H-3818.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2744**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Doglio, Duerr, Davis, Fitzgibbon, and Ramel

AN ACT Relating to improving environmental and social outcomes associated with the production of building materials; amending RCW 39.04.350, 39.10.330, 39.10.360, 39.26.160, 36.32.245, 36.32.250, 35.23.352, 39.04.155, 53.08.120, 54.04.070, and 57.08.050; adding a new section to chapter 19.27 RCW; adding a new chapter to Title 39 RCW; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds and declares that:

(1) Washington state, through its extensive purchasing power, can accelerate necessary greenhouse gas reductions to protect public health, the environment, and conserve a livable climate while promoting a fair economy by incorporating greenhouse gas emissions information from throughout the supply chain and product life cycle and high labor standards into procurement decisions and using that information to help direct expenditure.

(2) Incorporating emissions information and high labor standards will acknowledge those companies that have invested in emissions reduction technologies and practices and reward responsible manufacturers that are promoting and protecting a twenty-first century workforce through wages, fringe benefits, and workforce training. It will encourage other companies to take action to reduce emissions to become more competitive in the Washington contracting process and improve labor practices.

(3) The legislature has committed to carbon reduction measures by requiring action by public agencies. Those actions do not currently encourage public dollars for infrastructure projects to be spent in a way that is consistent with the state's carbon reduction goals as it relates to the global warming potential within the materials procured for these projects.

(4) State agencies must take global warming potential, or equivalent embodied carbon, into account in their planning and investment decisions with full life-cycle cost and global warming potential accounting that evaluates and compares infrastructure investments and alternatives.

(5) Full life-cycle cost accounting means a double bottom line evaluation of cost and global warming potential, accounting for the impacts across the life cycle of a product. The evaluations should lead to action, before the time of bidding and procurement decisions, when the life-cycle analysis uncertainties, as quantified by a nationally recognized life-cycle analysis database or by an independent life-cycle analysis expert, are shown to not overlap. When a comparison of uncertainties creates a potential that a decision based upon global warming potential only would not be fully validated, then planning and investment decisions should be made based upon other objectives, including cost and resiliency, and global warming potential as a decision-making consideration should be deferred until the time of bidding and procurement.

(6) Great quantities of greenhouse gas emissions are often released during the material sourcing, manufacture, and transport of products used in public infrastructure projects.

(7) Establishing a system for comparing the emissions of a building material relative to other similar building materials with like performance characteristics, and within the same material categories, provides incentive for reduced greenhouse gas emissions. When evaluations happen as a double bottom line cradle to gate life-cycle analysis accounting at the time of bidding and purchasing, it allows for the selection of lower global warming potential material producers of like materials without biasing state procurement decisions against alternative categories of building materials that may have inherently higher associated emissions but that offer other beneficial attributes that are appropriate to consider during the purchasing process.

(8) Removing unnecessary barriers in the state building code and in state procurement contracts will allow the use of low carbon construction materials that achieve equal performance outcomes to similar building materials produced using higher-carbon production processes.

(9) Providing financial assistance to small manufacturers to facilitate the production of environmental product declarations, and the reporting mechanism based on life-cycle analysis, will ensure that small manufacturers are not put at a competitive disadvantage in state contracting as a result of the requirements of this chapter, and will improve the state's ability to make purchasing decisions that align with state carbon reduction goals.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Awarding authority" includes any of the following:

(a) The department of enterprise services;

(b) Institutions of higher education as defined in RCW 28B.92.030;

(c) Natural resource agencies, including the department of natural resources, state parks and recreation commission, and department of fish and wildlife;

(d) Any other state governmental entity that receives funding from the omnibus capital appropriations act for a public works project;

(e) The department of transportation; and

(f) Any nonprofit organization receiving funding from the omnibus capital appropriations act for a public works project.

(2) "Department" means the department of commerce.

(3) "Eligible materials" includes any of the following:

(a) Concrete including, but not limited to, cast in place that is used as a structural material, shotcrete, and precast;

(b) Carbon steel rebar;

(c) Steel that is used as a structural material;

(d) Unit masonry that is used as a structural material;

(e) Wood of any type including, but not limited to, wood composites and wood laminated products; and

(f) Gauge metal products for roof and floor decking, wall studs, and floor system studs.

