

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 6143**

65th Legislature  
2018 Regular Session

Passed by the Senate February 7, 2018  
Yeas 48 Nays 0

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**President of the Senate**

Passed by the House February 28, 2018  
Yeas 70 Nays 28

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6143** as passed by Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE SENATE BILL 6143

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Passed Legislature - 2018 Regular Session

State of Washington                      65th Legislature                      2018 Regular Session

By Senate Local Government (originally sponsored by Senator Takko)

READ FIRST TIME 01/18/18.

1            AN ACT Relating to clarifying the authority and procedures for  
2 unit priced contracting by cities; and amending RCW 35.22.620 and  
3 35.23.352.

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

5            **Sec. 1.** RCW 35.22.620 and 2012 1st sp.s. c 5 s 1 are each  
6 amended to read 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  
10 contract pursuant to public notice and call for competitive bids. As  
11 limited by subsection (3) of this section, a first-class city may  
12 have public works performed by city employees in any annual or  
13 biennial budget period equal to a dollar value not exceeding ten  
14 percent of the public works construction budget, including any amount  
15 in a supplemental public works construction budget, over the budget  
16 period. The amount of public works that a first-class city has a  
17 county perform for it under RCW 35.77.020 shall be included within  
18 this ten percent limitation.

19            If a first-class city has public works performed by public  
20 employees in any budget period that are in excess of this ten percent  
21 limitation, the amount in excess of the permitted amount shall be

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

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

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

20 (3) In addition to the percentage limitation provided in  
21 subsection (2) of this section, a first-class city shall not have  
22 public employees perform a public works project in excess of ninety  
23 thousand dollars if more than a single craft or trade is involved  
24 with the public works project, or a public works project in excess of  
25 forty-five thousand dollars if only a single craft or trade is  
26 involved with the public works project or the public works project is  
27 street signalization or street lighting. A public works project means  
28 a complete project. The restrictions in this subsection do not permit  
29 the division of the project into units of work or classes of work to  
30 avoid the restriction on work that may be performed by day labor on a  
31 single project.

32 (4) In addition to the accounting and recordkeeping requirements  
33 contained in RCW 39.04.070, every first-class city annually may  
34 prepare a report for the state auditor indicating the total public  
35 works construction budget and supplemental public works construction  
36 budget for that year, the total construction costs of public works  
37 performed by public employees for that year, and the amount of public  
38 works that is performed by public employees above or below ten  
39 percent of the total construction budget. However, if a city budgets  
40 on a biennial basis, this annual report may indicate the amount of

1 public works that is performed by public employees within the current  
2 biennial period that is above or below ten percent of the total  
3 biennial construction budget.

4 Each first-class city with a population of one hundred fifty  
5 thousand or less shall use the form required by RCW 43.09.205 to  
6 account and record costs of public works in excess of five thousand  
7 dollars that are not let by contract.

8 (5) The cost of a separate public works project shall be the  
9 costs of materials, supplies, equipment, and labor on the  
10 construction of that project. The value of the public works budget  
11 shall be the value of all the separate public works projects within  
12 the budget.

13 (6) The competitive bidding requirements of this section may be  
14 waived by the city legislative authority pursuant to RCW 39.04.280 if  
15 an exemption contained within that section applies to the work or  
16 contract.

17 (7) In lieu of the procedures of subsections (2) and (6) of this  
18 section, a first-class city may let contracts using the small works  
19 roster process in RCW 39.04.155.

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

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

26 (9) This section does not apply to performance-based contracts,  
27 as defined in RCW 39.35A.020(4), that are negotiated under chapter  
28 39.35A RCW.

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

32 (11)(a) Any first-class city may procure public works with a unit  
33 priced contract under this section for the purpose of completing  
34 anticipated types of work based on hourly rates or unit pricing for  
35 one or more categories of work or trades.

36 (b) For the purposes of this section, "unit priced contract"  
37 means a competitively bid contract in which public works are  
38 anticipated on a recurring basis to meet the business or operational  
39 needs of the city, under which the contractor agrees to a fixed

1 period indefinite quantity delivery of work, at a defined unit price  
2 for each category of work.

3 (c) Unit priced contracts must be executed for an initial  
4 contract term not to exceed three years, with the city having the  
5 option of extending or renewing the unit priced contract for one  
6 additional year.

7 (d) Invitations for unit price bids shall include, for purposes  
8 of the bid evaluation, estimated quantities of the anticipated types  
9 of work or trades, and specify how the city will issue or release  
10 work assignments, work orders, or task authorizations pursuant to a  
11 unit priced contract for projects, tasks, or other work based on the  
12 hourly rates or unit prices bid by the contractor. Contracts must be  
13 awarded to the lowest responsible bidder as per RCW 39.04.010.  
14 Whenever possible, the city must invite at least one proposal from a  
15 minority or woman contractor who otherwise qualifies under this  
16 section.

