

ESSB 5418 - H COMM AMD
By Committee on Local Government

ADOPTED AS AMENDED 04/16/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 35.23.352 and 2018 c 74 s 2 are each amended to
4 read as follows:

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

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

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

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

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

24 (2) For the purposes of this section:

25 (a) "Lowest responsible bidder" means a bid that meets the
26 criteria under RCW 39.04.350 and has the lowest bid or is the next
27 (second) lowest bid within five percent of the lowest bid, and has
28 not been disqualified as a lowest responsible bidder, based upon a
29 written finding, that the bidder has delivered a project to the city
30 within the last three years that was late, over budget, or did not
31 meet specifications.

32 (b) If a bid does not meet the specifications pursuant to (a) of
33 this subsection, then "lowest responsible bidder" means a bid that
34 meets the criteria under RCW 39.04.350 and that is the third lowest
35 bid that is within five percent of the lowest bid and:

36 (i) Has delivered at least one project of similar size and scope
37 within the last three years for the city on time, within budget, and
38 according to required specifications; and

1 (ii) Has not delivered a project to the city within the last
2 three years that was late, over budget, or did not meet
3 specifications.

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

7 ~~((3))~~ (4) In lieu of the procedures of subsection (1) of this
8 section, a second-class city or a town may let contracts using the
9 small works roster process provided in RCW 39.04.155.

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

13 ~~((4))~~ (5) The form required by RCW 43.09.205 shall be to
14 account and record costs of public works in excess of five thousand
15 dollars that are not let by contract.

16 ~~((5))~~ (6) The cost of a separate public works project shall be
17 the costs of the materials, equipment, supplies, and labor on that
18 construction project.

19 ~~((6))~~ (7) Any purchase of supplies, material, or equipment,
20 except for public work or improvement, where the cost thereof exceeds
21 seven thousand five hundred dollars shall be made upon call for bids.

22 ~~((7))~~ (8) Bids shall be called annually and at a time and in
23 the manner prescribed by ordinance for the publication in a newspaper
24 of general circulation in the city or town of all notices or
25 newspaper publications required by law. The contract shall be awarded
26 to the lowest responsible bidder.

27 ~~((8))~~ (9) For advertisement and formal sealed bidding to be
28 dispensed with as to purchases with an estimated value of fifteen
29 thousand dollars or less, the council or commission must authorize by
30 resolution, use of the uniform procedure provided in RCW 39.04.190.

31 ~~((9))~~ (10) The city or town legislative authority may waive the
32 competitive bidding requirements of this section pursuant to RCW
33 39.04.280 if an exemption contained within that section applies to
34 the purchase or public work.

35 ~~((10))~~ (11) This section does not apply to performance-based
36 contracts, as defined in RCW 39.35A.020(4), that are negotiated under
37 chapter 39.35A RCW.

38 ~~((11))~~ (12) Nothing in this section shall prohibit any second-
39 class city or any town from allowing for preferential purchase of

1 products made from recycled materials or products that may be
2 recycled or reused.

3 ~~((12))~~ (13)(a) Any second-class city or any town may procure
4 public works with a unit priced contract under this section for the
5 purpose of completing anticipated types of work based on hourly rates
6 or unit pricing for one or more categories of work or trades.

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

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

17 (d) Invitations for unit price bids shall include, for purposes
18 of the bid evaluation, estimated quantities of the anticipated types
19 of work or trades, and specify how the city or town will issue or
20 release work assignments, work orders, or task authorizations
21 pursuant to a unit priced contract for projects, tasks, or other work
22 based on the hourly rates or unit prices bid by the contractor.
23 Contracts must be awarded to the lowest responsible bidder as per RCW
24 39.04.010. Whenever possible, the city or town must invite at least
25 one proposal from a certified minority or woman contractor who
26 otherwise qualifies under this section.

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

36 (14) Any second-class city or town that awards a project to a
37 bidder under the criteria described in subsection (2) of this section
38 must make an annual report to the department of commerce that
39 includes the total number of bids awarded to certified minority or

1 women contractors and describing how notice was provided to potential
2 certified minority or women contractors.

3 **Sec. 2.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read
4 as follows:

5 (~~(Unless the context clearly requires otherwise,)~~) The
6 definitions in this section apply throughout this chapter unless the
7 context clearly requires otherwise.

8 (1) "Advisory committee" means the advisory committee on minority
9 and women's business enterprises.

10 (2) "Broker" means a person that provides a bona fide service,
11 such as professional, technical, consultant, brokerage, or managerial
12 services and assistance in the procurement of essential personnel,
13 facilities, equipment, materials, or supplies required for
14 performance of a contract.

15 (3) "Contractor" means an individual or entity granted state
16 certification and awarded either a direct contract with an agency or
17 an indirect contract as a subcontractor to perform a service or
18 provide goods.

19 (4) "Director" means the director of the office of minority and
20 women's business enterprises.

21 (~~(4)~~) (5) "Educational institutions" means the state
22 universities, the regional universities, The Evergreen State College,
23 and the community colleges.

24 (~~(5)~~) (6) "Goals" means annual overall agency goals, expressed
25 as a percentage of dollar volume, for participation by minority and
26 women-owned and controlled businesses and shall not be construed as a
27 minimum goal for any particular contract or for any particular
28 geographical area. It is the intent of this chapter that such overall
29 agency goals shall be achievable and shall be met on a contract-by-
30 contract or class-of-contract basis.

31 (~~(6)~~) (7) "Goods and/or services" includes professional
32 services and all other goods and services.

33 (~~(7)~~) (8) "Office" means the office of minority and women's
34 business enterprises.

35 (~~(8)~~) (9) "Person" includes one or more individuals,
36 partnerships, associations, organizations, corporations,
37 cooperatives, legal representatives, trustees and receivers, or any
38 group of persons.

1 (~~(9)~~) (10) "Procurement" means the purchase, lease, or rental
2 of any goods or services.

3 (~~(10)~~) (11) "Public works" means all work, construction,
4 highway and ferry construction, alteration, repair, or improvement
5 other than ordinary maintenance, which a state agency or educational
6 institution is authorized or required by law to undertake.

