

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5418**

Chapter 434, Laws of 2019

(partial veto)

66th Legislature  
2019 Regular Session

LOCAL GOVERNMENT PROCUREMENT--VARIOUS PROVISIONS

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 23, 2019  
Yeas 40 Nays 7

CYRUS HABIB

**President of the Senate**

Passed by the House April 16, 2019  
Yeas 76 Nays 22

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 21, 2019 11:19 AM with the  
exception of section 15, which is  
vetoed.

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of  
the Senate of the State of  
Washington, do hereby certify that  
the attached is **ENGROSSED  
SUBSTITUTE SENATE BILL 5418** as  
passed by the Senate and the House  
of Representatives on the dates  
hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 21, 2019

**Secretary of State  
State of Washington**

---

**ENGROSSED SUBSTITUTE SENATE BILL 5418**

---

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

**State of Washington                      66th Legislature                      2019 Regular Session**

**By** Senate Local Government (originally sponsored by Senators Takko, Zeiger, and Liias)

READ FIRST TIME 02/20/19.

1            AN ACT Relating to local government procurement modernization and  
2 efficiency; amending RCW 35.23.352, 39.19.020, 39.19.060, 39.19.250,  
3 39.04.155, 39.12.040, 54.04.070, 57.08.050, 35.22.620, 52.14.110,  
4 39.04.105, 54.04.082, and 87.03.435; reenacting and amending RCW  
5 36.32.235; adding a new section to chapter 39.04 RCW; and creating a  
6 new section.

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

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

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

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

3 Whenever the cost of the public work or improvement, including  
4 materials, supplies and equipment, will exceed these figures, the  
5 same shall be done by contract. All such contracts shall be let at  
6 public bidding upon publication of notice calling for sealed bids  
7 upon the work. The notice shall be published in the official  
8 newspaper, or a newspaper of general circulation most likely to bring  
9 responsive bids, at least thirteen days prior to the last date upon  
10 which bids will be received. The notice shall generally state the  
11 nature of the work to be done that plans and specifications therefor  
12 shall then be on file in the city or town hall for public  
13 inspections, and require that bids be sealed and filed with the  
14 council or commission within the time specified therein. Each bid  
15 shall be accompanied by a bid proposal deposit in the form of a  
16 cashier's check, postal money order, or surety bond to the council or  
17 commission for a sum of not less than five percent of the amount of  
18 the bid, and no bid shall be considered unless accompanied by such  
19 bid proposal deposit. The council or commission of the city or town  
20 shall let the contract to the lowest responsible bidder or shall have  
21 power by resolution to reject any or all bids and to make further  
22 calls for bids in the same manner as the original call.

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

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

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

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

14       ~~((3))~~ (4) In lieu of the procedures of subsection (1) of this  
15 section, a second-class city or a town may let contracts using the  
16 small works roster process provided in RCW 39.04.155.

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

20       ~~((4))~~ (5) The form required by RCW 43.09.205 shall be to  
21 account and record costs of public works in excess of five thousand  
22 dollars that are not let by contract.

23       ~~((5))~~ (6) The cost of a separate public works project shall be  
24 the costs of the materials, equipment, supplies, and labor on that  
25 construction project.

26       ~~((6))~~ (7) Any purchase of supplies, material, or equipment,  
27 except for public work or improvement, where the cost thereof exceeds  
28 seven thousand five hundred dollars shall be made upon call for bids.

29       ~~((7))~~ (8) Bids shall be called annually and at a time and in  
30 the manner prescribed by ordinance for the publication in a newspaper  
31 of general circulation in the city or town of all notices or  
32 newspaper publications required by law. The contract shall be awarded  
33 to the lowest responsible bidder.

34       ~~((8))~~ (9) For advertisement and formal sealed bidding to be  
35 dispensed with as to purchases with an estimated value of fifteen  
36 thousand dollars or less, the council or commission must authorize by  
37 resolution, use of the uniform procedure provided in RCW 39.04.190.

38       ~~((9))~~ (10) The city or town legislative authority may waive the  
39 competitive bidding requirements of this section pursuant to RCW

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

3 ~~((10))~~ (11) This section does not apply to performance-based  
4 contracts, as defined in RCW 39.35A.020(4), that are negotiated under  
5 chapter 39.35A RCW.

