
SUBSTITUTE SENATE BILL 5525

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Haugen, Horn, Jacobsen and Hale)

Read first time 03/05/97.

1 AN ACT Relating to exemptions from formal competitive bidding
2 procedures for goods and services; amending RCW 35.22.620, 35.23.352,
3 36.32.270, 52.14.110, 53.08.120, 54.04.070, and 70.44.140; reenacting
4 and amending RCW 57.08.050; and adding a new chapter to Title 39 RCW.

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

6 NEW SECTION. **Sec. 1.** For the purposes of this chapter, the term
7 "municipality" includes every city, county, town, district, or other
8 public agency thereof that is authorized by law to require the
9 execution of public work, except drainage districts, diking districts,
10 diking and drainage improvement districts, drainage improvement
11 districts, diking improvement districts, consolidated diking and
12 drainage improvement districts, consolidated drainage improvement
13 districts, consolidated diking improvement districts, irrigation
14 districts, or any other districts as may from time to time be
15 authorized by law for the reclamation or development of waste or
16 undeveloped lands.

17 NEW SECTION. **Sec. 2.** (1) This section provides uniform exemptions
18 to competitive bidding procedures utilized by municipalities when

1 awarding contracts for purchases of goods and services. The purpose of
2 this section is to supplement and not to limit the current powers,
3 requirements, or practices of any municipality to provide exemptions
4 from competitive bidding procedures.

5 (2) Competitive bidding procedures may be waived by the governing
6 body of the municipality for purchases in which the purchase price may
7 be best established by direct negotiation, and:

8 (a) The purchases are clearly and legitimately limited to a single
9 source of supply;

10 (b) The purchases involve special facilities or market conditions;
11 or

12 (c) The municipality is purchasing insurance or bonds.

13 (3) The waiver of competitive bidding procedures under subsection
14 (2) of this section may be by resolution or by the terms of written
15 policies adopted by the municipality, at the option of the governing
16 body of the municipality. If the governing body elects to waive
17 competitive bidding procedures by the terms of written policies adopted
18 by the municipality, immediately after the award of any contract is
19 made, the contract and the factual basis for the exception must be
20 recorded and open to public inspection.

21 (4) If a resolution is adopted by a governing body to waive
22 competitive bidding procedures under subsection (2) of this section,
23 the resolution must recite the factual basis for the exception.

24 (5) Competitive bidding procedures may be waived for purchases of
25 goods and services in the event of an emergency under section 3 of this
26 act.

27 NEW SECTION. **Sec. 3.** (1) The governing body of the municipality
28 may designate by resolution a person or persons who shall declare that
29 an emergency situation exists for the purpose of waiving competitive
30 bidding requirements and awarding all necessary contracts for purchases
31 of goods and services on behalf of the municipality to address the
32 emergency situation.

33 (2) If a contract is awarded for purchases of goods or services due
34 to an emergency, a written finding of the existence of an emergency
35 must be made by the governing body or its designee and duly entered of
36 record not later than two weeks following the award of the contract.

37 (3) For the purposes of this chapter, "emergency" means unforeseen
38 circumstances beyond the control of the municipality that either: (a)

1 Present a real, immediate threat to the proper performance of essential
2 functions; or (b) will likely result in material loss or damage to
3 property, bodily injury, or loss of life if immediate action is not
4 taken.

5 **Sec. 4.** RCW 35.22.620 and 1993 c 198 s 9 are each amended to read
6 as follows:

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

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

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

31 Whenever a first class city has had public works performed in any
32 budget period up to the maximum permitted amount for that budget
33 period, all remaining public works within that budget period shall be
34 done by contract pursuant to public notice and call for competitive
35 bids.

36 The state auditor shall report to the state treasurer any first
37 class city that exceeds this amount and the extent to which the city

1 has or has not reduced the amount of public works it has performed by
2 public employees in subsequent years.

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

23 (4) In addition to the accounting and record-keeping requirements
24 contained in RCW 39.04.070, every first class city annually shall
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 percent
30 of the total construction budget. However, if a city budgets on a
31 biennial basis, this annual report shall indicate the amount of public
32 works that is performed by public employees within the current biennial
33 period that is above or below ten percent of the total biennial
34 construction budget.

35 After September 1, 1987, each first class city with a population of
36 one hundred fifty thousand or less shall use the form required by RCW
37 43.09.205 to account and record costs of public works in excess of five
38 thousand dollars that are not let by contract.