7 (~~(11)~~) (12) "State agency" includes the state of Washington and
8 all agencies, departments, offices, divisions, boards, commissions,
9 and correctional and other types of institutions.

10 **Sec. 3.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to
11 read as follows:

12 (1) Each state agency and educational institution shall comply
13 with the annual goals established for that agency or institution
14 under this chapter for public works and procuring goods or services.
15 This chapter applies to all public works and procurement by state
16 agencies and educational institutions, including all contracts and
17 other procurement under chapters 28B.10, 39.04, (~~(39.29)~~) 39.26,
18 43.19, and 47.28 RCW.

19 (2) Each state agency shall adopt a plan, developed in
20 consultation with the director and the advisory committee, to
21 (~~(insure)~~) ensure that minority and women-owned businesses are
22 afforded the maximum practicable opportunity to directly and
23 meaningfully participate in the execution of public contracts for
24 public works and goods and services. The plan shall include specific
25 measures the agency will undertake to increase the participation of
26 certified minority and women-owned businesses.

27 (3) The office shall annually notify the governor, the state
28 auditor, and the joint legislative audit and review committee of all
29 agencies and educational institutions not in compliance with this
30 chapter.

31 **Sec. 4.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to
32 read as follows:

33 (1) For the purpose of annual reporting on progress required by
34 section 1 of this act, each state agency and educational institution
35 shall submit data to the office and the office of minority and
36 women's business enterprises on the participation by qualified
37 minority and women-owned and controlled businesses in the agency's or
38 institution's contracts and other related information requested by

1 the director. The director of the office of minority and women's
2 business enterprises shall determine the content and format of the
3 data and the reporting schedule, which must be at least annually.

4 (2) The office must develop and maintain a list of contact people
5 at each state agency and educational institution (~~that is~~) who are
6 able to present to hearings of the appropriate committees of the
7 legislature its progress in carrying out the purposes of chapter
8 39.19 RCW.

9 (3) The office must submit a report aggregating the data received
10 from each state agency and educational institution to the legislature
11 and the governor.

12 **Sec. 5.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to
13 read as follows:

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

26 (2)(a) A state agency or authorized local government may create a
27 single general small works roster, or may create a small works roster
28 for different specialties or categories of anticipated work. Where
29 applicable, small works rosters may make distinctions between
30 contractors based upon different geographic areas served by the
31 contractor. The small works roster or rosters shall consist of all
32 responsible contractors who have requested to be on the list, and
33 where required by law are properly licensed or registered to perform
34 such work in this state. A state agency or local government
35 establishing a small works roster or rosters may require eligible
36 contractors desiring to be placed on a roster or rosters to keep
37 current records of any applicable licenses, certifications,
38 registrations, bonding, insurance, or other appropriate matters on
39 file with the state agency or local government as a condition of

1 being placed on a roster or rosters. At least once a year, the state
2 agency or local government shall publish in a newspaper of general
3 circulation within the jurisdiction a notice of the existence of the
4 roster or rosters and solicit the names of contractors for such
5 roster or rosters. In addition, responsible contractors shall be
6 added to an appropriate roster or rosters at any time they submit a
7 written request and necessary records. Master contracts may be
8 required to be signed that become effective when a specific award is
9 made using a small works roster.

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

24 (c) Procedures shall be established for securing telephone,
25 written, or electronic quotations from contractors on the appropriate
26 small works roster to assure that a competitive price is established
27 and to award contracts to the lowest responsible bidder, as defined
28 in RCW 39.04.010. Invitations for quotations shall include an
29 estimate of the scope and nature of the work to be performed as well
30 as materials and equipment to be furnished. However, detailed plans
31 and specifications need not be included in the invitation. This
32 subsection does not eliminate other requirements for architectural or
33 engineering approvals as to quality and compliance with building
34 codes. Quotations may be invited from all appropriate contractors on
35 the appropriate small works roster. As an alternative, quotations
36 (~~may~~) must be invited from at least five contractors on the
37 appropriate small works roster who have indicated the capability of
38 performing the kind of work being contracted, in a manner that will
39 equitably distribute the opportunity among the contractors on the
40 appropriate roster. However, if the estimated cost of the work is

1 from (~~one~~) two hundred fifty thousand dollars to three hundred
2 fifty thousand dollars, a state agency or local government that
3 chooses to solicit bids from less than all the appropriate
4 contractors on the appropriate small works roster must also notify
5 the remaining contractors on the appropriate small works roster that
6 quotations on the work are being sought. The government has the sole
7 option of determining whether this notice to the remaining
8 contractors is made by: (i) Publishing notice in a legal newspaper in
9 general circulation in the area where the work is to be done; (ii)
10 mailing a notice to these contractors; or (iii) sending a notice to
11 these contractors by facsimile or other electronic means. For
12 purposes of this subsection (2)(c), "equitably distribute" means that
13 a state agency or local government soliciting bids may not favor
14 certain contractors on the appropriate small works roster over other
15 contractors on the appropriate small works roster who perform similar
16 services.

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

19 (e) Immediately after an award is made, the bid quotations
20 obtained shall be recorded, open to public inspection, and available
21 by (~~telephone inquiry~~) electronic request.

22 (f) For projects awarded under the small works roster process
23 established under this subsection, a state agency or authorized local
24 government may waive the retainage requirements of RCW
25 60.28.011(1)(a), thereby assuming the liability for contractor's
26 nonpayment of: (i) Laborers, mechanics, subcontractors,
27 materialpersons, and suppliers; and (ii) taxes, increases, and
28 penalties under Titles 50, 51, and 82 RCW that may be due from the
29 contractor for the project. However, the state agency or local
30 government has the right of recovery against the contractor for any
31 payments made on the contractor's behalf. Recovery of unpaid wages
32 and benefits are the first priority for actions filed against the
33 retainage.

34 (3) (a) In lieu of awarding contracts under subsection (2) of this
35 section, a state agency or authorized local government may award a
36 contract for work, construction, alteration, repair, or improvement
37 projects estimated to cost less than (~~thirty-five~~) fifty thousand
38 dollars using the limited public works process provided under this
39 subsection. Public works projects awarded under this subsection are
40 exempt from the other requirements of the small works roster process

1 provided under subsection (2) of this section and are exempt from the
2 requirement that contracts be awarded after advertisement as provided
3 under RCW 39.04.010.