6 ~~((11))~~ (12) Nothing in this section shall prohibit any second-  
7 class city or any town from allowing for preferential purchase of  
8 products made from recycled materials or products that may be  
9 recycled or reused.

10 ~~((12))~~ (13)(a) Any second-class city or any town may procure  
11 public works with a unit priced contract under this section for the  
12 purpose of completing anticipated types of work based on hourly rates  
13 or unit pricing for one or more categories of work or trades.

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

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

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

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

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

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

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

11 (~~Unless the context clearly requires otherwise,~~) The  
12 definitions in this section apply throughout this chapter unless the  
13 context clearly requires otherwise.

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

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

21 (3) "Contractor" means an individual or entity granted state  
22 certification and awarded either a direct contract with an agency or  
23 an indirect contract as a subcontractor to perform a service or  
24 provide goods.

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

27 (~~(4)~~) (5) "Educational institutions" means the state  
28 universities, the regional universities, The Evergreen State College,  
29 and the community colleges.

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

37 (~~(6)~~) (7) "Goods and/or services" includes professional  
38 services and all other goods and services.

1        ~~((7))~~ (8) "Office" means the office of minority and women's  
2 business enterprises.

3        ~~((8))~~ (9) "Person" includes one or more individuals,  
4 partnerships, associations, organizations, corporations,  
5 cooperatives, legal representatives, trustees and receivers, or any  
6 group of persons.

7        ~~((9))~~ (10) "Procurement" means the purchase, lease, or rental  
8 of any goods or services.

9        ~~((10))~~ (11) "Public works" means all work, construction,  
10 highway and ferry construction, alteration, repair, or improvement  
11 other than ordinary maintenance, which a state agency or educational  
12 institution is authorized or required by law to undertake.

13        ~~((11))~~ (12) "State agency" includes the state of Washington and  
14 all agencies, departments, offices, divisions, boards, commissions,  
15 and correctional and other types of institutions.

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

18        (1) Each state agency and educational institution shall comply  
19 with the annual goals established for that agency or institution  
20 under this chapter for public works and procuring goods or services.  
21 This chapter applies to all public works and procurement by state  
22 agencies and educational institutions, including all contracts and  
23 other procurement under chapters 28B.10, 39.04, ~~((39.29))~~ 39.26,  
24 43.19, and 47.28 RCW.

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

33        (3) The office shall annually notify the governor, the state  
34 auditor, and the joint legislative audit and review committee of all  
35 agencies and educational institutions not in compliance with this  
36 chapter.

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

1 (1) For the purpose of annual reporting on progress required by  
2 section 1 of this act, each state agency and educational institution  
3 shall submit data to the office and the office of minority and  
4 women's business enterprises on the participation by qualified  
5 minority and women-owned and controlled businesses in the agency's or  
6 institution's contracts and other related information requested by  
7 the director. The director of the office of minority and women's  
8 business enterprises shall determine the content and format of the  
9 data and the reporting schedule, which must be at least annually.

10 (2) The office must develop and maintain a list of contact people  
11 at each state agency and educational institution (~~that is~~) who are  
12 able to present to hearings of the appropriate committees of the  
13 legislature its progress in carrying out the purposes of chapter  
14 39.19 RCW.

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

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

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

32 (2) (a) A state agency or authorized local government may create a  
33 single general small works roster, or may create a small works roster  
34 for different specialties or categories of anticipated work. Where  
35 applicable, small works rosters may make distinctions between  
36 contractors based upon different geographic areas served by the  
37 contractor. The small works roster or rosters shall consist of all  
38 responsible contractors who have requested to be on the list, and  
39 where required by law are properly licensed or registered to perform



1 such work in this state. A state agency or local government  
2 establishing a small works roster or rosters may require eligible  
3 contractors desiring to be placed on a roster or rosters to keep  
4 current records of any applicable licenses, certifications,  
5 registrations, bonding, insurance, or other appropriate matters on  
6 file with the state agency or local government as a condition of  
7 being placed on a roster or rosters. At least once a year, the state  
8 agency or local government shall publish in a newspaper of general  
9 circulation within the jurisdiction a notice of the existence of the  
10 roster or rosters and solicit the names of contractors for such  
11 roster or rosters. In addition, responsible contractors shall be  
12 added to an appropriate roster or rosters at any time they submit a  
13 written request and necessary records. Master contracts may be  
14 required to be signed that become effective when a specific award is  
15 made using a small works roster.