1 (5) The cost of a separate public works project shall be the costs
2 of materials, supplies, equipment, and labor on the construction of
3 that project. The value of the public works budget shall be the value
4 of all the separate public works projects within the budget.

5 (6) When any emergency shall require the immediate execution of
6 such public work, upon the finding of the existence of such emergency
7 by the authority having power to direct such public work to be done and
8 duly entered of record, publication of description and estimate may be
9 made within seven days after the commencement of the work. Within two
10 weeks of the finding that such an emergency existed, the city council
11 shall adopt a resolution certifying the existence of this emergency
12 situation.

13 (7) In lieu of the procedures of subsections (2) and (6) of this
14 section, a first class city may use ((a)) the small works roster
15 process ((and)) in RCW 39.04.155 to award contracts for public works
16 projects with an estimated value of one hundred thousand dollars or
17 less ((as provided in RCW 39.04.155)).

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

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

23 (9) This section does not apply to performance-based contracts, as
24 defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A
25 RCW.

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

29 **Sec. 5.** RCW 35.23.352 and 1996 c 18 s 2 are each amended to read
30 as follows:

31 (1) Any second class city or any town may construct any public
32 works, as defined in RCW 39.04.010, by contract or day labor without
33 calling for bids therefor whenever the estimated cost of the work or
34 improvement, including cost of materials, supplies and equipment will
35 not exceed the sum of thirty thousand dollars if more than one craft or
36 trade is involved with the public works, or twenty thousand dollars if
37 a single craft or trade is involved with the public works or the public
38 works project is street signalization or street lighting. A public

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

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

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

37 If no bid is received on the first call the council or commission
38 may readvertise and make a second call, or may enter into a contract

1 without any further call or may purchase the supplies, material or
2 equipment and perform the work or improvement by day labor.

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

6 (3) In lieu of the procedures of subsection (1) of this section, a
7 second class city or a town may use the small works roster process
8 provided in RCW 39.04.155 to award public works contracts with an
9 estimated value of one hundred thousand dollars or less.

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

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

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

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

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

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

31 ~~(9) ((These requirements for purchasing may be waived by resolution
32 of the city or town council or commission which declared that the
33 purchase is clearly and legitimately limited to a single source or
34 supply within the near vicinity, or the materials, supplies, equipment,
35 or services are subject to special market conditions, and recites why
36 this situation exists. Such actions are subject to RCW 39.30.020.))~~
37 The city or town legislative authority may waive the competitive
38 bidding requirements of this section pursuant to chapter 39.-- RCW
39 (sections 1 through 3 of this act) if an exemption contained within

1 chapter 39.-- RCW (sections 1 through 3 of this act) applies to the
2 purchase.

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

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

9 **Sec. 6.** RCW 36.32.270 and 1963 c 4 s 36.32.270 are each amended to
10 read as follows:

11 ~~((In the event of an emergency when the public interest or property~~
12 ~~of the county would suffer material injury or damage by delay, upon~~
13 ~~resolution of the board of county commissioners declaring the existence~~
14 ~~of such emergency and reciting the facts constituting the same, the~~
15 ~~board)) The county legislative authority may waive the competitive
16 bidding requirements of this chapter ((with reference to any)) pursuant
17 to chapter 39.-- RCW (sections 1 through 3 of this act) if an exemption
18 contained within chapter 39.-- RCW (sections 1 through 3 of this act)
19 applies to the purchase ((or contract)).~~

20 **Sec. 7.** RCW 52.14.110 and 1993 c 198 s 11 are each amended to read
21 as follows:

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

27 (1) ~~((Emergency purchases if the sealed bidding procedure would~~
28 ~~prevent or hinder the emergency from being addressed appropriately.~~
29 ~~The term emergency means an occurrence that creates an immediate threat~~
30 ~~to life or property;~~

31 ~~(2))~~ The purchase of any materials, supplies, or equipment if the
32 cost will not exceed the sum of four thousand five hundred dollars.
33 However, whenever the estimated cost is from four thousand five hundred
34 dollars up to ten thousand dollars, the commissioners may by resolution
35 use the process provided in RCW 39.04.190 to award contracts;

36 ~~((3))~~ (2) Contracting for work to be done involving the
37 construction or improvement of a fire station or other buildings where

1 the estimated cost will not exceed the sum of two thousand five hundred
2 dollars, which includes the costs of labor, material, and equipment.
3 However, whenever the estimated cost is from two thousand five hundred
4 dollars up to ten thousand dollars, the commissioner may by resolution
5 use the small works roster process provided in RCW 39.04.155; and

6 ~~((4) Purchases which are clearly and legitimately limited to a
7 single source of supply, or services, in which instances the purchase
8 price may be best established by direct negotiation: PROVIDED, That
9 this subsection shall not apply to purchases or contracts relating to
10 public works as defined in chapter 39.04 RCW; and~~

11 ~~(5) Purchases of insurance and bonds.))~~ (3) Any contract for
12 purchases or public work pursuant to chapter 39.-- RCW (sections 1
13 through 3 of this act) if an exemption contained within chapter 39.--
14 RCW (sections 1 through 3 of this act) applies to the purchase.

