.352, 36.32.250, 52.14.110, and 70.44.140; and  
3 reenacting and amending RCW 57.08.050.

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

5            **Sec. 1.** RCW 35.22.620 and 2002 c 94 s 1 are each amended to read  
6 as follows:

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

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

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

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

18       ~~The state auditor shall report to the state treasurer any~~  
19 ~~first class city that exceeds this amount and the extent to which the~~  
20 ~~city has or has not reduced the amount of public works it has performed~~  
21 ~~by public employees in subsequent years.))~~

22       ~~(3) ((In addition to the percentage limitation provided in~~  
23 ~~subsection (2) of this section,)) A first class city ((with a~~  
24 ~~population in excess of one hundred fifty thousand)) shall not have~~  
25 ~~public employees perform a public works project in excess of~~  
26 ~~((seventy)) one hundred fifty thousand dollars((, or ninety thousand~~  
27 ~~dollars after January 1, 2010, if more than a single craft or trade is~~  
28 ~~involved with the public works project, or a public works project in~~  
29 ~~excess of thirty five thousand dollars, or forty five thousand dollars~~  
30 ~~after January 1, 2010, if only a single craft or trade is involved with~~  
31 ~~the public works project or the public works project is street~~  
32 ~~signalization or street lighting. In addition to the percentage~~  
33 ~~limitation provided in subsection (2) of this section, a first class~~  
34 ~~city with a population of one hundred fifty thousand or less shall not~~  
35 ~~have public employees perform a public works project in excess of fifty~~  
36 ~~thousand dollars, or sixty five thousand dollars after January 1, 2010,~~  
37 ~~if more than one craft or trade is involved with the public works~~  
38 ~~project, or a public works project in excess of thirty thousand~~

1 dollars, or forty thousand dollars after January 1, 2010, if only a  
2 single craft or trade is involved with the public works project or the  
3 public works project is street signalization or street lighting.)) A  
4 public works project means a complete project. The restriction((s)) in  
5 this subsection ((de)) does not permit the division of the project into  
6 units of work or classes of work to avoid the restriction on work that  
7 may be 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, and 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 Each first-class city with a population of one hundred fifty  
21 thousand or less shall use the form required by RCW 43.09.205 to  
22 account and record costs of public works in excess of five thousand  
23 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) The competitive bidding requirements of this section may be  
29 waived by the city legislative authority pursuant to RCW 39.04.280 if  
30 an exemption contained within that section applies to the work or  
31 contract.

32 (7) In lieu of the procedures of subsection(~~s (2) and~~) (6) of  
33 this section, a first-class city may let contracts using the small  
34 works roster process in RCW 39.04.155.

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

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

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

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

9 **Sec. 2.** RCW 35.23.352 and 2002 c 94 s 2 are each amended to read  
10 as follows:

11 (1) Any second-class city or any town may construct any public  
12 works, as defined in RCW 39.04.010, by contract or day labor without  
13 calling for bids therefor whenever the estimated cost of the work or  
14 improvement, including cost of materials, supplies and equipment will  
15 not exceed the sum of (~~forty five~~) one hundred fifty thousand  
16 dollars(~~(, or sixty thousand dollars after January 1, 2010, if more~~  
17 ~~than one craft or trade is involved with the public works, or thirty~~  
18 ~~thousand dollars, or forty thousand dollars after January 1, 2010, if~~  
19 ~~a single craft or trade is involved with the public works or the public~~  
20 ~~works project is street signalization or street lighting)). A public  
21 works project means a complete project. The restriction(~~(s)~~) in this  
22 subsection (~~(d)~~) does not permit the division of the project into  
23 units of work or classes of work to avoid the restriction on work that  
24 may be performed by day labor on a single project.~~

25 Whenever the cost of the public work or improvement, including  
26 materials, supplies and equipment, will exceed these figures, the same  
27 shall be done by contract. All such contracts shall be let at public  
28 bidding upon publication of notice calling for sealed bids upon the  
29 work. The notice shall be published in the official newspaper, or a  
30 newspaper of general circulation most likely to bring responsive bids,  
31 at least thirteen days prior to the last date upon which bids will be  
32 received. The notice shall generally state the nature of the work to  
33 be done that plans and specifications therefor shall then be on file in  
34 the city or town hall for public inspections, and require that bids be  
35 sealed and filed with the council or commission within the time  
36 specified therein. Each bid shall be accompanied by a bid proposal  
37 deposit in the form of a cashier's check, postal money order, or surety

1 bond to the council or commission for a sum of not less than five  
2 percent of the amount of the bid, and no bid shall be considered unless  
3 accompanied by such bid proposal deposit. The council or commission of  
4 the city or town shall let the contract to the lowest responsible  
5 bidder or shall have power by resolution to reject any or all bids and  
6 to make further calls for bids in the same manner as the original call.