(4) "Eligible project" means: (a) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code (chapter 51-11C WAC); (b) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet; or (c) a state transportation system project funded or carried out by Washington state department of transportation that (i) has a cost in excess of one million dollars, and (ii) uses more than a de minimis amount of eligible materials.

(5) "Environmental product declaration" means a facility specific type III environmental product declaration, as defined by the international organization for standardization standard 14025 as that standard existed as of January 1, 2020, or similarly robust life-cycle assessment methods that have uniform standards in data collection consistent with international organization for standardization standard 14025, industry acceptance, and integrity.

(6) "Facility specific" means a facility that contributes to at least eighty percent of the total global warming potential, as measured and reported in the environmental product declaration, of the manufacturing of the eligible material.

(7) "Greenhouse gas" has the same meaning as in RCW 70.235.010.

(8) "Low carbon" and "lower carbon" means a comparatively lower global warming potential measure reported in an environmental product declaration.

(9) "Performance-based specifications" means a contract provision that requires that a structural material achieve specified performance outcomes from the use of the structural material including, but not limited to, outcomes related to the strength, durability, permeability, or other attributes related to the function of the building material for applied uses.

(10) "Prescriptive specifications" means a contract provision that requires that a structural material be produced using a specified manufacturing process, design features, technologies, or proportions of constituent materials.

(11) "Proposer" means a person responding to a public solicitation under alternative public works contracting procedures authorized under chapter 39.10 RCW.

(12)(a) "Structural material" means a building material or component that:

(i) Supports gravity loads, lateral loads, or both, as the primary structure of the building or buildings including, but not limited to, the foundations, bearing walls, shear walls, columns, beams, slabs, and lateral bracing required to maintain the stability of the final structure as a whole; or

(iii) Is used in a state transportation system project and supports gravity loads or is a primary lateral system resisting wind and earthquake loads.

(b) Structural materials and components include both below grade and elevated above grade structures.

NEW SECTION. **Sec.**  (1)(a) Beginning January 1, 2022, an awarding authority shall require the bidder for a contract for an eligible project to submit a current environmental product declaration for each eligible material proposed to be used.

(i) Each awarding authority must transmit to the department a copy of each environmental product declaration that the awarding authority receives along with the material quantities of all eligible materials to be used on the project.

(ii) The department must track the data submitted in (a)(i) of this subsection in a publicly accessible database with project anonymized.

(iii) Environmental product declarations must include minimal data quality assessment metadata as specified by the Q metadata program or other similar procurement program.

(iv) Beginning January 1, 2025, environmental product declarations must report actual data quality assessment including variability in facility, product, and upstream data for key processes.

(b) Beginning July 1, 2020, until December 31, 2021, awarding authorities must encourage, but may not require, bidders to comply with the requirements of (a) of this subsection.

(2) Beginning July 1, 2023, and subject to the requirements of RCW 39.04.350, when awarding a contract for an eligible project when a bid features a primary structural material that does not exceed the maximum acceptable global warming potential for the material, an awarding authority:

(a) Must award the contract to the bid that uses the lower carbon eligible material for projects with bid prices lower than the engineer's estimate;

(b) Must consider awarding a contract to a bid that uses the lower carbon eligible material if the bid is no greater than fifteen percent above the lowest bid for the eligible project; and

(c) May award a contract to a bid that uses the lower carbon eligible material if the bid is greater than fifteen percent above the lowest bid for the eligible project.

(3)(a) A successful bidder for a contract described in subsection (2) of this section may not install any eligible materials on the project until that bidder submits a facility specific environmental product declaration for that material pursuant to subsection (1) of this section.

(b) The requirements of (a) of this subsection do not apply to an eligible material of a type for which no environmental product declarations yet exist.

(4) This section only applies to a contract entered into on or after January 1, 2022.

NEW SECTION. **Sec.**  (1) By January 1, 2023, the department shall establish and publish a maximum acceptable global warming potential for each category of eligible materials in accordance with both of the following requirements:

(a) The department shall set the maximum acceptable global warming potential at a high estimate of the current market representing approximately the eightieth percentile value of the product weighted distributions of the emissions intensity of each category of product. The department shall determine this value by consulting nationally or internationally recognized databases of environmental product declarations of like performance and quality materials, and may rely on the data in such databases or published evaluations of that data for purposes of identifying industry averages, ranges, and variations, and for establishing the maximum acceptable global warming potentials for materials.