17 (e) Unit price contractors shall pay prevailing wages for all  
18 work that would otherwise be subject to the requirements of chapter  
19 39.12 RCW. Prevailing wages for all work performed pursuant to each  
20 work order must be the prevailing wage rates in effect at the  
21 beginning date for each contract year. Unit priced contracts must  
22 have prevailing wage rates updated annually. Intents and affidavits  
23 for prevailing wages paid must be submitted annually for all work  
24 completed within the previous twelve-month period of the unit priced  
25 contract.

26 **Sec. 2.** RCW 35.23.352 and 2009 c 229 s 4 are each amended to  
27 read as follows:

28 (1) Any second-class city or any town may construct any public  
29 works, as defined in RCW 39.04.010, by contract or day labor without  
30 calling for bids therefor whenever the estimated cost of the work or  
31 improvement, including cost of materials, supplies and equipment will  
32 not exceed the sum of sixty-five thousand dollars if more than one  
33 craft or trade is involved with the public works, or forty thousand  
34 dollars if a single craft or trade is involved with the public works  
35 or the public works project is street signalization or street  
36 lighting. A public works project means a complete project. The  
37 restrictions in this subsection do not permit the division of the  
38 project into units of work or classes of work to avoid the

1 restriction on work that may be performed by day labor on a single  
2 project.

3 Whenever the cost of the public work or improvement, including  
4 materials, supplies and equipment, will exceed these figures, the  
5 same shall be done by contract. All such contracts shall be let at  
6 public bidding upon publication of notice calling for sealed bids  
7 upon the work. The notice shall be published in the official  
8 newspaper, or a newspaper of general circulation most likely to bring  
9 responsive bids, at least thirteen days prior to the last date upon  
10 which bids will be received. The notice shall generally state the  
11 nature of the work to be done that plans and specifications therefor  
12 shall then be on file in the city or town hall for public  
13 inspections, and require that bids be sealed and filed with the  
14 council or commission within the time specified therein. Each bid  
15 shall be accompanied by a bid proposal deposit in the form of a  
16 cashier's check, postal money order, or surety bond to the council or  
17 commission for a sum of not less than five percent of the amount of  
18 the bid, and no bid shall be considered unless accompanied by such  
19 bid proposal deposit. The council or commission of the city or town  
20 shall let the contract to the lowest responsible bidder or shall have  
21 power by resolution to reject any or all bids and to make further  
22 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  
27 or commission, in accordance with RCW 39.08.030. If the bidder fails  
28 to enter into the contract in accordance with his or her bid and  
29 furnish a bond within ten days from the date at which he or she is  
30 notified that he or she is the successful bidder, the check or postal  
31 money order and the amount thereof shall be forfeited to the council  
32 or commission or the council or commission shall recover the amount  
33 of the surety bond. A low bidder who claims error and fails to enter  
34 into a contract is prohibited from bidding on the same project if a  
35 second or subsequent call for bids is made for the project.

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

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

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

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

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

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

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

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

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

28 (9) The city or town legislative authority may waive the  
29 competitive bidding requirements of this section pursuant to RCW  
30 39.04.280 if an exemption contained within that section applies to  
31 the purchase or public work.

32 (10) This section does not apply to performance-based contracts,  
33 as defined in RCW 39.35A.020(4), that are negotiated under chapter  
34 39.35A RCW.

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

38 (12)(a) Any second-class city or any town may procure public  
39 works with a unit priced contract under this section for the purpose

1 of completing anticipated types of work based on hourly rates or unit  
2 pricing for one or more categories of work or trades.

3 (b) For the purposes of this section, "unit priced contract"  
4 means a competitively bid contract in which public works are  
5 anticipated on a recurring basis to meet the business or operational  
6 needs of the city or town, under which the contractor agrees to a  
7 fixed period indefinite quantity delivery of work, at a defined unit  
8 price for each category of work.

9 (c) Unit priced contracts must be executed for an initial  
10 contract term not to exceed three years, with the city or town having  
11 the option of extending or renewing the unit priced contract for one  
12 additional year.

13 (d) Invitations for unit price bids shall include, for purposes  
14 of the bid evaluation, estimated quantities of the anticipated types  
15 of work or trades, and specify how the city or town will issue or  
16 release work assignments, work orders, or task authorizations  
17 pursuant to a unit priced contract for projects, tasks, or other work  
18 based on the hourly rates or unit prices bid by the contractor.  
19 Contracts must be awarded to the lowest responsible bidder as per RCW  
20 39.04.010. Whenever possible, the city or town must invite at least  
21 one proposal from a minority or woman contractor who otherwise  
22 qualifies under this section.

23 (e) Unit price contractors shall pay prevailing wages for all  
24 work that would otherwise be subject to the requirements of chapter  
25 39.12 RCW. Prevailing wages for all work performed pursuant to each  
26 work order must be the prevailing wage rates in effect at the  
27 beginning date for each contract year. Unit priced contracts must  
28 have prevailing wage rates updated annually. Intents and affidavits  
29 for prevailing wages paid must be submitted annually for all work  
30 completed within the previous twelve-month period of the unit priced  
31 contract.

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