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

30 (c) Procedures shall be established for securing telephone,  
31 written, or electronic quotations from contractors on the appropriate  
32 small works roster to assure that a competitive price is established  
33 and to award contracts to the lowest responsible bidder, as defined  
34 in RCW 39.04.010. Invitations for quotations shall include an  
35 estimate of the scope and nature of the work to be performed as well  
36 as materials and equipment to be furnished. However, detailed plans  
37 and specifications need not be included in the invitation. This  
38 subsection does not eliminate other requirements for architectural or  
39 engineering approvals as to quality and compliance with building  
40 codes. Quotations may be invited from all appropriate contractors on

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

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

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

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

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

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

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

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

6           ~~(b) A state agency or authorized local government may adopt~~  
7 ~~additional procedures to encourage small businesses that are~~  
8 ~~registered contractors with gross revenues under two hundred fifty~~  
9 ~~thousand dollars annually as reported on their federal tax returns to~~  
10 ~~submit quotations or bids on small works roster contracts.~~

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

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

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

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

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

32           (1)(a) Except as provided in subsection (2) of this section,  
33 before payment is made by or on behalf of the state, or any county,  
34 municipality, or political subdivision created by its laws, of any  
35 sum or sums due on account of a public works contract, it is the duty  
36 of the officer or person charged with the custody and disbursement of  
37 public funds to require the contractor and each and every  
38 subcontractor from the contractor or a subcontractor to submit to  
39 such officer a "Statement of Intent to Pay Prevailing Wages". For a

1 contract in excess of ten thousand dollars, the statement of intent  
2 to pay prevailing wages must include:

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

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

7 (b) Each statement of intent to pay prevailing wages must be  
8 approved by the industrial statistician of the department of labor  
9 and industries before it is submitted to the disbursing officer.

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

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

5 (a) An awarding agency may authorize the contractor or  
6 subcontractor to submit the statement of intent to pay prevailing  
7 wages directly to the officer or person charged with the custody or  
8 disbursement of public funds in the awarding agency without approval  
9 by the industrial statistician of the department of labor and  
10 industries. The awarding agency must retain such statement of intent  
11 to pay prevailing wages for a period of not less than three years.

12 (b) Upon final acceptance of the public works project, the  
13 awarding agency must require the contractor or subcontractor to  
14 submit an affidavit of wages paid. Upon receipt of the affidavit of  
15 wages paid, the awarding agency may pay the contractor or  
16 subcontractor in full, including funds that would otherwise be  
17 retained according to the provisions of RCW 60.28.011. Within thirty  
18 days of receipt of the affidavit of wages paid, the awarding agency  
19 must submit the affidavit of wages paid to the industrial  
20 statistician of the department of labor and industries for approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (e) Unit price contractors shall pay prevailing wages for all  
39 work that would otherwise be subject to the requirements of chapter  
40 39.12 RCW. (~~Prevailing wages for all work performed pursuant to each~~



1 ~~work order must be the rates in effect at the time the individual~~  
2 ~~work order is issued)) Prevailing wages for all work performed  
3 pursuant to each work order must be the prevailing wage rates in  
4 effect at the beginning date for each contract year. Unit priced  
5 contracts must have prevailing wage rates updated annually. Intents  
6 and affidavits for prevailing wages paid must be submitted annually  
7 for all work completed within the previous twelve-month period of the  
8 unit priced contract.~~

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

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

20       (2) As used in this section:

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

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

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

1 stormwater runoff, or reducing erosion or other water quality impacts  
2 caused by municipal separate storm sewer system discharges.

3 (3) Except as otherwise specified in this chapter or in chapter  
4 36.77 RCW, all counties subject to these provisions shall contract on  
5 a competitive basis for all public works after bids have been  
6 submitted to the county upon specifications therefor. Such  
7 specifications shall be in writing and shall be filed with the clerk  
8 of the county legislative authority for public inspection.

