
SUBSTITUTE HOUSE BILL 1621

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Local Government (originally sponsored by Representatives Ryu, Duerr, Pollet, Kloba, and Senn)

READ FIRST TIME 02/14/23.

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:

(1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of (~~(thirty thousand dollars)~~) \$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 (~~(twelve thousand dollars)~~) \$12,000 in any calendar month without a contract, purchasing any excess thereof over (~~(twelve thousand dollars)~~) \$12,000 by contract.

(2) Any work ordered by a district commission, the estimated cost of which is in excess of (~~(fifty thousand dollars, exclusive of sales tax)~~) \$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 contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding (~~three hundred thousand dollars~~) \$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 (~~thirteen~~) 13 days before the last date upon which bids will be received, inviting sealed proposals for the work or materials. Plans and specifications for the work or materials shall 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 39.04.155.

(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.

(7) (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 a 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 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 contractors 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 (~~twelve-month~~) 12-month period of the unit priced contract.

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

Sec. 2. RCW 35.23.352 and 2019 c 434 s 1 are each amended to read as follows:

(1) ~~(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 therefor 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~~) \$75,500 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. 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) (a) ~~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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(b) 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 or town 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.

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(c) 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.

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(d) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every second

class city or any town 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 second class city or any town 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.

(e) Each second class city or any town 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.

(f) (5) The cost of a separate public works project shall be the costs of all materials, supplies, equipment, and all 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.

~~Declaration of exigent public works circumstances for public works defined under subsection (2) of this section must be established by written policies and procedures adopted by the second class city or any town. If the governing body elects to declare an exigency, it must document the factual basis for the decision, which for the exception must be documented and be open to public inspection.~~

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~~If an exigency exists, the person or persons designated by the governing body to act in the event of an exigency may declare an exigency situation exists, and use in house employees to address the exigency. If in-house personnel are used to address an exigency under this act, written findings of the existence of an exigency must be made by the governing body or its designee and duly documented no later than two weeks following the award of the contract or the use of in-house employees.~~

(g) Declaration of exigent public works circumstances for public works defined under subsection (2) of this section must may be established by individual action of the governing body or by written policies and procedures adopted by the second-class city or any town. In either case, when the second-class city or town elects to declare an exigency, it must document the factual basis for the decision, which must be open to public inspection no later than two weeks from the beginning of the project.

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Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least ((thirteen)) 13 days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to

the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

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

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

~~(2) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second~~

~~lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.~~

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

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

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

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

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

(7) Any purchase of supplies, material, or equipment, except for public work or improvement, (~~where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids~~) with an estimated cost in excess of \$40,000, shall be by contract. Any purchase of materials, supplies, or equipment with an estimated cost of less than \$50,000 shall be made using the process provided in RCW 39.04.190. ~~NOTED~~

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

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

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

(11) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(~~(4)~~) (6), that are negotiated under chapter 39.35A RCW.

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

(13) (a) Any second-class city or any town may procure public works with a unit priced contract under this section 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 the city or town, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a 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 city or town 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 city or town 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. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the city or town must invite at

least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors 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 (~~twelve-month~~) 12-month period of the unit priced contract.

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

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

(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 (~~ten~~) 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 (~~ten~~) 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 (~~ten~~) 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. Twenty 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.

(3) ~~(3)~~ 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

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~~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.~~

(4) (a) ~~First class cities may address exigent public works need 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.~~

~~(b) In addition, the amount of public works performed by a first class city in any given year, to address exigent~~

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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 first 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 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. 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.

(c) 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.

(d) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every first class city or any town 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

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construction budget. However, if a second class city or any town 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.

(e) Each first class city 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.

(f) (5) The cost of a separate public works project shall be the costs of all materials, supplies, equipment, and all 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.

~~Declaration of exigent public works circumstances for public works defined under this subsection must be established by written policies and procedures adopted by the first class city. If the governing body elects to declare an exigency, it must document the factual basis for the decision, which for the exception must be documented and be open to public inspection. If an exigency exists, the person or persons designated by the governing body to act in the event of an exigency may declare an exigency situation exists, and use in house employees to address the exigency. If in house personnel are used to address an exigency under this act, written findings of the existence of an exigency must be made by the governing body or its designee and duly documented no later than two weeks following the award of the contract or the use of in house employees.~~

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(g) Declaration of exigent public works circumstances for public works defined under subsection (2) of this section must may be established by individual action of the governing body or by written policies and procedures adopted by the second-class city or any town. In either case, when a first class city elects to declare an exigency, it must document the factual basis for the decision, which must be open to public inspection no later than two weeks from the beginning of the project.