4 (b) For limited public works projects, a state agency or
5 authorized local government shall solicit electronic or written
6 quotations from a minimum of three contractors from the appropriate
7 small works roster and shall award the contract to the lowest
8 responsible bidder as defined under RCW 39.04.010. After an award is
9 made, the quotations shall be open to public inspection and available
10 by electronic request. A state agency or authorized local government
11 ~~((shall attempt to))~~ must equitably distribute opportunities for
12 limited public works projects ~~((equitably))~~ among contractors willing
13 to perform in the geographic area of the work. A state agency or
14 authorized local government shall maintain a list of the contractors
15 contacted and the contracts awarded during the previous twenty-four
16 months under the limited public works process, including the name of
17 the contractor, the contractor's registration number, the amount of
18 the contract, a brief description of the type of work performed, and
19 the date the contract was awarded. For limited public works projects,
20 a state agency or authorized local government may waive the payment
21 and performance bond requirements of chapter 39.08 RCW and may waive
22 the retainage requirements of ~~((chapter 60.28))~~ RCW 60.28.011(1)(a),
23 thereby assuming the liability for the contractor's nonpayment of
24 laborers, mechanics, subcontractors, materialpersons, suppliers, and
25 taxes ~~((imposed under Title))~~, increases, and penalties imposed under
26 Titles 50, 51, and 82 RCW that may be due from the contractor for the
27 limited public works project, however the state agency or authorized
28 local government shall have the right of recovery against the
29 contractor for any payments made on the contractor's behalf.

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

34 (5) ~~((a) A state agency or authorized local government may use
35 the limited public works process of subsection (3) of this section to
36 solicit and award small works roster contracts to small businesses
37 that are registered contractors with gross revenues under one million
38 dollars annually as reported on their federal tax return.~~

39 ~~((b) A state agency or authorized local government may adopt
40 additional procedures to encourage small businesses that are~~

1 ~~registered contractors with gross revenues under two hundred fifty~~
2 ~~thousand dollars annually as reported on their federal tax returns to~~
3 ~~submit quotations or bids on small works roster contracts.~~

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

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

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

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

23 **Sec. 6.** RCW 39.12.040 and 2013 c 113 s 5 are each amended to
24 read as follows:

25 (1)(a) Except as provided in subsection (2) of this section,
26 before payment is made by or on behalf of the state, or any county,
27 municipality, or political subdivision created by its laws, of any
28 sum or sums due on account of a public works contract, it is the duty
29 of the officer or person charged with the custody and disbursement of
30 public funds to require the contractor and each and every
31 subcontractor from the contractor or a subcontractor to submit to
32 such officer a "Statement of Intent to Pay Prevailing Wages". For a
33 contract in excess of ten thousand dollars, the statement of intent
34 to pay prevailing wages must include:

35 (i) The contractor's registration certificate number; and

36 (ii) The prevailing rate of wage for each classification of
37 workers entitled to prevailing wages under RCW 39.12.020 and the
38 estimated number of workers in each classification.

1 (b) Each statement of intent to pay prevailing wages must be
2 approved by the industrial statistician of the department of labor
3 and industries before it is submitted to the disbursing officer.
4 Unless otherwise authorized by the department of labor and
5 industries, each voucher claim submitted by a contractor for payment
6 on a project estimate must state that the prevailing wages have been
7 paid in accordance with the prefiled statement or statements of
8 intent to pay prevailing wages on file with the public agency.
9 Following the final acceptance of a public works project, it is the
10 duty of the officer charged with the disbursement of public funds, to
11 require the contractor and each and every subcontractor from the
12 contractor or a subcontractor to submit to such officer an affidavit
13 of wages paid before the funds retained according to the provisions
14 of RCW 60.28.011 are released to the contractor. On a public works
15 project where no retainage is withheld (~~pursuant to RCW~~
16 ~~60.28.011(1)(b)~~), the affidavit of wages paid must be submitted to
17 the state, county, municipality, or other public body charged with
18 the duty of disbursing or authorizing disbursement of public funds
19 prior to final acceptance of the public works project. If a
20 subcontractor performing work on a public works project fails to
21 submit an affidavit of wages paid form, the contractor or
22 subcontractor with whom the subcontractor had a contractual
23 relationship for the project may file the forms on behalf of the
24 nonresponsive subcontractor. Affidavit forms may only be filed on
25 behalf of a nonresponsive subcontractor who has ceased operations or
26 failed to file as required by this section. The contractor filing the
27 affidavit must accept responsibility for payment of prevailing wages
28 unpaid by the subcontractor on the project pursuant to RCW 39.12.020
29 and 39.12.065. Intentionally filing a false affidavit on behalf of a
30 subcontractor subjects the filer to the same penalties as are
31 provided in RCW 39.12.050. Each affidavit of wages paid must be
32 certified by the industrial statistician of the department of labor
33 and industries before it is submitted to the disbursing officer.

34 (2) As an alternate to the procedures provided for in subsection
35 (1) of this section, for public works projects of two thousand five
36 hundred dollars or less and for projects where the limited public
37 works process under RCW 39.04.155(3) is followed:

38 (a) An awarding agency may authorize the contractor or
39 subcontractor to submit the statement of intent to pay prevailing
40 wages directly to the officer or person charged with the custody or

1 disbursement of public funds in the awarding agency without approval
2 by the industrial statistician of the department of labor and
3 industries. The awarding agency must retain such statement of intent
4 to pay prevailing wages for a period of not less than three years.

5 (b) Upon final acceptance of the public works project, the
6 awarding agency must require the contractor or subcontractor to
7 submit an affidavit of wages paid. Upon receipt of the affidavit of
8 wages paid, the awarding agency may pay the contractor or
9 subcontractor in full, including funds that would otherwise be
10 retained according to the provisions of RCW 60.28.011. Within thirty
11 days of receipt of the affidavit of wages paid, the awarding agency
12 must submit the affidavit of wages paid to the industrial
13 statistician of the department of labor and industries for approval.