(b) The department shall express the maximum acceptable global warming potential as a number that states the maximum acceptable facility specific global warming potential for each category of eligible materials. The global warming potential must be provided in a manner that is consistent with criteria in a nationally recognized and current environmental product declaration.

(2) By January 1, 2024, and in conformance with RCW 43.01.036, the department shall submit a report to the appropriate committees of the legislature that describes the method that the department used to develop the maximum global warming potential for each category of eligible materials pursuant to subsection (1) of this section.

(3) By January 1, 2027, and every three years thereafter, the department shall review the range of global warming potential values submitted for each category of eligible materials established pursuant to subsection (1) of this section, and must adjust the maximum acceptable global warming potential downward for any eligible material to be the lower number of the following two options:

(a) Prior to January 1, 2030, the linearly interpolated value between the initial maximum acceptable global warming potential determined on January 1, 2023, and a fifty percent reduction by January 1, 2030. After January 1, 2030, the linearly interpolated value between the January 1, 2030, level and zero global warming potential by January 1, 2050.

(b) The ninetieth percentile value of the range of global warming potential data collected in the previous three years. If this option is chosen, the department shall set the maximum acceptable global warming potential based on the linearly interpolated value between the ninetieth percentile value and zero global warming potential by January 1, 2050.

(4) An awarding authority may amend their fee schedule to accommodate this chapter.

(5) The department may contract for the use of nationally or internationally recognized databases of environmental product declarations for purposes of implementing this section and section 3 of this act.

(6) All recognized environmental product declarations shall follow nationally or internationally recognized rules for producing environmental product declarations for the subject material, follow standards established for life-cycle analysis material reporting of global warming potentials, and conform to ISO standards 14025, 14040, 14044, and 21930, as those standards existed as of January 1, 2020.

(7) Subject to funds made available for this purpose, the department may provide financial assistance to small businesses, as defined in RCW 19.85.020, equal to no less than half of the cost to the small business of producing an environmental product declaration required under section 3 of this act.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2022, an awarding authority shall require the bidders or proposers for a contract for an eligible project to report on their compliance, including their subcontractor's or subcontractors' compliance, with domestic labor law in the countries where they produce goods or services.

(2) Beginning July 1, 2020, until December 31, 2021, awarding authorities must encourage, but may not require, bidders or proposers to comply with the requirements of subsection (1) of this section.

(3) For purposes of this section, "domestic labor law" includes international standards that are applicable to employers under domestic law. Examples of these laws include, but are not limited to, wages and benefits, hours of work, harassment and abuse, and prohibition of forced labor, child labor, or discrimination.

NEW SECTION. **Sec.**  The office of financial management shall incorporate requirements for state agencies to consider lower carbon building materials and domestic labor law compliance declarations within existing business processes and tools including, but not limited to, facility planning, predesign, and budget instructions.

NEW SECTION. **Sec.**  In carrying out its duties under this chapter, an awarding authority shall strive to achieve a continuous reduction of emissions over time.

NEW SECTION. **Sec.**  Beginning January 1, 2023, and to the extent practicable, specifications for a bid or proposal for a project contract by an awarding authority, cities, counties, towns, and other municipal corporations or political subdivisions of the state may only include performance-based specifications for concrete or unit masonry products used as a structural material. To the extent practicable, an awarding authority, cities, counties, towns, and other municipal subdivisions of the state may not enter into a contract that includes prescriptive specifications for concrete or unit masonry products used as a structural material.

NEW SECTION. **Sec.**  (1) By January 1, 2025, and in conformance with RCW 43.01.036, the department shall submit a report to the legislature on any obstacles to the implementation of this chapter, and the effectiveness of this chapter to reduce global warming potential.

(2) This section expires January 1, 2026.

