

AN ACT Relating to standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts; amending RCW 54.04.070, 35.23.352, 35.22.620, 57.08.050, and 52.14.110; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to read as follows: PUDs.....WE SHOULD BE ABLE TO DO AWAY WITH THIS SECTION BECAUSE THESE CHANGES UNDERLINED CHANGES BELOW HAVE GONE INTO EFFECT. BUT I DON'T SEE THE SECOND LOWEST RESPONSIBLE BIDDER LANGUAGE HERE THAT NEEDS DELETING. IT MAY HAVE FALLEN OFF DURING MY EDITING. LET'S DISCUSS TO MAKE SURE I HAVE THIS RIGHT BEFORE INCLUDING THE DELETION.

- (1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of \$30,000, exclusive of sales tax, shall be by contract. However, a district may make purchases of the same kind of items of materials, equipment, and supplies not exceeding \$12,000 in any calendar month without a contract, purchasing any excess over \$12,000 by contract.
- (2) Any work ordered by a district commission, the estimated cost of which is in excess of \$150,000 exclusive of sales tax if more than a single craft or trade is involved with the public works project, or a public works project in excess of \$75,500 exclusive of sales tax if only a single craft or trade is involved with the public works project, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contact. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For the purposes of this section, the term "equipment" includes but is not limited to conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.
- (3) Before awarding a contract required under subsection (1) or (2) of this section, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least 13 days before the last date upon which bids will

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be received, inviting sealed proposals of the work or materials. Plans and specifications for the work or materials shall be at the time of publication be on file at the office of the district and subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may, at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

- (4) As an alternative to the competitive bidding requirements of this section and RCW 54.04.080, a district may let contracts using the small works roster process under RCW 30.04.155.
- (5) Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission, and may consider such price as a bid without a deposit or bond.
- (6) Pursuant to RCW 39.04.280, the commission may waive the competitive bidding requirements of this section and RCW 54.04.080 if an exemption contained within RCW 39.04.280 applies to the purchase or public work.
  - (a) A district may procure public works with a unit priced contract under this section, RCW 54.04.080, or 54.04.085 for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.
  - (b) For the purposes of this section, unit priced contract means a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at defined unit price, for each category of work.
  - (c) Unit priced contracts must be executed for an initial contract term not to exceed three years, with the district having the option of extending or renewing the unit priced contract for one additional year.
  - (d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Where electrical

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facility construction or improvement work is anticipated, contractors on a unit priced contract shall comply with the requirements under RCW 54.04.085 (1) through (5). Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010.

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

(8)

**Sec. 2.** RCW 35.23.352 and 2019 c 434 s 1 are each amended to read as follows: **second-class cities or any towns and applicable to Water, Sewer and fire districts.....**

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(1) Any second-class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of ((one-hundred sixteen thousand one hundred fifty-five dollars)) \$150,000 if more than one craft or trade is involved with the public works, or ((seventy-five thousand five hundred dollars)) \$75,000 if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

~~However, a second-class city or any town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment.~~

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For purposes of this section, "equipment" includes, but is not limited to, conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

- (2) Second-class cities and towns may address exigent public works needs that result from unforeseen circumstances beyond the control of the city or town, any second-class city or town may have its own regularly employed in-house personnel perform exigent public works projects without a contract up to \$300,000. Project costs shall include all labor, materials, supplies, and equipment and any associated administrative costs. A public works project shall mean a complete project; therefore, the restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by crew labor on a single project. Exigent public works needs are due to unforeseen circumstances that result in situations that compromise the proper performance of essential government functions and there is a need to avoid, prevent or alleviate serious impacts (financial or otherwise), harm or injury, and the use of a competitive procurement would prevent the urgent action required to address the situation.

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In addition, the amount of public works performed by a second-class city or town in any given year, to address exigent public works needs not exceeding \$300,000, shall be limited to a dollar value not exceeding 10 percent of the public works construction budget for the annual or biennial budget period, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a second-class city or town has a county perform for it under RCW 35.77.020 shall be included within this 10 percent limitation. If a second-class city has public works performed by public employees in any budget period that are in excess of this 10 percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. The state auditor shall report to the state treasurer any second-class city or any town that exceeds this amount and the extent to which the city or town has or has not reduced the amount of public works it has performed by public employees in subsequent years.