14 (c) A statement of intent to pay prevailing wages and an
15 affidavit of wages paid must be on forms approved by the department
16 of labor and industries.

17 (d) In the event of a wage claim and a finding for the claimant
18 by the department of labor and industries where the awarding agency
19 has used the alternative process provided for in this subsection (2),
20 the awarding agency must pay the wages due directly to the claimant.
21 If the contractor or subcontractor did not pay the wages stated in
22 the affidavit of wages paid, the awarding agency may take action at
23 law to seek reimbursement from the contractor or subcontractor of
24 wages paid to the claimant, and may prohibit the contractor or
25 subcontractor from bidding on any public works contract of the
26 awarding agency for up to one year.

27 (e) Nothing in this section may be interpreted to allow an
28 awarding agency to subdivide any public works project of more than
29 two thousand five hundred dollars for the purpose of circumventing
30 the procedures required by subsection (1) of this section.

31 **Sec. 7.** RCW 54.04.070 and 2017 c 85 s 1 are each amended to read
32 as follows:

33 (1) Any item, or items of the same kind of materials, equipment,
34 or supplies purchased, the estimated cost of which is in excess of
35 (~~fifteen~~) thirty thousand dollars, exclusive of sales tax, shall be
36 by contract. However, a district may make purchases of the same kind
37 of items of materials, equipment, and supplies not exceeding
38 (~~seven~~) twelve thousand (~~five hundred~~) dollars in any calendar

1 month without a contract, purchasing any excess thereof over
2 ((seven)) twelve thousand ((five hundred)) dollars by contract.

3 (2) Any work ordered by a district commission, the estimated cost
4 of which is in excess of ((twenty-five)) fifty thousand dollars,
5 exclusive of sales tax, shall be by contract. However, a district
6 commission may have its own regularly employed personnel perform work
7 which is an accepted industry practice under prudent utility
8 management without a contract. For purposes of this section, "prudent
9 utility management" means performing work with regularly employed
10 personnel utilizing material of a worth not exceeding ((one)) three
11 hundred ((fifty)) thousand dollars in value without a contract. This
12 limit on the value of material being utilized in work being performed
13 by regularly employed personnel shall not include the value of
14 individual items of equipment ((purchased or acquired and used as one
15 unit of a project)). For the purposes of this section, the term
16 "equipment" includes but is not limited to conductor, cabling, wire,
17 pipe, or lines used for electrical, water, fiber optic, or
18 telecommunications.

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

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

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

1 supported by the sworn affidavit of one member of the commission, and
2 may consider such price as a bid without a deposit or bond.

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

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

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

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

21 (d) Invitations for unit price bids shall include, for purposes
22 of the bid evaluation, estimated quantities of the anticipated types
23 of work or trades, and specify how the district will issue or release
24 work assignments, work orders, or task authorizations pursuant to a
25 unit priced contract for projects, tasks, or other work based on the
26 hourly rates or unit prices bid by the contractor. Where electrical
27 facility construction or improvement work is anticipated, contractors
28 on a unit priced contract shall comply with the requirements under
29 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
30 lowest responsible bidder as per RCW 39.04.010.

31 (e) Unit price contractors shall pay prevailing wages for all
32 work that would otherwise be subject to the requirements of chapter
33 39.12 RCW. (~~Prevailing wages for all work performed pursuant to each~~
34 ~~work order must be the rates in effect at the time the individual~~
35 ~~work order is issued)) Prevailing wages for all work performed
36 pursuant to each work order must be the prevailing wage rates in
37 effect at the beginning date for each contract year. Unit priced
38 contracts must have prevailing wage rates updated annually. Intents
39 and affidavits for prevailing wages paid must be submitted annually~~

1 for all work completed within the previous twelve-month period of the
2 unit priced contract.

3 **Sec. 8.** RCW 36.32.235 and 2016 c 95 s 8 and 2016 c 19 s 8 are
4 each reenacted and amended to read as follows:

5 (1) In each county (~~(with a population of four hundred thousand~~
6 ~~or more))~~) which by resolution establishes a county purchasing
7 department, the purchasing department shall enter into leases of
8 personal property on a competitive basis and purchase all supplies,
9 materials, and equipment on a competitive basis, for all departments
10 of the county, as provided in this chapter and chapter 39.04 RCW,
11 except that the county purchasing department is not required to make
12 purchases that are paid from the county road fund or equipment rental
13 and revolving fund.

14 (2) As used in this section:

15 (a) "Public works" has the same definition as in RCW 39.04.010.

16 (b) "Riverine project" means a project of construction,
17 alteration, repair, replacement, or improvement other than ordinary
18 maintenance, executed at the cost of the state or of any
19 municipality, or which is by law a lien or charge on any property,
20 carried out on a river or stream and its tributaries and associated
21 floodplains, beds, banks, and waters for the purpose of improving
22 aquatic habitat, improving water quality, restoring floodplain
23 function, or providing flood protection.

24 (c) "Stormwater project" means a project of construction,
25 alteration, repair, replacement, or improvement other than ordinary
26 maintenance, executed at the cost of the state or of any
27 municipality, or which is by law a lien or charge on any property,
28 carried out on a municipal separate storm sewer system, and any
29 connections to the system, that is regulated under a state-issued
30 national pollutant discharge elimination system general municipal
31 stormwater permit for the purpose of improving control of stormwater
32 runoff quantity and quality from developed land, safely conveying
33 stormwater runoff, or reducing erosion or other water quality impacts
34 caused by municipal separate storm sewer system discharges.

35 (3) Except as otherwise specified in this chapter or in chapter
36 36.77 RCW, all counties subject to these provisions shall contract on
37 a competitive basis for all public works after bids have been
38 submitted to the county upon specifications therefor. Such

1 specifications shall be in writing and shall be filed with the clerk
2 of the county legislative authority for public inspection.