NEW SECTION. **Sec.**  This chapter may be known and cited as the buy clean and buy fair Washington act.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act constitute a new chapter in Title 39 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 19.27 RCW to read as follows:

To the extent practicable, the state building code council shall adopt rules that do not include or require the use of prescriptive specifications, as that term is defined in section 2 of this act, for concrete or unit masonry used as a structural material, as that term is defined in section 2 of this act.

**Sec.**  RCW 39.04.350 and 2019 c 232 s 15 are each amended to read as follows:

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The department of labor and industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement. For eligible projects under chapter 39.--- RCW (the new chapter created in section 11 of this act), a bidder shall submit environmental product declarations consistent with section 3 of this act and domestic labor law compliance declarations consistent with section 6 of this act.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

**Sec.**  RCW 39.10.330 and 2019 c 212 s 6 are each amended to read as follows:

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A description of the project including the estimated design-build contract value and the intended use of the project;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for qualifications shall include technical qualifications, such as specialized experience and technical competence of the firms and the key design and construction personnel; capacity to perform; the proposer's past performance in utilization of the office of minority and women's business enterprises certified businesses, to the extent permitted by law; ability to provide a performance and payment bond for the project; domestic labor law compliance declarations required under chapter 39.--- RCW (the new chapter created in section 11 of this act), if applicable; and other appropriate factors. Evaluation factors may also include, but are not limited to, the proposer's past performance in utilization of small business entities. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include the management plan to meet time and budget requirements and one or more price-related factors. Evaluation factors may also include, but not be limited to, the technical approach, design concept, and the outreach plan to include small business entities and disadvantaged business enterprises as subconsultants, subcontractors, and suppliers for the project;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The proposed contract;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists. The request for proposal documents shall include:

(a) Any specific forms to be used by the finalists; and

(b) Submission of a summary of the finalist's accident prevention program and an overview of its implementation.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the request for qualifications, the request for proposals, and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the finalist submitting the highest scored proposal. If the public body is unable to execute a contract with the finalist submitting the highest scored proposal, negotiations with that finalist may be suspended or terminated and the public body may proceed to negotiate with the next highest scored finalist. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) Any contract must require the firm awarded the contract to track and report to the public body its utilization of the office of minority and women's business enterprises certified businesses and veteran certified businesses.

(9) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall recognize the level of effort required to meet the selection criteria.

(10)(a) Awarding authorities shall require the selected firm for an eligible project under chapter 39.--- RCW (the new chapter created in section 11 of this act) to submit a current environmental product declaration for each eligible material proposed to be used.

(b) Each awarding authority must transmit to the department a copy of each environmental product declaration that the awarding authority receives along with the material quantities of all eligible materials to be used on the project.

(c) The department must track the data submitted in (b) of this subsection in a publicly accessible database with projects anonymized.

(d) Environmental product declarations must include minimal data quality assessment metadata as specified by the Q metadata program or other similar procurement program.

(e) Beginning January 1, 2025, environmental product declarations must report actual data quality assessments including variability in facility, product, and upstream data for key processes.

(f) For purposes of this subsection, the definitions in section 2 of this act apply.

**Sec.**  RCW 39.10.360 and 2014 c 42 s 5 are each amended to read as follows:

(1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/ construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure including, if applicable, a clear statement that the public body is electing to procure the project as a heavy civil construction project, in which case the solicitation must additionally:

(i) Indicate the minimum percentage of the cost of the work to construct the project that will constitute the negotiated self-perform portion of the project;

(ii) Indicate whether the public body will allow the price to be paid for the negotiated self-perform portion of the project to be deemed a cost of the work to which the general contractor/construction manager's percent fee applies; and

(iii) Require proposals to indicate the proposer's fee for the negotiated self-perform portion of the project;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(i) Ability of the firm's professional personnel;

(ii) The firm's past performance in negotiated and complex projects;

(iii) The firm's ability to meet time and budget requirements;

(iv) The scope of work the firm proposes to self-perform and its ability to perform that work;

(v) The firm's proximity to the project location;

(vi) Recent, current, and projected workloads of the firm; ((~~and~~))

(vii) The firm's approach to executing the project; and

(viii) Domestic labor law compliance declarations required under chapter 39.--- RCW (the new chapter created in section 11 of this act), if applicable.