Whenever a second-class city or town has had public works performed by city labor in any budget period up to the maximum permitted amount under this subsection for that budget period, all remaining public works within that budget period must be done pursuant to public notice and call for competitive bids. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids pursuant to the appropriate authorizing statute.

(3) A public works project means a complete project. The restrictions in this subsection do not permit the division of a project into units of work or classes of work to avoid the restriction on work that may be performed by in-house labor on a single project.

(4) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every municipality annually must prepare a report subject to review by the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below 10 percent of the total construction budget. However, if a municipality budgets on a biennial basis, this annual report may indicate the amount of public works that is performed by public employees within the current biennial period that is above or below 10 percent of the total biennial construction budget.

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

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

(a) Declaration of Exigent public works circumstances ~~The waiver of competitive bidding requirements~~ for public works defined under subsection (2) of this section must be established by written policies and procedures adopted by the municipality. If the governing body municipality elects to declare an exigency, it must document the factual basis for the decision, which for the exception must be ~~recorded~~ documented and be open to public inspection.

(b) If an exigency exists, the person or persons designated by the governing body of the municipality to act in the event of an exigency may declare an exigency situation exists, ~~waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the exigency situation or~~ use in house employees ~~to address the exigency.~~ If ~~in-house personnel are used a~~

**Commented [mt1]:** Am sure there are better words for this.

**Commented [mt2]:** Is this sufficient as we discussed. For example, see RCW 36.32.235 for counties.

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**Commented [mt3]:** Broadly interpreted so as to include non-on site workers like program managers, finance and other administrative folks.

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**Commented [mt5]:** We didn't discuss this deletion. Look forward to your comments.

~~contract is awarded without competitive bidding due to~~ address an exigency under this act, ~~a~~ written findings of the existence of an exigency must be made by the governing body or its designee and duly ~~documented entered of record~~ no later than two weeks following the award of the contract or ~~the~~ use of in-house employees.

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**Sec. 3.** RCW 35.22.620 and 2019 c 434 s 11 are each amended to read as follows:

**FIRST CLASS CITIES....**

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- (1) As used in this section, the term "public works" means as defined in RCW 39.04.010.
- (2) A first-class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first-class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding 10 percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first-class city has a county perform for it under RCW 35.77.020 shall be included within this 10 percent limitation.

If a first-class city has public works performed by public employees in any budget period that are in excess of this 10 percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first-class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids. The state auditor shall report to the state treasurer any first-class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

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- (3) LIKE ABOVE, THE DOLLAR FIGURES IN THIS SECTION ARE IN EFFECT AND THE PUM LANGUAGE WOULD BE DELETED AS SHOWN BELOW. In addition to the percentage limitation provided in subsection (2) of this section, a first-class city shall not have public employees perform a public works project in excess of ~~((one hundred fifty thousand dollars))~~ \$150,000 if more than a single craft or trade is involved with the public works project, or a public works project in excess of ~~((seventy five thousand five hundred dollars))~~ \$75,500 if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project. However, a first-class city may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding \$300,000 in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment. For purposes of this section, the term "equipment" includes, but is not limited to, conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.
- (3) Pursuant to the obligation for first-class cities to address urgent or exigent public works needs that result from unforeseen circumstances beyond the control of the city or town, any first-class city may have its own regularly employed personnel perform public works projects without a contract up to a worth not exceeding \$300,000. Project costs shall include labor, materials, supplies, and equipment. A public works project shall mean a complete project; therefore, the restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by crew labor on a single project. Urgent public works needs are defined as situations beyond the control of the city or town when safety or security of the public is at risk (e.g. property damage, bodily injury, or loss of life). Exigent public works needs are situations that compromise the proper performance of essential government functions such as 1) avoidance of financial loss to the city or town, 2) lack of receiving bids for contracted work requires use of city crew labor to perform the work, 3) action is required due to timing restrictions to perform the

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work or 4) adverse environmental or societal impacts will result if the work is not performed in an expedited and efficient manner.

***(Continuation with the rest of Sec. 3 unchanged.....)***