3 (4) An advertisement shall be published in the county official
4 newspaper stating the time and place where bids will be opened, the
5 time after which bids will not be received, the character of the work
6 to be done, the materials and equipment to be furnished, and that
7 specifications therefor may be seen at the office of the clerk of the
8 county legislative authority. An advertisement shall also be
9 published in a legal newspaper of general circulation in or as near
10 as possible to that part of the county in which such work is to be
11 done. If the county official newspaper is a newspaper of general
12 circulation covering at least forty percent of the residences in that
13 part of the county in which such public works are to be done, then
14 the publication of an advertisement of the applicable specifications
15 in the county official newspaper is sufficient. Such advertisements
16 shall be published at least once at least thirteen days prior to the
17 last date upon which bids will be received.

18 (5) The bids shall be in writing, may be in either hard copy or
19 electronic form as specified by the county, shall be filed with the
20 clerk, shall be opened and read in public at the time and place named
21 therefor in the advertisements, and, after being opened, shall be
22 filed for public inspection. No bid may be considered for public work
23 unless it is accompanied by a bid deposit in the form of a surety
24 bond, postal money order, cash, cashier's check, or certified check
25 in an amount equal to five percent of the amount of the bid proposed.

26 (6) The contract for the public work shall be awarded to the
27 lowest responsible bidder. Any or all bids may be rejected for good
28 cause. The county legislative authority shall require from the
29 successful bidder for such public work a contractor's bond in the
30 amount and with the conditions imposed by law.

31 (7) If the bidder to whom the contract is awarded fails to enter
32 into the contract and furnish the contractor's bond as required
33 within ten days after notice of the award, exclusive of the day of
34 notice, the amount of the bid deposit shall be forfeited to the
35 county and the contract awarded to the next lowest and best bidder.
36 The bid deposit of all unsuccessful bidders shall be returned after
37 the contract is awarded and the required contractor's bond given by
38 the successful bidder is accepted by the county legislative
39 authority. Immediately after the award is made, the bid quotations

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

3 (8) As limited by subsection (~~(10)~~) (11) of this section, a
4 county subject to these provisions may have public works performed by
5 county employees in any annual or biennial budget period equal to a
6 dollar value not exceeding ten percent of the public works
7 construction budget, including any amount in a supplemental public
8 works construction budget, over the budget period.

9 Whenever a county subject to these provisions has had public
10 works performed in any budget period up to the maximum permitted
11 amount for that budget period, all remaining public works except
12 emergency work under subsection (~~(12)~~) (13) of this section within
13 that budget period shall be done by contract pursuant to public
14 notice and call for competitive bids as specified in subsection (3)
15 of this section. The state auditor shall report to the state
16 treasurer any county subject to these provisions that exceeds this
17 amount and the extent to which the county has or has not reduced the
18 amount of public works it has performed by public employees in
19 subsequent years.

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

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

30 (b) Unit priced contracts must be executed for an initial
31 contract term not to exceed one year, with the county having the
32 option of extending or renewing the unit priced contract for one
33 additional year.

34 (c) Invitations for unit price bids shall include, for purposes
35 of the bid evaluation, estimated quantities of the anticipated types
36 of work or trades, and specify how the county will issue or release
37 work assignments, work orders, or task authorizations pursuant to a
38 unit priced contract for projects, tasks, or other work based on the
39 hourly rates or unit prices bid by the contractor. The contract must
40 be awarded to the lowest responsible bidder as defined under RCW

1 39.04.010. Whenever possible, the county must invite at least one bid
2 from a certified minority or woman contractor who otherwise qualifies
3 under this section.

4 (d) Unit price contractors shall pay prevailing wages for all
5 work that would otherwise be subject to the requirements of chapter
6 39.12 RCW. Prevailing wages for all work performed pursuant to each
7 work order must be the prevailing wage rates in effect at the
8 beginning date for each contract year. Unit priced contracts must
9 have prevailing wage rates updated annually. Intents and affidavits
10 for prevailing wages paid must be submitted annually for all work
11 completed within the previous twelve-month period of the unit priced
12 contract.

13 (10) If a county subject to these provisions has public works
14 performed by public employees in any budget period that are in excess
15 of this ten percent limitation, the amount in excess of the permitted
16 amount shall be reduced from the otherwise permitted amount of public
17 works that may be performed by public employees for that county in
18 its next budget period. Ten percent of the motor vehicle fuel tax
19 distributions to that county shall be withheld if two years after the
20 year in which the excess amount of work occurred, the county has
21 failed to so reduce the amount of public works that it has performed
22 by public employees. The amount withheld shall be distributed to the
23 county when it has demonstrated in its reports to the state auditor
24 that the amount of public works it has performed by public employees
25 has been reduced as required.

26 ~~((10))~~ (11) In addition to the percentage limitation provided
27 in subsection (8) of this section, counties subject to these
28 provisions containing a population of four hundred thousand or more
29 shall not have public employees perform: A public works project in
30 excess of ninety thousand dollars if more than a single craft or
31 trade is involved with the public works project, a riverine project
32 or stormwater project in excess of two hundred fifty thousand dollars
33 if more than a single craft or trade is involved with the riverine
34 project or stormwater project, a public works project in excess of
35 forty-five thousand dollars if only a single craft or trade is
36 involved with the public works project, or a riverine project or
37 stormwater project in excess of one hundred twenty-five thousand
38 dollars if only a single craft or trade is involved with the riverine
39 project or stormwater project. A public works project, a riverine
40 project, and a stormwater project means a complete project. The

1 restrictions in this subsection do not permit the division of the
2 project into units of work or classes of work to avoid the
3 restriction on work that may be performed by public employees on a
4 single project.

5 The cost of a separate public works project shall be the costs of
6 materials, supplies, equipment, and labor on the construction of that
7 project. The value of the public works budget shall be the value of
8 all the separate public works projects within the budget.

9 ~~((11))~~ (12) In addition to the accounting and recordkeeping
10 requirements contained in chapter 39.04 RCW, any county which uses
11 public employees to perform public works projects under RCW
12 36.32.240(1) shall prepare a year-end report to be submitted to the
13 state auditor indicating the total dollar amount of the county's
14 public works construction budget and the total dollar amount for
15 public works projects performed by public employees for that year.

16 The year-end report submitted pursuant to this subsection to the
17 state auditor shall be in accordance with the standard form required
18 by RCW 43.09.205.