15 **Sec. 8.** RCW 53.08.120 and 1993 c 198 s 13 are each amended to read
16 as follows:

17 All material required by a port district may be procured in the
18 open market or by contract and all work ordered may be done by contract
19 or day labor. All such contracts for work, the estimated cost of which
20 exceeds one hundred thousand dollars, shall be let at public bidding
21 upon notice published in a newspaper of general circulation in the
22 district at least thirteen days before the last date upon which bids
23 will be received, calling for sealed bids upon the work, plans and
24 specifications for which shall then be on file in the office of the
25 commission for public inspection. The same notice may call for bids on
26 such work or material based upon plans and specifications submitted by
27 the bidder. The competitive bidding requirements for purchases or
28 public works may be waived pursuant to chapter 39.-- RCW (sections 1
29 through 3 of this act) if an exemption contained within chapter 39.--
30 RCW (sections 1 through 3 of this act) applies to the purchase.

31 Each port district shall maintain a small works roster, as provided
32 in RCW 39.04.155, and may use the small works roster process to award
33 contracts in lieu of calling for sealed bids whenever work is done by
34 contract, the estimated cost of which is one hundred thousand dollars
35 or less. Whenever possible, the managing official shall invite at
36 least one proposal from a minority contractor who shall otherwise
37 qualify under this section.

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

7 **Sec. 9.** RCW 54.04.070 and 1993 c 198 s 14 are each amended to read
8 as follows:

9 Any item, or items of the same kind of materials, equipment, or
10 supplies purchased, the estimated cost of which is in excess of five
11 thousand dollars, exclusive of sales tax shall be by contract:
12 PROVIDED, That a district may make purchases of the same kind of items
13 of materials, equipment and supplies not exceeding five thousand
14 dollars in any calendar month without a contract, purchasing any excess
15 thereof over five thousand dollars by contract. Any work ordered by a
16 district commission, the estimated cost of which is in excess of ten
17 thousand dollars exclusive of sales tax, shall be by contract, except
18 that a district commission may have its own regularly employed
19 personnel perform work which is an accepted industry practice under
20 prudent utility management without a contract. Prudent utility
21 management means performing work with regularly employed personnel
22 utilizing material of a worth not exceeding fifty thousand dollars in
23 value without a contract: PROVIDED, That such limit on the value of
24 material being utilized in work being performed by regularly employed
25 personnel shall not include the value of individual items of equipment
26 purchased or acquired and used as one unit of a project. Before
27 awarding such a contract, the commission shall publish a notice once or
28 more in a newspaper of general circulation in the district at least
29 thirteen days before the last date upon which bids will be received,
30 inviting sealed proposals for the work or materials; plans and
31 specifications of which shall at the time of the publication be on file
32 at the office of the district subject to public inspection. Any
33 published notice ordering work to be performed for the district shall
34 be mailed at the time of publication to any established trade
35 association which files a written request with the district to receive
36 such notices. The commission may at the same time and as part of the
37 same notice, invite tenders for the work or materials upon plans and
38 specifications to be submitted by the bidders.

1 Notwithstanding any other provisions herein, all contract projects,
2 the estimated cost of which is less than one hundred thousand dollars,
3 may be awarded to a contractor using the small works roster process
4 provided in RCW 39.04.155. All contract projects equal to or in excess
5 of one hundred thousand dollars shall be let by competitive bidding.