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

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

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

37 (7) If the bidder to whom the contract is awarded fails to enter  
38 into the contract and furnish the contractor's bond as required  
39 within ten days after notice of the award, exclusive of the day of  
40 notice, the amount of the bid deposit shall be forfeited to the

1 county and the contract awarded to the next lowest and best bidder.  
2 The bid deposit of all unsuccessful bidders shall be returned after  
3 the contract is awarded and the required contractor's bond given by  
4 the successful bidder is accepted by the county legislative  
5 authority. Immediately after the award is made, the bid quotations  
6 obtained shall be recorded and open to public inspection and shall be  
7 available by telephone inquiry.

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

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

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

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

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

39 (c) Invitations for unit price bids shall include, for purposes  
40 of the bid evaluation, estimated quantities of the anticipated types

1 of work or trades, and specify how the county will issue or release  
2 work assignments, work orders, or task authorizations pursuant to a  
3 unit priced contract for projects, tasks, or other work based on the  
4 hourly rates or unit prices bid by the contractor. The contract must  
5 be awarded to the lowest responsible bidder as defined under RCW  
6 39.04.010. Whenever possible, the county must invite at least one bid  
7 from a certified minority or woman contractor who otherwise qualifies  
8 under this section.

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

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

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

1 involved with the public works project, or a riverine project or  
2 stormwater project in excess of one hundred twenty-five thousand  
3 dollars if only a single craft or trade is involved with the riverine  
4 project or stormwater project. A public works project, a riverine  
5 project, and a stormwater project means a complete project. The  
6 restrictions in this subsection do not permit the division of the  
7 project into units of work or classes of work to avoid the  
8 restriction on work that may be performed by public employees on a  
9 single project.

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

14 ~~((11))~~ (12) In addition to the accounting and recordkeeping  
15 requirements contained in chapter 39.04 RCW, any county which uses  
16 public employees to perform public works projects under RCW  
17 36.32.240(1) shall prepare a year-end report to be submitted to the  
18 state auditor indicating the total dollar amount of the county's  
19 public works construction budget and the total dollar amount for  
20 public works projects performed by public employees for that year.

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

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

38 ~~((13))~~ (14) In lieu of the procedures of subsections (3)  
39 through ~~((11))~~ (12) of this section, a county may let contracts  
40 using the small works roster process provided in RCW 39.04.155.

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

4 ~~((14))~~ (15) The allocation of public works projects to be  
5 performed by county employees shall not be subject to a collective  
6 bargaining agreement.

7 ~~((15))~~ (16) This section does not apply to performance-based  
8 contracts, as defined in RCW 39.35A.020(4), that are negotiated under  
9 chapter 39.35A RCW.

10 ~~((16))~~ (17) Nothing in this section prohibits any county from  
11 allowing for preferential purchase of products made from recycled  
12 materials or products that may be recycled or reused.

13 ~~((17))~~ (18) This section does not apply to contracts between  
14 the public stadium authority and a team affiliate under RCW  
15 36.102.060(4), or development agreements between the public stadium  
16 authority and a team affiliate under RCW 36.102.060(7) or leases  
17 entered into under RCW 36.102.060(8).

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

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

24 (a) Every county public transportation authority as defined under  
25 RCW 36.57.010;

26 (b) Every public transportation benefit area as defined under RCW  
27 36.57A.010; and

28 (c) Every regional transit authority as defined under RCW  
29 81.112.020.

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

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

38 (4) Invitations for unit price bids must include, for purposes of  
39 the bid evaluation, estimated quantities of the anticipated types of

1 work or trades, and specify how the public body will issue or release  
2 work assignments, work orders, or task authorizations pursuant to a  
3 unit priced contract for projects, tasks, or other work based on the  
4 hourly rates or unit prices bid by the contractor. Contracts must be  
5 awarded to the lowest responsible bidder as provided in RCW  
6 39.04.010. Whenever possible, the public body must invite at least  
7 one proposal from a certified minority or woman contractor who  
8 otherwise qualifies under this section.

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

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

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

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

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

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

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

39 (3) Any purchase of materials, supplies, or equipment, with an  
40 estimated cost in excess of forty thousand dollars, shall be by



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

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

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

20 (6) (a) A district may procure public works with a unit priced  
21 contract under this section for the purpose of completing anticipated  
22 types of work based on hourly rates or unit pricing for one or more  
23 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 district, 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 one year, with the district having the  
32 option of extending or renewing the unit priced contract for one  
33 additional year.