19 ~~((12))~~ (13) Notwithstanding any other provision in this
20 section, counties may use public employees without any limitation for
21 emergency work performed under an emergency declared pursuant to RCW
22 36.32.270, and any such emergency work shall not be subject to the
23 limitations of this section. Publication of the description and
24 estimate of costs relating to correcting the emergency may be made
25 within seven days after the commencement of the work. Within two
26 weeks of the finding that such an emergency existed, the county
27 legislative authority shall adopt a resolution certifying the damage
28 to public facilities and costs incurred or anticipated relating to
29 correcting the emergency. Additionally this section shall not apply
30 to architectural and engineering or other technical or professional
31 services performed by public employees in connection with a public
32 works project.

33 ~~((13))~~ (14) In lieu of the procedures of subsections (3)
34 through ~~((11))~~ (12) of this section, a county may let contracts
35 using the small works roster process provided in RCW 39.04.155.

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

1 (~~(14)~~) (15) The allocation of public works projects to be
2 performed by county employees shall not be subject to a collective
3 bargaining agreement.

4 (~~(15)~~) (16) This section does not apply to performance-based
5 contracts, as defined in RCW 39.35A.020(4), that are negotiated under
6 chapter 39.35A RCW.

7 (~~(16)~~) (17) Nothing in this section prohibits any county from
8 allowing for preferential purchase of products made from recycled
9 materials or products that may be recycled or reused.

10 (~~(17)~~) (18) This section does not apply to contracts between
11 the public stadium authority and a team affiliate under RCW
12 36.102.060(4), or development agreements between the public stadium
13 authority and a team affiliate under RCW 36.102.060(7) or leases
14 entered into under RCW 36.102.060(8).

15 NEW SECTION. **Sec. 9.** A new section is added to chapter 39.04
16 RCW to read as follows:

17 (1) The following public bodies of the state of Washington are
18 authorized to procure public works contracts under this chapter for
19 the purpose of completing anticipated types of work based on hourly
20 rates or unit pricing for one or more categories of work or trades:

21 (a) Every county public transportation authority as defined under
22 RCW 36.57.010;

23 (b) Every public transportation benefit area as defined under RCW
24 36.57A.010; and

25 (c) Every regional transit authority as defined under RCW
26 81.112.020.

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

31 (3) Unit priced contracts must be executed for an initial
32 contract term not to exceed one year, with the public body having the
33 option of extending or renewing the unit priced contract for one
34 additional year.

35 (4) Invitations for unit price bids must include, for purposes of
36 the bid evaluation, estimated quantities of the anticipated types of
37 work or trades, and specify how the public body will issue or release
38 work assignments, work orders, or task authorizations pursuant to a
39 unit priced contract for projects, tasks, or other work based on the

1 hourly rates or unit prices bid by the contractor. Contracts must be
2 awarded to the lowest responsible bidder as provided in RCW
3 39.04.010. Whenever possible, the public body must invite at least
4 one proposal from a certified minority or woman contractor who
5 otherwise qualifies under this section.

6 (5) Unit priced contractors shall pay prevailing wages for all
7 work that would otherwise be subject to the requirements of chapter
8 39.12 RCW. Prevailing wages for all work performed pursuant to each
9 work order must be the prevailing wage rates in effect at the
10 beginning date for each contract year. Unit priced contracts must
11 have prevailing wage rates updated annually. Intents and affidavits
12 for prevailing wages paid must be submitted annually for all work
13 completed within the previous twelve-month period of the unit priced
14 contract.

15 (6) All public works procured with a unit priced contract under
16 this section must comply with all other applicable bid requirements.

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

23 **Sec. 10.** RCW 57.08.050 and 2015 c 136 s 1 are each amended to
24 read as follows:

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

37 Each bid shall be accompanied by a certified or cashier's check
38 or postal money order payable to the order of the county treasurer
39 for a sum not less than five percent of the amount of the bid, or

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

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

36 (3) Any purchase of materials, supplies, or equipment, with an
37 estimated cost in excess of forty thousand dollars, shall be by
38 contract. Any purchase of materials, supplies, or equipment, with an
39 estimated cost of less than fifty thousand dollars shall be made
40 using the process provided in RCW 39.04.190. Any purchase of

1 materials, supplies, or equipment with an estimated cost of fifty
2 thousand dollars or more shall be made by competitive bidding
3 following the procedure for letting contracts for projects under
4 subsection (1) of this section.

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

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

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

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

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

31 (d) Invitations for unit price bids must include, for purposes of
32 the bid evaluation, estimated quantities of the anticipated types of
33 work or trades, and specify how the district will issue or release
34 work assignments, work orders, or task authorizations pursuant to a
35 unit priced contract for projects, tasks, or other work based on the
36 hourly rates or unit prices bid by the contractor. Contracts must be
37 awarded to the lowest responsible bidder as per RCW 39.04.010.
38 Whenever possible, the district must invite at least one proposal
39 from a certified minority or woman contractor who otherwise qualifies
40 under this section.

1 (e) Unit price contractors shall pay prevailing wages for all
2 work that would otherwise be subject to the requirements of chapter
3 39.12 RCW. Prevailing wages for all work performed pursuant to each
4 work order must be the prevailing wage rates in effect at the
5 beginning date for each contract year. Unit priced contracts must
6 have prevailing wage rates updated annually. Intents and affidavits
7 for prevailing wages paid must be submitted annually for all work
8 completed within the previous twelve-month period of the unit priced
9 contract.

10 **Sec. 11.** RCW 35.22.620 and 2018 c 74 s 1 are each amended to
11 read as follows:

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

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

24 If a first-class city has public works performed by public
25 employees in any budget period that are in excess of this ten percent
26 limitation, the amount in excess of the permitted amount shall be
27 reduced from the otherwise permitted amount of public works that may
28 be performed by public employees for that city in its next budget
29 period. Twenty percent of the motor vehicle fuel tax distributions to
30 that city shall be withheld if two years after the year in which the
31 excess amount of work occurred, the city has failed to so reduce the
32 amount of public works that it has performed by public employees. The
33 amount so withheld shall be distributed to the city when it has
34 demonstrated in its reports to the state auditor that the amount of
35 public works it has performed by public employees has been so
36 reduced.

