
SENATE BILL 5220

State of Washington

69th Legislature

2025 Regular Session

By Senator Shewmake

Prefiled 01/10/25.

1 AN ACT Relating to modifying small works requirements for cities;
2 and reenacting and amending RCW 35.22.620 and 35.23.352.

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

4 **Sec. 1.** RCW 35.22.620 and 2023 c 395 s 20 and 2023 c 255 s 3 are
5 each reenacted and amended to read as follows:

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

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

18 If a first-class city has public works performed by public
19 employees in any budget period that are in excess of this 10 percent
20 limitation, the amount in excess of the permitted amount shall be
21 reduced from the otherwise permitted amount of public works that may

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

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

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

19 (3) In addition to the percentage limitation provided in
20 subsection (2) of this section, a first-class city shall not have
21 public employees perform a public works project in excess of
22 ~~((\$150,000))~~ \$300,000 if more than a single craft or trade is
23 involved with the public works project, or a public works project in
24 excess of ~~((\$75,500))~~ \$151,000 if only a single craft or trade is
25 involved with the public works project or the public works project is
26 street signalization or street lighting. A public works project means
27 a complete project. The restrictions in this subsection do not permit
28 the division of the project into units of work or classes of work to
29 avoid the restriction on work that may be performed by day labor on a
30 single project. ~~((However, a first-class city may have its own
31 regularly employed personnel perform work which is an accepted
32 industry practice under prudent utility management without a
33 contract. For purposes of this section, "prudent utility management"
34 means performing work with regularly employed personnel utilizing
35 material of a worth not exceeding \$300,000 in value without a
36 contract. This limit on the value of material being utilized in work
37 being performed by regularly employed personnel shall not include the
38 value of individual items of equipment. For purposes of this section,
39 the term "equipment" includes, but is not limited to, conductor,~~

1 ~~cabling, wire, pipe, or lines used for electrical, water, fiber~~
2 ~~optic, or telecommunications.))~~

3 (4) In addition to the accounting and recordkeeping requirements
4 contained in RCW 39.04.070, every first-class city annually may
5 prepare a report for the state auditor indicating the total public
6 works construction budget and supplemental public works construction
7 budget for that year, the total construction costs of public works
8 performed by public employees for that year, and the amount of public
9 works that is performed by public employees above or below 10 percent
10 of the total construction budget. However, if a city budgets on a
11 biennial basis, this annual report may indicate the amount of public
12 works that is performed by public employees within the current
13 biennial period that is above or below 10 percent of the total
14 biennial construction budget.

15 Each first-class city with a population of 150,000 or less shall
16 use the form required by RCW 43.09.205 to account and record costs of
17 public works in excess of \$5,000 that are not let by contract.

18 (5) The cost of a separate public works project shall be the
19 costs of materials, supplies, equipment, and labor on the
20 construction of that project. The value of the public works budget
21 shall be the value of all the separate public works projects within
22 the budget.

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

27 (7) In lieu of the procedures of subsections (2) and (6) of this
28 section, a first-class city may let contracts using the small works
29 roster process in RCW 39.04.151 through 39.04.154.

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

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

36 (9) This section does not apply to performance-based contracts,
37 as defined in RCW 39.35A.020(6), that are negotiated under chapter
38 39.35A RCW.

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

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

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

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

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

28 (e) Unit price contractors shall pay prevailing wages for all
29 work that would otherwise be subject to the requirements of chapter
30 39.12 RCW. Prevailing wages for all work performed pursuant to each
31 work order must be the prevailing wage rates in effect at the
32 beginning date for each contract year. Unit priced contracts must
33 have prevailing wage rates updated annually. Intents and affidavits
34 for prevailing wages paid must be submitted annually for all work
35 completed within the previous 12-month period of the unit priced
36 contract.

37 (12) For the purposes of this section, "lowest responsible
38 bidder" means a bid that meets the criteria under RCW 39.04.350 and
39 has the lowest bid; provided, that if the city issues a written
40 finding that the lowest bidder has delivered a project to the city

1 within the last three years which was late, over budget, or did not
2 meet specifications, and the city does not find in writing that such
3 bidder has shown how they would improve performance to be likely to
4 meet project specifications then the city may choose the second
5 lowest bidder whose bid is within five percent of the lowest bid and
6 meets the same criteria as the lowest bidder.