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

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

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

27 (3) In lieu of the procedures of subsection (1) of this section, a  
28 second-class city or a town may let contracts using the small works  
29 roster process provided in RCW 39.04.155.

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

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

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

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

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

9 (8) For advertisement and formal sealed bidding to be dispensed  
10 with as to purchases with an estimated value of fifteen thousand  
11 dollars or less, the council or commission must authorize by  
12 resolution, use of the uniform procedure provided in RCW 39.04.190.

13 (9) The city or town legislative authority may waive the  
14 competitive bidding requirements of this section pursuant to RCW  
15 39.04.280 if an exemption contained within that section applies to the  
16 purchase or public work.

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

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

23 **Sec. 3.** RCW 36.32.250 and 2000 c 138 s 207 are each amended to  
24 read as follows:

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

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

35 As an alternative to requirements under this section, a county may  
36 let contracts using the small works roster process under RCW 39.04.155.

37 This section does not apply to performance-based contracts, as

1 defined in RCW 39.35A.020(~~(+3+)~~) (4), that are negotiated under chapter  
2 39.35A RCW.

3 **Sec. 4.** RCW 52.14.110 and 2001 c 79 s 1 are each amended to read  
4 as follows:

5 Insofar as practicable, purchases and any public works by the  
6 district shall be based on competitive bids. A formal sealed bid  
7 procedure shall be used as standard procedure for purchases and  
8 contracts for purchases executed by the board of commissioners. Formal  
9 sealed bidding shall not be required for:

10 (1) The purchase of any materials, supplies, or equipment if the  
11 cost will not exceed the sum of ten thousand dollars. However,  
12 whenever the estimated cost does not exceed fifty thousand dollars, the  
13 commissioners may by resolution use the process provided in RCW  
14 39.04.190 to award contracts;

15 (2) Contracting for work to be done involving the construction or  
16 improvement of a fire station or other buildings where the estimated  
17 cost will not exceed the sum of (~~two thousand~~) seventy-five  
18 (~~hundred~~) thousand dollars, which includes the costs of labor,  
19 material, and equipment;

20 (3) Contracts using the small works roster process under RCW  
21 39.04.155; and

22 (4) Any contract for purchases or public work pursuant to RCW  
23 39.04.280 if an exemption contained within that section applies to the  
24 purchase or public work.

25 **Sec. 5.** RCW 57.08.050 and 2003 c 145 s 1 and 2003 c 60 s 1 are  
26 each reenacted and amended to read as follows:

27 (1) All work ordered, the estimated cost of which is in excess of  
28 (~~ten~~) seventy-five thousand dollars, shall be let by contract and  
29 competitive bidding. Before awarding any such contract the board of  
30 commissioners shall publish a notice in a newspaper of general  
31 circulation where the district is located at least once thirteen days  
32 before the last date upon which bids will be received, inviting sealed  
33 proposals for such work, plans and specifications which must at the  
34 time of publication of such notice be on file in the office of the  
35 board of commissioners subject to the public inspection. The notice



1 shall state generally the work to be done and shall call for proposals  
2 for doing the same to be sealed and filed with the board of  
3 commissioners on or before the day and hour named therein.

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

1 (2) As an alternative to requirements under subsection (1) of this  
2 section, a water-sewer district may let contracts using the small works  
3 roster process under RCW 39.04.155.

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

13 (4) As an alternative to requirements under subsection (3) of this  
14 section, a water-sewer district may let contracts for purchase of  
15 materials, supplies, or equipment with the suppliers designated on  
16 current state agency, county, city, or town purchasing rosters for the  
17 materials, supplies, or equipment, when the roster has been established  
18 in accordance with the competitive bidding law for purchases applicable  
19 to the state agency, county, city, or town. The price and terms for  
20 purchases shall be as described on the applicable roster.

21 (5) The board may waive the competitive bidding requirements of  
22 this section pursuant to RCW 39.04.280 if an exemption contained within  
23 that section applies to the purchase or public work.

24 **Sec. 6.** RCW 70.44.140 and 2002 c 106 s 1 are each amended to read  
25 as follows:

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

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

30 (2) As an alternative to the requirements of subsection (1) of this  
31 section, a public hospital district may let contracts using the small  
32 works roster process under RCW 39.04.155.

33 (3) Any purchases with an estimated cost of up to ~~((fifteen))~~  
34 seventy-five thousand dollars may be made using the process provided in  
35 RCW 39.04.190.

36 (4) The commission may waive the competitive bidding requirements

1 of this section pursuant to RCW 39.04.280 if an exemption contained  
2 within that section applies to the purchase or public work.

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