6 Whenever equipment or materials required by a district are held by
7 a governmental agency and are available for sale but such agency is
8 unwilling to submit a proposal, the commission may ascertain the price
9 of such items and file a statement of such price supported by the sworn
10 affidavit of one member of the commission and may consider such price
11 as a bid without a deposit or bond. ~~((In the event of an emergency
12 when the public interest or property of the district would suffer
13 material injury or damage by delay, upon resolution of the commission,
14 or proclamation of an official designated by the board to act for the
15 board during such emergencies, declaring the existence of such
16 emergency and reciting the facts constituting the same, the board, or
17 the official acting for the board, may waive the requirements of this
18 chapter with reference to any purchase or contract, after having taken
19 precautions to secure the lowest price practicable under the
20 circumstances.~~

21 ~~After determination by the commission during a public meeting that
22 a particular purchase is available clearly and legitimately only from
23 a single source of supply, the bidding requirements of this section may
24 be waived by the commission.))~~

25 The commission may waive the competitive bidding requirements of
26 this section pursuant to chapter 39.-- RCW (sections 1 through 3 of
27 this act) if an exemption contained within chapter 39.-- RCW (sections
28 1 through 3 of this act) applies to the purchase.

29 **Sec. 10.** RCW 57.08.050 and 1996 c 230 s 311 and 1996 c 18 s 14 are
30 each reenacted and amended to read as follows:

31 (1) All work ordered, the estimated cost of which is in excess of
32 five thousand dollars, shall be let by contract. All contract
33 projects, the estimated cost of which is in excess of five thousand
34 dollars but less than fifty thousand dollars, may be awarded to a
35 contractor using the small works roster process provided in RCW
36 39.04.155. The board of commissioners may set up uniform procedures to
37 prequalify contractors for inclusion on the small works roster. All
38 contract projects equal to or in excess of fifty thousand dollars shall

1 be let by competitive bidding. Before awarding any such contract the
2 board of commissioners shall publish a notice in a newspaper of general
3 circulation where the district is located at least once thirteen days
4 before the last date upon which bids will be received, inviting sealed
5 proposals for such work(~~(7)~~). The plans and specifications ((which))
6 for such work must at the time of publication of such notice be on file
7 in the office of the board of commissioners (~~((subject to the))~~) and be
8 available for public inspection. The notice shall state generally the
9 work to be done and shall call for proposals for doing the same to be
10 sealed and filed with the board of (~~(water)~~) commissioners on or before
11 the day and hour named therein.

12 Each bid shall be accompanied by a certified or cashier's check or
13 postal money order payable to the order of the county treasurer for a
14 sum not less than five percent of the amount of the bid, or accompanied
15 by a bid bond in an amount not less than five percent of the bid with
16 a corporate surety licensed to do business in the state, conditioned
17 that the bidder will pay the district as liquidated damages the amount
18 specified in the bond, unless the bidder enters into a contract in
19 accordance with the bidder's bid, and no bid shall be considered unless
20 accompanied by such check, cash, or bid bond. At the time and place
21 named such bids shall be publicly opened and read and the board of
22 commissioners shall proceed to canvass the bids and may let such
23 contract to the lowest responsible bidder upon plans and specifications
24 on file or to the best bidder submitting the bidder's own plans and
25 specifications. However, no contract shall be let in excess of the
26 cost of the materials or work. The board of commissioners may reject
27 all bids for good cause and readvertise and in such case all checks,
28 cash, or bid bonds shall be returned to the bidders. If the contract
29 is let, then all checks, cash, or bid bonds shall be returned to the
30 bidders, except that of the successful bidder, which shall be retained
31 until a contract shall be entered into for doing the work, and a bond
32 to perform such work furnished with sureties satisfactory to the board
33 of commissioners in the full amount of the contract price between the
34 bidder and the commission in accordance with the bid. If the bidder
35 fails to enter into the contract in accordance with the bid and furnish
36 the bond within ten days from the date at which the bidder is notified
37 that the bidder is the successful bidder, the check, cash, or bid bonds
38 and the amount thereof shall be forfeited to the district. If the
39 bidder fails to enter into a contract in accordance with the bidder's

1 bid, and the board of commissioners deems it necessary to take legal
2 action to collect on any bid bond required by this section, then the
3 district shall be entitled to collect from the bidder any legal
4 expenses, including reasonable attorneys' fees (~~occasioned thereby~~).
5 A low bidder who claims error and fails to enter into a contract is
6 prohibited from bidding on the same project if a second or subsequent
7 call for bids is made for the project.

8 (2) Any purchase of materials, supplies, or equipment, with an
9 estimated cost in excess of ten thousand dollars, shall be by contract.
10 Any purchase of materials, supplies, or equipment, with an estimated
11 cost of from (~~five~~) ten thousand dollars to less than fifty thousand
12 dollars shall be made using the process provided in RCW (~~39.04.155~~)
13 39.04.190 or by competitive bidding following the procedure for letting
14 contracts for projects under subsection (1) of this section. Any
15 purchase of materials, supplies, or equipment with an estimated cost of
16 fifty thousand dollars or more shall be made by competitive bidding
17 following the procedure for letting contracts for projects under
18 subsection (1) of this section.