34 (d) Invitations for unit price bids must include, for purposes of  
35 the bid evaluation, estimated quantities of the anticipated types of  
36 work or trades, and specify how the district 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 district must invite at least one proposal  
2 from a certified minority or woman contractor who otherwise qualifies  
3 under 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. 11.** RCW 35.22.620 and 2018 c 74 s 1 are each amended to  
14 read as follows:

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

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

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

1 Whenever a first-class city has had public works performed in any  
2 budget period up to the maximum permitted amount for that budget  
3 period, all remaining public works within that budget period shall be  
4 done by contract pursuant to public notice and call for competitive  
5 bids.

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

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

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

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

39 (5) The cost of a separate public works project shall be the  
40 costs of materials, supplies, equipment, and labor on the

1 construction of that project. The value of the public works budget  
2 shall be the value of all the separate public works projects within  
3 the budget.

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

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

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

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

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

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

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

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

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

37 (d) Invitations for unit price bids shall include, for purposes  
38 of the bid evaluation, estimated quantities of the anticipated types  
39 of work or trades, and specify how the city will issue or release  
40 work assignments, work orders, or task authorizations pursuant to a

1 unit priced contract for projects, tasks, or other work based on the  
2 hourly rates or unit prices bid by the contractor. Contracts must be  
3 awarded to the lowest responsible bidder as per RCW 39.04.010.  
4 Whenever possible, the city must invite at least one proposal from a  
5 certified minority or woman contractor who otherwise qualifies under  
6 this section.

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

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

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

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

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

32 (3) Contracts using the small works roster process under RCW  
33 39.04.155; and

34 (4) Any contract for purchases or public work pursuant to RCW  
35 39.04.280 if an exemption contained within that section applies to  
36 the purchase or public work.

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

1 (1) Within two business days of the bid opening on a public works  
2 project that is the subject of competitive bids, the municipality  
3 must provide, if requested by a bidder, copies of the bids the  
4 municipality received for the project. The municipality shall then  
5 allow at least two full business days after providing bidders with  
6 copies of all bids before executing a contract for the project.  
7 Intermediate Saturdays, Sundays, and legal holidays are not counted.

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

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

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

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

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

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

1           (1) Except as provided in subsections (2) and (3) of this section  
2 and RCW 87.03.436, whenever in the construction of the district canal  
3 or canals, or other works, or the furnishing of materials therefor,  
4 the board of directors shall determine to let a contract or contracts  
5 for the doing of the work or the furnishing of the materials, a  
6 notice calling for sealed proposals shall be published. The notice  
7 shall be published in a newspaper in the county in which the office  
8 of the board is situated, ((and)) in any other newspaper which may be  
9 designated by the board, and on the irrigation district's web site or  
10 on the county's web site where the district is located if the  
11 district does not have a web site, and for such length of time, not  
12 less than once each week for two weeks, as may be fixed by the board.  
13 At the time and place appointed in the notice for the opening of  
14 bids, the sealed proposals shall be opened in public, and as soon as  
15 convenient thereafter, the board shall let the work or the contract  
16 for the purchase of materials, either in portions or as a whole, to  
17 the lowest responsible bidder, or the board may reject any or all  
18 bids and readvertise, or may contract using the small works roster  
19 process in RCW 39.04.155 or may proceed to construct the work under  
20 its own superintendence. All work shall be done under the direction  
21 and to the satisfaction of the engineer of the district, and be  
22 approved by the board. The board of directors may require bidders  
23 submitting bids for the construction or maintenance for any of the  
24 works of the district, or for the furnishing of labor or material, to  
25 accompany their bids by a deposit in cash, certified check, cashier's  
26 check, or surety bond in an amount equal to five percent of the  
27 amount of the bid and a bid shall not be considered unless the  
28 deposit is enclosed with it. If the contract is let, then all the bid  
29 deposits shall be returned to the unsuccessful bidders. The bid  
30 deposit of the successful bidder shall be retained until a contract  
31 is entered into for the purchase of the materials or doing of such  
32 work, and a bond given to the district in accordance with chapter  
33 39.08 RCW for the performance of the contract. The performance bond  
34 shall be conditioned as may be required by law and as may be required  
35 by resolution of the board, with good and sufficient sureties  
36 satisfactory to the board, payable to the district for its use, for  
37 at least twenty-five percent of the contract price. If the successful  
38 bidder fails to enter into a contract and furnish the necessary bond  
39 within twenty days from the award, exclusive of the day of the award,