(b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(7)(a) Awarding authorities shall require the selected firm for an eligible project under chapter 39.--- RCW (the new chapter created in section 11 of this act) to submit a current environmental product declaration for each eligible material proposed to be used.

(b) Each awarding authority must transmit to the department a copy of each environmental product declaration that the awarding authority receives along with the material quantities of all eligible materials to be used on the project.

(c) The department must track the data submitted in (b) of this subsection in a publicly accessible database with projects anonymized.

(d) Environmental product declarations must include minimal data quality assessment metadata as specified by the Q metadata program or other similar procurement program.

(e) Beginning January 1, 2025, environmental product declarations must report actual data quality assessments including variability in facility, product, and upstream data for key processes.

(f) For purposes of this subsection, the definitions in section 2 of this act apply.

**Sec.**  RCW 39.26.160 and 2019 c 232 s 16 are each amended to read as follows:

(1)(a) After bids that are submitted in response to a competitive solicitation process are reviewed by the awarding agency, the awarding agency may:

(i) Reject all bids and rebid or cancel the competitive solicitation;

(ii) Request best and final offers from responsive and responsible bidders; or

(iii) Award the purchase or contract to the lowest responsive and responsible bidder.

(b) The agency may award one or more contracts from a competitive solicitation.

(2) In determining whether the bidder is a responsible bidder, the agency must consider the following elements:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and

(g) Such other information as may be secured having a bearing on the decision to award the contract.

(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:

(a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;

(b) Whether the bid encourages diverse contractor participation;

(c) Whether the bid provides competitive pricing, economies, and efficiencies;

(d) Whether the bid considers human health and environmental impacts;

(e) Whether the bid appropriately weighs cost and noncost considerations; ((~~and~~))

(f) Life-cycle cost; and

(g) Whether the bid meets the requirements of section 3 of this act, if applicable.

(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions. Before award of a contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (2)(f) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(5) The awarding agency may at its discretion reject the bid of any contractor who has failed to perform satisfactorily on a previous contract with the state.

(6) After reviewing all bid submissions, an agency may enter into negotiations with the lowest responsive and responsible bidder in order to determine if the bid may be improved. An agency may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) The procuring agency must enter into the state's enterprise vendor registration and bid notification system the name of each bidder and an indication as to the successful bidder.

**Sec.**  RCW 36.32.245 and 2016 c 95 s 9 are each amended to read as follows:

(1) No contract for the purchase of materials, equipment, or supplies may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county. Bid specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the official newspaper of the county stating the time and place where bids will be opened, the time after which bids will not be received, the materials, equipment, supplies, or services to be purchased, and that the specifications may be seen at the office of the clerk of the county legislative authority. The advertisement shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(2) The bids shall be in writing, may be in either hard copy or electronic form as specified by the county, and shall be filed with the clerk. The bids shall be opened and read in public at the time and place named in the advertisement. Contracts requiring competitive bidding under this section may be awarded only to the lowest responsible bidder, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Immediately after the award is made, the bid quotations shall be recorded and open to public inspection and shall be available by telephone inquiry. Any or all bids may be rejected for good cause.

(3) For advertisement and formal sealed bidding to be dispensed with as to purchases between ten thousand and fifty thousand dollars, the county legislative authority must use the uniform process to award contracts as provided in RCW 39.04.190. Advertisement and formal sealed bidding may be dispensed with as to purchases of less than ten thousand dollars upon the order of the county legislative authority.

(4) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW; or contracts and purchases for the printing of election ballots, voting machine labels, and all other election material containing the names of candidates and ballot titles.

(5) Nothing in this section shall prohibit the legislative authority of any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(6) This section does not apply to contracting for public defender services by a county.

**Sec.**  RCW 36.32.250 and 2009 c 229 s 8 are each amended to read as follows:

No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than forty thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

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

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

**Sec.**  RCW 35.23.352 and 2019 c 434 s 1 are each amended to read as follows:

(1) Any second‑class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of one hundred sixteen thousand one hundred fifty-five dollars if more than one craft or trade is involved with the public works, or seventy-five thousand five hundred dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable, or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

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

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

(2) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

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

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

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

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

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

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

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

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

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

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

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

(13)(a) Any second-class city or any town may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

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

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

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the city or town will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as ((~~per~~)) defined in RCW 39.04.010, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Whenever possible, the city or town must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

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

(14) Any second-class city or town that awards a project to a bidder under the criteria described in subsection (2) of this section must make an annual report to the department of commerce that includes the total number of bids awarded to certified minority or women contractors and describing how notice was provided to potential certified minority or women contractors.