19 (~~In the event of an emergency when the public interest or
20 property of the district would suffer material injury or damage by
21 delay, upon resolution of the board of commissioners, or proclamation
22 of an official designated by the board to act for the board during such
23 emergencies, declaring the existence of such emergency and reciting the
24 facts constituting the same, the board or official acting for the board
25 may waive the requirements of this chapter with reference to any
26 purchase or contract. In addition, these requirements may be waived
27 for purchases which are clearly and legitimately limited to a single
28 source of supply and purchases involving special facilities, services,
29 or market conditions, in which instances the purchase price may be best
30 established by direct negotiation.)) The board may waive the
31 competitive bidding requirements of this section pursuant to chapter
32 39.-- RCW (sections 1 through 3 of this act) if an exemption contained
33 within chapter 39.-- RCW (sections 1 through 3 of this act) applies to
34 the purchase.~~

35 **Sec. 11.** RCW 70.44.140 and 1996 c 18 s 15 are each amended to read
36 as follows:

37 (1) All materials purchased and work ordered, the estimated cost of
38 which is in excess of five thousand dollars, shall be by contract.

1 Before awarding any such contract, the commission shall publish a
2 notice at least thirteen days before the last date upon which bids will
3 be received, inviting sealed proposals for such work. The plans and
4 specifications must at the time of the publication of such notice be on
5 file at the office of the public hospital district, subject to public
6 inspection: PROVIDED, HOWEVER, That the commission may at the same
7 time, and as part of the same notice, invite tenders for the work or
8 materials upon plans and specifications to be submitted by bidders.
9 The notice shall state generally the work to be done, and shall call
10 for proposals for doing the same, to be sealed and filed with the
11 commission on or before the day and hour named therein. Each bid shall
12 be accompanied by bid proposal security in the form of a certified
13 check, cashier's check, postal money order, or surety bond made payable
14 to the order of the commission, for a sum not less than five percent of
15 the amount of the bid, and no bid shall be considered unless
16 accompanied by such bid proposal security. At the time and place
17 named, such bids shall be publicly opened and read, and the commission
18 shall proceed to canvass the bids, and may let such contract to the
19 lowest responsible bidder upon plans and specifications on file, or to
20 the best bidder submitting his or her own plans and specifications:
21 PROVIDED, HOWEVER, That no contract shall be let in excess of the
22 estimated cost of the materials or work, or if, in the opinion of the
23 commission, all bids are unsatisfactory, they may reject all of them
24 and readvertise, and in such case all bid proposal security shall be
25 returned to the bidders; but if such contract be let, then and in such
26 case all bid proposal security shall be returned to the bidders, except
27 that of the successful bidder, which shall be retained until a contract
28 shall be entered into for the purchase of such materials for doing such
29 work, and a bond to perform such work furnished, with sureties
30 satisfactory to the commission, in an amount to be fixed by the
31 commission, not less than twenty-five percent of contract price in any
32 case, between the bidder and commission, in accordance with the bid.
33 If such bidder fails to enter into the contract in accordance with the
34 bid and furnish such bond within ten days from the date at which the
35 bidder is notified that he or she is the successful bidder, the bid
36 proposal security and the amount thereof shall be forfeited to the
37 public hospital district. A low bidder who claims error and fails to
38 enter into a contract is prohibited from bidding on the same project if
39 a second or subsequent call for bids is made for the project.

1 (2) In lieu of the procedures of subsection (1) of this section, a
2 public hospital district may use a small works roster process and award
3 public works contracts for projects in excess of five thousand dollars
4 up to fifty thousand dollars as provided in RCW 39.04.155.

5 (3) For advertisement and formal sealed bidding to be dispensed
6 with as to purchases between five thousand and fifteen thousand
7 dollars, the commission must authorize by resolution a procedure as
8 provided in RCW 39.04.190.

9 (4) The commission may waive the competitive bidding requirements
10 of this section pursuant to chapter 39.-- RCW (sections 1 through 3 of
11 this act) if an exemption contained within chapter 39.-- RCW (sections
12 1 through 3 of this act) applies to the purchase.

13 NEW SECTION. Sec. 12. Sections 1 through 3 of this act constitute
14 a new chapter in Title 39 RCW.

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