37 Whenever a first-class city has had public works performed in any
38 budget period up to the maximum permitted amount for that budget
39 period, all remaining public works within that budget period shall be

1 done by contract pursuant to public notice and call for competitive
2 bids.

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

7 (3) In addition to the percentage limitation provided in
8 subsection (2) of this section, a first-class city shall not have
9 public employees perform a public works project in excess of
10 (~~ninety~~) one hundred fifty thousand dollars if more than a single
11 craft or trade is involved with the public works project, or a public
12 works project in excess of (~~forty-five thousand~~) seventy-five
13 thousand five hundred dollars if only a single craft or trade is
14 involved with the public works project or the public works project is
15 street signalization or street lighting. A public works project means
16 a complete project. The restrictions in this subsection do not permit
17 the division of the project into units of work or classes of work to
18 avoid the restriction on work that may be performed by day labor on a
19 single project.

20 (4) In addition to the accounting and recordkeeping requirements
21 contained in RCW 39.04.070, every first-class city annually may
22 prepare a report for the state auditor indicating the total public
23 works construction budget and supplemental public works construction
24 budget for that year, the total construction costs of public works
25 performed by public employees for that year, and the amount of public
26 works that is performed by public employees above or below ten
27 percent of the total construction budget. However, if a city budgets
28 on a biennial basis, this annual report may indicate the amount of
29 public works that is performed by public employees within the current
30 biennial period that is above or below ten percent of the total
31 biennial construction budget.

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

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

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

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

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

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

14 (9) This section does not apply to performance-based contracts,
15 as defined in RCW 39.35A.020(4), that are negotiated under chapter
16 39.35A RCW.

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

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

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

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

34 (d) Invitations for unit price bids shall include, for purposes
35 of the bid evaluation, estimated quantities of the anticipated types
36 of work or trades, and specify how the city will issue or release
37 work assignments, work orders, or task authorizations pursuant to a
38 unit priced contract for projects, tasks, or other work based on the
39 hourly rates or unit prices bid by the contractor. Contracts must be
40 awarded to the lowest responsible bidder as per RCW 39.04.010.

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

4 (e) Unit price contractors shall pay prevailing wages for all
5 work that would otherwise be subject to the requirements of chapter
6 39.12 RCW. Prevailing wages for all work performed pursuant to each
7 work order must be the prevailing wage rates in effect at the
8 beginning date for each contract year. Unit priced contracts must
9 have prevailing wage rates updated annually. Intents and affidavits
10 for prevailing wages paid must be submitted annually for all work
11 completed within the previous twelve-month period of the unit priced
12 contract.

13 **Sec. 12.** RCW 52.14.110 and 2009 c 229 s 9 are each amended to
14 read as follows:

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

20 (1) The purchase of any materials, supplies, or equipment if the
21 cost will not exceed the sum of (~~ten~~) forty thousand dollars.
22 However, whenever the estimated cost does not exceed (~~fifty~~)
23 seventy-five thousand dollars, the commissioners may by resolution
24 use the process provided in RCW 39.04.190 to award contracts;

25 (2) Contracting for work to be done involving the construction or
26 improvement of a fire station or other buildings where the estimated
27 cost will not exceed the sum of (~~twenty~~) thirty thousand dollars,
28 which includes the costs of labor, material, and equipment;

29 (3) Contracts using the small works roster process under RCW
30 39.04.155; and

31 (4) Any contract for purchases or public work pursuant to RCW
32 39.04.280 if an exemption contained within that section applies to
33 the purchase or public work.

34 **Sec. 13.** RCW 39.04.105 and 2003 c 300 s 1 are each amended to
35 read as follows:

36 (1) Within two business days of the bid opening on a public works
37 project that is the subject of competitive bids, the municipality
38 must provide, if requested by a bidder, copies of the bids the

1 municipality received for the project. The municipality shall then
2 allow at least two full business days after providing bidders with
3 copies of all bids before executing a contract for the project.
4 Intermediate Saturdays, Sundays, and legal holidays are not counted.

5 (2) When a municipality receives a written protest from a bidder
6 for a public works project (~~(which)~~) that is the subject of
7 competitive bids, the municipality (~~(shall)~~) must not execute a
8 contract for the project with anyone other than the protesting bidder
9 without first providing at least two full business days' written
10 notice of the municipality's intent to execute a contract for the
11 project; provided that the protesting bidder submits notice in
12 writing of its protest no later than:

13 (a) Two full business days following bid opening, if no bidder
14 requested copies of the bids received for the project under
15 subsection (1) of this section; or

16 (b) Two full business days following when the municipality
17 provided copies of the bids to those bidders requesting bids under
18 subsection (1) of this section. Intermediate Saturdays, Sundays, and
19 legal holidays are not counted.

20 **Sec. 14.** RCW 54.04.082 and 2008 c 216 s 3 are each amended to
21 read as follows:

22 For the awarding of a contract to purchase any item, or items of
23 the same kind of materials, equipment, or supplies in an amount
24 exceeding (~~(fifteen)~~) thirty thousand dollars per calendar month, but
25 less than (~~(sixty)~~) one hundred twenty thousand dollars per calendar
26 month, exclusive of sales tax, the commission may, in lieu of the
27 procedure described in RCW 54.04.070 and 54.04.080 requiring public
28 notice to invite sealed proposals for such materials, equipment, or
29 supplies, pursuant to commission resolution use the process provided
30 in RCW 39.04.190. Waiver of the deposit or bid bond required under
31 RCW 54.04.080 may be authorized by the commission in securing such
32 bid quotations.

