
SENATE BILL 5225

State of Washington

66th Legislature

2019 Regular Session

By Senators Takko and Short

1 AN ACT Relating to clarifying the contracting procedures for
2 cities; and amending RCW 35.23.352.

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

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

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

19 Whenever the cost of the public work or improvement, including
20 materials, supplies and equipment, will exceed these figures, the
21 same shall be done by contract. All such contracts shall be let at

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

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

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

35 (2) For the purposes of this section, "lowest responsible bidder"
36 means a bid that meets the criteria under RCW 39.04.350; and has the
37 lowest bid, or has a bid that is within five percent of the lowest
38 bid and meets the following supplemental criteria:

1 (a) The bidder has delivered at least one project of similar size
2 and scope within the last five years for the city on time, within
3 budget, and according to required specifications; and

4 (b) The bidder has not delivered a project to the city within the
5 last five years that was late, over budget, or did not meet
6 specifications.

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

10 ~~((3))~~ (4) In lieu of the procedures of subsection (1) of this
11 section, a second-class city or a town may let contracts using the
12 small works roster process provided in RCW 39.04.155.

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

16 ~~((4))~~ (5) The form required by RCW 43.09.205 shall be to
17 account and record costs of public works in excess of five thousand
18 dollars that are not let by contract.

19 ~~((5))~~ (6) The cost of a separate public works project shall be
20 the costs of the materials, equipment, supplies, and labor on that
21 construction project.

22 ~~((6))~~ (7) Any purchase of supplies, material, or equipment,
23 except for public work or improvement, where the cost thereof exceeds
24 seven thousand five hundred dollars shall be made upon call for bids.

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

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

34 ~~((9))~~ (10) The city or town legislative authority may waive the
35 competitive bidding requirements of this section pursuant to RCW
36 39.04.280 if an exemption contained within that section applies to
37 the purchase or public work.

38 ~~((10))~~ (11) This section does not apply to performance-based
39 contracts, as defined in RCW 39.35A.020(4), that are negotiated under
40 chapter 39.35A RCW.

1 (~~(11)~~) (12) Nothing in this section shall prohibit any second
2 class city or any town from allowing for preferential purchase of
3 products made from recycled materials or products that may be
4 recycled or reused.

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

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

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

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

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

--- END ---