1 *the bid deposit shall be forfeited to the district and the contract*  
2 *may then be awarded to the second lowest bidder.*

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

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

7 *(a) In the case of any contract between the district and the*  
8 *United States;*

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

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

*\*Sec. 15 was vetoed. See message at end of chapter.*

20 NEW SECTION. **Sec. 16.** (1) The legislature finds that there are  
21 hundreds of local governments and special purpose districts and due  
22 to their existing authority and structure, partial legislative  
23 measures are introduced each year to amend the procurement thresholds  
24 for each individual entity. Therefore the legislature intends to  
25 require a comprehensive review of all local government bid limits for  
26 public works projects and purchases, including the small works roster  
27 and limited public works processes, rather than amend procurement  
28 rules and contract thresholds on a case-by-case basis.

29 (2) Subject to funds appropriated for this purpose, the capital  
30 projects advisory review board must review the public works  
31 contracting processes for local governments, including the small  
32 works roster and limited public works processes provided in RCW  
33 39.04.155, and report to the governor and appropriate committees of  
34 the legislature by November 1, 2020. The report must include the  
35 following:

36 (a) Identification of the most common contracting procedures used  
37 by local governments;



1 (b) Identification of the dollar amounts set for local government  
2 public works contracting processes;

3 (c) Analysis of whether the dollar amounts identified in (b) of  
4 this subsection comport with estimated project costs within the  
5 relevant industries;

6 (d) An analysis of the potential application of an inflation-  
7 based increaser, taking regional factors into consideration, to the  
8 dollar amounts identified in (b) of this subsection, for example:

9 (i) Applying the implicit price deflator for state and local  
10 government purchases of goods and services for the United States as  
11 published by the bureau of economic analysis of the federal  
12 department of commerce; and

13 (ii) Adjusting the bid limit dollar thresholds for inflation, on  
14 a regional basis, by the building cost index during that time period;

15 (e) Recommendations to increase uniformity and efficiency for  
16 local government public works contracting and procurement processes;

17 (f) Rates of participation of all contractor types, including  
18 qualified minority and women-owned and controlled businesses, in the  
19 small works roster and limited public works contracting processes;  
20 and

21 (g) Barriers to improving the participation rate in the small  
22 works roster and limited public works contracting processes.

23 (3) For purposes of this section:

24 (a) "Local governments" refers to all counties, cities, towns,  
25 other political subdivisions, and special purpose districts.

26 (b) "Building cost index" means the building cost index for  
27 Seattle, Washington, compiled by engineering news record, a  
28 nationally recognized professional construction trade periodical. The  
29 building cost index uses average skilled construction labor rates,  
30 structural steel, concrete, and lumber as the basis of measurement.

Passed by the Senate April 23, 2019.

Passed by the House April 16, 2019.

Approved by the Governor May 21, 2019, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 21, 2019.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 15,  
Engrossed Substitute Senate Bill No. 5418 entitled:

"AN ACT Relating to local government procurement modernization  
and efficiency."

Engrossed Substitute Senate Bill 5418 will help improve procurement processes for local governments. Section 15 of the bill amends RCW 87.03.435 relating to irrigation districts. Section 2 of a different bill passed by the Legislature this year, Engrossed Senate Bill 5453, contains the same amendments as well as other changes. Therefore I am vetoing Section 15 of Engrossed Substitute Senate Bill 5418 to avoid these double amendments and any confusion at the Office of the Code Reviser.

I would also note that the Legislature did not provide funding for the Capital Projects Advisory Review Board to review the public works contracting processes for local governments, including the small works roster and limited public works processes as set forth in Section 16. I am directing my Office of Financial Management to work with the Department of Enterprise Services to identify resources so they can begin this important work. In addition, I will be asking the Legislature to include full funding of this study in the 2020 supplemental operating budget.

For these reasons I have vetoed Section 15 of Engrossed Substitute Senate Bill No. 5418.

With the exception of Section 15, Engrossed Substitute Senate Bill No. 5418 is approved."

--- END ---