**Sec.**  RCW 39.04.155 and 2019 c 434 s 5 are each amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred fifty thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of enterprise services in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from two hundred fifty thousand dollars to three hundred fifty thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by at least one of the following: Telephone or electronic request.

(f) For projects awarded under the small works roster process established under this subsection, a state agency or authorized local government may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for contractor's nonpayment of: (i) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (ii) taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. However, the state agency or local government has the right of recovery against the contractor for any payments made on the contractor's behalf. Recovery of unpaid wages and benefits are the first priority for actions filed against the contract.

(3)(a) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than fifty thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

(b) For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) A state agency or authorized local government may use the limited public works process in this section to solicit and award small works roster contracts to minibusinesses and microbusinesses as defined under RCW 39.26.010 that are registered contractors.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Equitably distribute opportunities" means that a state agency or authorized local government may not favor certain contractors on the appropriate small works roster over other contractors on the same roster who perform similar services.

(b) "State agency" means the department of enterprise services, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of enterprise services to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

**Sec.**  RCW 53.08.120 and 2018 c 149 s 2 are each amended to read as follows:

(1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds three hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at three hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of advertising for bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

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

(c) Any port district may construct any public work, as defined in RCW 39.04.010, by contract without calling for bids whenever the estimated cost of the work or improvement, including cost of materials, supplies, and equipment, will not exceed the sum of forty thousand dollars. A "public works project" means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid calling for bids. The port district managing official shall make his or her best effort to reach out to qualified contractors, including certified minority and woman-owned contractors.

(3)(a) A port district may procure public works with a unit priced contract under this section or RCW 39.04.010(2) for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

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

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

(d) Invitations for unit priced bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the port district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as ((~~per~~)) defined in RCW 39.04.010, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Whenever possible, the port district must invite at least one proposal from a minority or woman contractor who otherwise qualifies under this section.

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

**Sec.**  RCW 54.04.070 and 2019 c 434 s 7 are each amended to read as follows:

(1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of thirty thousand dollars, exclusive of sales tax, shall be by contract. However, a district may make purchases of the same kind of items of materials, equipment, and supplies not exceeding twelve thousand dollars in any calendar month without a contract, purchasing any excess thereof over twelve thousand dollars by contract.

(2) Any work ordered by a district commission, the estimated cost of which is in excess of fifty thousand dollars, exclusive of sales tax, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding three hundred thousand dollars in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

(3) Before awarding a contract required under subsection (1) or (2) of this section, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials. Plans and specifications for the work or materials shall at the time of publication be on file at the office of the district and subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may, at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

(4) As an alternative to the competitive bidding requirements of this section and RCW 54.04.080, a district may let contracts using the small works roster process under RCW 39.04.155.

(5) Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission, and may consider such price as a bid without a deposit or bond.

(6) Pursuant to RCW 39.04.280, the commission may waive the competitive bidding requirements of this section and RCW 54.04.080 if an exemption contained within RCW 39.04.280 applies to the purchase or public work.

(7)(a) A district may procure public works with a unit priced contract under this section, RCW 54.04.080, or 54.04.085 for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

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

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

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Where electrical facility construction or improvement work is anticipated, contractors on a unit priced contract shall comply with the requirements under RCW 54.04.085 (1) through (5). Contracts must be awarded to the lowest responsible bidder as ((~~per~~)) defined in RCW 39.04.010, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable.

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

**Sec.**  RCW 57.08.050 and 2019 c 434 s 10 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of fifty thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

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

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

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

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

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

(6)(a) A district may procure public works with a unit priced contract under this section for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

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

(c) Unit priced contracts must be executed for an initial contract term not to exceed one year, with the district having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids must include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Contracts must be awarded to the lowest responsible bidder as ((~~per~~)) defined in RCW 39.04.010, except where consideration of additional criteria is allowed or required under section 3 of this act, if applicable. Whenever possible, the district must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

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

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**