33 **Sec. 15.** RCW 87.03.435 and 1997 c 354 s 3 are each amended to
34 read as follows:

35 (1) Except as provided in subsections (2) and (3) of this section
36 and RCW 87.03.436, whenever in the construction of the district canal
37 or canals, or other works, or the furnishing of materials therefor,
38 the board of directors shall determine to let a contract or contracts

1 for the doing of the work or the furnishing of the materials, a
2 notice calling for sealed proposals shall be published. The notice
3 shall be published in a newspaper in the county in which the office
4 of the board is situated, (~~and~~) in any other newspaper which may be
5 designated by the board, and on the irrigation district's web site or
6 on the county's web site where the district is located if the
7 district does not have a web site, and for such length of time, not
8 less than once each week for two weeks, as may be fixed by the board.
9 At the time and place appointed in the notice for the opening of
10 bids, the sealed proposals shall be opened in public, and as soon as
11 convenient thereafter, the board shall let the work or the contract
12 for the purchase of materials, either in portions or as a whole, to
13 the lowest responsible bidder, or the board may reject any or all
14 bids and readvertise, or may contract using the small works roster
15 process in RCW 39.04.155 or may proceed to construct the work under
16 its own superintendence. All work shall be done under the direction
17 and to the satisfaction of the engineer of the district, and be
18 approved by the board. The board of directors may require bidders
19 submitting bids for the construction or maintenance for any of the
20 works of the district, or for the furnishing of labor or material, to
21 accompany their bids by a deposit in cash, certified check, cashier's
22 check, or surety bond in an amount equal to five percent of the
23 amount of the bid and a bid shall not be considered unless the
24 deposit is enclosed with it. If the contract is let, then all the bid
25 deposits shall be returned to the unsuccessful bidders. The bid
26 deposit of the successful bidder shall be retained until a contract
27 is entered into for the purchase of the materials or doing of such
28 work, and a bond given to the district in accordance with chapter
29 39.08 RCW for the performance of the contract. The performance bond
30 shall be conditioned as may be required by law and as may be required
31 by resolution of the board, with good and sufficient sureties
32 satisfactory to the board, payable to the district for its use, for
33 at least twenty-five percent of the contract price. If the successful
34 bidder fails to enter into a contract and furnish the necessary bond
35 within twenty days from the award, exclusive of the day of the award,
36 the bid deposit shall be forfeited to the district and the contract
37 may then be awarded to the second lowest bidder.

38 (2) The provisions of this section in regard to public bidding
39 shall not apply in cases where the board is authorized to exchange
40 bonds of the district in payment for labor and material.

1 (3) The provisions of this section do not apply:

2 (a) In the case of any contract between the district and the
3 United States;

4 (b) In the case of an emergency when the public interest or
5 property of the district would suffer material injury or damage by
6 delay, upon resolution of the board of directors or proclamation of
7 an official designated by the board to act for the board during such
8 emergencies. The resolution or proclamation shall declare the
9 existence of the emergency and recite the facts constituting the
10 emergency; or

11 (c) To purchases which are clearly and legitimately limited to a
12 single source of supply or to purchases involving special facilities,
13 services, or market conditions, in which instances the purchase price
14 may be best established by direct negotiation.

15 NEW SECTION. **Sec. 16.** (1) The bid limit dollar thresholds for
16 each public works contracting process and purchase must be adjusted
17 for inflation by the office of financial management every five years,
18 beginning July 1, 2020, based upon changes in the consumer price
19 index during that time period.

20 (2) "Consumer price index" means the consumer price index
21 compiled by the bureau of labor and statistics, United States
22 department of labor for the state of Washington. If the bureau of
23 labor and statistics develops more than one consumer price index for
24 areas within the state, the index covering the greatest number of
25 people, covering areas exclusively within the boundaries of the
26 state, and including all items shall be used for the adjustments for
27 inflation in this section.

28 (3) The office of financial management must calculate the new
29 dollar thresholds and transmit them to the office of the code reviser
30 for publication in the Washington State Register at least one month
31 before the new dollar thresholds are to take effect.

32 (4) The public works contracting processes and purchases under
33 subsection (1) of this section must include the local government
34 entities subject to the following statutes: RCW 28A.335.190,
35 28B.10.029, 28B.10.350, 28B.50.330, 35.21.225, 35.21.730, 35.22.620,
36 35.23.352, 35.57.020, 35.61.135, 35A.40.210, 36.100.030, 36.32.235,
37 36.32.240, 36.32.245, 36.32.250, 52.14.110, 53.08.120, 53.08.135,
38 54.04.070, 54.04.082, 57.08.050, 70.44.140, 71.24.300, 74.38.050,
39 87.03.435, 87.03.436, 87.03.437, and 89.30.154 and chapters 17.28,

1 27.12, 28A.310, 35.82, 36.57, 36.57A, 36.69, 36.73, 39.04, 39.34,
2 48.62, 70.46, 85.38, and 89.08 RCW.

3 (5) For purposes of this section, "local government" refers to
4 all counties, cities, towns, other political subdivisions, and
5 special purpose districts."

6 Correct the title.

EFFECT: (1) Adds provisions that:

(a) Amend public works contract thresholds proposed for public utility districts, cities, and fire protection districts;

(b) Amend the definition of "lowest responsible bidder";

(c) Require a city or town that awards a project to a bidder under the new allowable lowest bidder criteria to annually report to the Department of Commerce the number of bids awarded to certified minority or women contractors;

(d) Amend the small works roster process cost thresholds;

(e) Authorize state agencies and local governments to use the limited public works process to solicit and award small works roster contracts to mini and microbusinesses;

(f) Permit agencies, for projects awarded under the small works roster process, to waive certain retainage requirements and assume liability for the contractor's nonpayment of taxes and of laborers, subcontractors, mechanics, material persons, and suppliers;

(g) Require an agency or local government to equitably distribute opportunities for limited public works projects (and defines "equitably distribute");

(h) Require irrigation boards, when calling for bid proposals, to advertise on the irrigation district's website or the county's website;

(i) Authorize irrigation district boards to use the small works roster process for public works contracting processes and purchases;

(j) Require the Office of Financial Management, every 5 years, to adjust the bid limit thresholds (for inflation) for public works contracting processes and purchases, based upon changes in the consumer price index; and

(k) Authorize county public transportation authorities, public transportation benefit areas, and regional transit authorities to use unit priced contracts for public works.

(2) Eliminates the provision that:

(a) Required the Capital Project Advisory Review Board to study local government public works contracting processes; and

(b) Expired the act on March 31, 2021.

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