7 **Sec. 2.** RCW 35.23.352 and 2023 c 395 s 21 and 2023 c 255 s 2 are
8 each reenacted and amended to read as follows:

9 (1) Any second-class city or any town may construct any public
10 works, as defined in RCW 39.04.010, by contract or day labor without
11 calling for bids therefor whenever the estimated cost of the work or
12 improvement, including cost of materials, supplies and equipment will
13 not exceed the sum of (~~(\$150,000)~~) \$300,000 if more than one craft or
14 trade is involved with the public works, or (~~(\$75,500)~~) \$151,000 if a
15 single craft or trade is involved with the public works or the public
16 works project is street signalization or street lighting. A public
17 works project means a complete project. The restrictions in this
18 subsection do not permit the division of the project into units of
19 work or classes of work to avoid the restriction on work that may be
20 performed by day labor on a single project. However, a second-class
21 city or any town may have its own regularly employed personnel
22 perform work which is an accepted industry practice under prudent
23 utility management without a contract. For purposes of this section,
24 "prudent utility management" means performing work with regularly
25 employed personnel utilizing material of a worth not exceeding
26 \$300,000 in value without a contract. This limit on value of material
27 being utilized in work being performed by regularly employed
28 personnel shall not include the value of individual items of
29 equipment. For purposes of this section, "equipment" includes, but is
30 not limited to, conductor, cabling, wire, pipe, or lines used for
31 electrical, water, fiber optic, or telecommunications.

32 Whenever the cost of the public work or improvement, including
33 materials, supplies and equipment, will exceed these figures, the
34 same shall be done by contract. All such contracts shall be let at
35 public bidding upon publication of notice calling for sealed bids
36 upon the work. The notice shall be published in the official
37 newspaper, or a newspaper of general circulation most likely to bring
38 responsive bids, at least 13 days prior to the last date upon which
39 bids will be received. The notice shall generally state the nature of

1 the work to be done that plans and specifications therefor shall then
2 be on file in the city or town hall for public inspections, and
3 require that bids be sealed and filed with the council or commission
4 within the time specified therein. Each bid shall be accompanied by a
5 bid proposal deposit in the form of a cashier's check, postal money
6 order, or surety bond to the council or commission for a sum of not
7 less than five percent of the amount of the bid, and no bid shall be
8 considered unless accompanied by such bid proposal deposit. The
9 council or commission of the city or town shall let the contract to
10 the lowest responsible bidder or shall have power by resolution to
11 reject any or all bids and to make further calls for bids in the same
12 manner as the original call.

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

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

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

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

4 (4) In lieu of the procedures of subsection (1) of this section,
5 a second-class city or a town may let contracts using the small works
6 roster process provided in RCW 39.04.151 through 39.04.154.

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

10 (5) The form required by RCW 43.09.205 shall be to account and
11 record costs of public works in excess of \$5,000 that are not let by
12 contract.

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

16 (7) Any purchase of supplies, material, or equipment, except for
17 public work or improvement, with an estimated cost in excess of
18 \$40,000, shall be by contract. Any purchase of materials, supplies,
19 or equipment with an estimated cost of less than \$50,000 shall be
20 made using the process provided in RCW 39.04.190.

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

26 (9) For advertisement and formal sealed bidding to be dispensed
27 with as to purchases with an estimated value of \$15,000 or less, the
28 council or commission must authorize by resolution, use of the
29 uniform procedure provided in RCW 39.04.190.

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

34 (11) This section does not apply to performance-based contracts,
35 as defined in RCW 39.35A.020(6), that are negotiated under chapter
36 39.35A RCW.

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

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

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

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

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

25 (e) Unit price contractors shall pay prevailing wages for all
26 work that would otherwise be subject to the requirements of chapter
27 39.12 RCW. Prevailing wages for all work performed pursuant to each
28 work order must be the prevailing wage rates in effect at the
29 beginning date for each contract year. Unit priced contracts must
30 have prevailing wage rates updated annually. Intents and affidavits
31 for prevailing wages paid must be submitted annually for all work
32 completed within the previous 12-month period of the unit priced
33 contract.

34 (14) Any second-class city or town that awards a project to a
35 bidder under the criteria described in subsection (2) of this section
36 must make an annual report to the department of commerce that
37 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.

--- **END** ---