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(4) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every first-class city annually may prepare a report for 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 ~~((ten))~~ 10 percent of the total construction budget. However, if a city 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 ~~((ten))~~ 10 percent of the total biennial construction budget.

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Each first-class city with a population of ~~((one hundred fifty thousand))~~ 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 ~~((five thousand dollars))~~ \$5,000 that are not let by contract.

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

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

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

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

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

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(~~(4)~~) (6), that are negotiated under chapter 39.35A RCW.

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

(11)(a) Any first-class city may procure public works with a unit priced contract under this section 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 the city, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a 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 city 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 city 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. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the city must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors 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 (~~twelve month~~) 12-month period of the unit priced contract.

~~(12) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.~~

Sec. 4. RCW 57.08.050 and 2019 c 434 s 10 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of (~~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 \$75,500 if only a single craft or trade is involved with the public works project, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general

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circulation where the district is located at least once (~~(thirteen)~~) 13 days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within (~~(ten)~~) 10 days from the date at which the

bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

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

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of (~~forty thousand dollars~~) \$40,000, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than (~~fifty thousand dollars~~) \$50,000 shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of (~~fifty thousand dollars~~) \$50,000 or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

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

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

(6) (a) A district may procure public works with a unit priced contract under this section 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 the district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.

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

(d) Invitations for unit price bids must 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. Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010. Whenever possible, the district must invite at least one proposal from a certified minority or woman contractor who otherwise qualifies under this section.

(e) Unit price contractors 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 (~~twelve-month~~) 12-month period of the unit priced contract.

(7) (a) a water-sewer district may address exigent public works need 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.

(b) In addition, the amount of public works performed by a water-sewer district may, 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 water-sewer district has a county perform for it under RCW 35.77.020 shall be included within this 10 percent limitation. If a water-sewer district 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.

(c) 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.

(d) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every water-sewer district 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 a water-sewer district 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.

(e) Each a water-sewer district 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.

(f) (5) The cost of a separate public works project shall be the costs of all materials, supplies, equipment, and all 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.

~~(g)~~

~~(h) Declaration of exigent public works circumstances for public works defined under this subsection must be established by~~

~~written policies and procedures adopted by the a water sewer district. If the governing body elects to declare an exigency, it must document the factual basis for the decision, which for the exception must be documented and be open to public inspection.~~

~~(i) If an exigency exists, the person or persons designated by the a water sewer district board to act in the event of an exigency may declare an exigency situation exists, and use in house employees to address the exigency. If in house personnel are used to address an exigency under this act, written findings of the existence of an exigency must be made by the board or its designee and duly documented no later than two weeks following the award of the contract or the use of in-house employees.~~

~~(j) Declaration of exigent public works circumstances for public works defined under subsection (2) of this section must may be established by individual action of the governing body or by written policies and procedures adopted by the second-class city or any town. In either case, when the district elects to declare an exigency, it must document the factual basis for the decision, which must be open to public inspection no later than two weeks from the beginning of the project.~~

~~(7) A water sewer district 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 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.~~

~~(8) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and~~

~~has the lowest bid; provided, that if the district issues a written finding that the lowest bidder has delivered a project to the district within the last three years which was late, over budget, or did not meet specifications, and the district does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the district may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.~~

Sec. 5. RCW 52.14.110 and 2019 c 434 s 12 are each amended to read as follows:

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

~~((1))~~ (a) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ~~((forty thousand dollars))~~ \$75,500. However, whenever the estimated cost does not exceed ~~((seventy-five thousand dollars))~~ \$150,000, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

~~((2))~~ (b) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of ~~((thirty thousand dollars, which includes the costs of labor, material, and equipment))~~ \$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 \$75,500 if only a single craft or trade is involved with the public works project;

~~((3))~~ (c) Contracts using the small works roster process under RCW 39.04.155; and

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

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

~~(2) (a) Districts may address exigent public works need 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~~

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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.

(b) In addition, the amount of public works performed by a district 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 district has a county perform for it under RCW 35.77.020 shall be included within this 10 percent limitation. If a district 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 district that exceeds this amount and the extent to which the district has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(c) 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.

(d) In addition to the accounting and recordkeeping requirements contained in RCW 39.04.070, every first class city or any town 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 second class city or any town district 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.

(e) Each district first class city 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.

(f) (5) The cost of a separate public works project shall be the costs of all materials, supplies, equipment, and all 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.

~~(g) Declaration of exigent public works circumstances for public works defined under this subsection must be established by written policies and procedures adopted by the . If the governing body elects to declare an exigency, it must document the factual basis for the decision, which for the exception must be documented and be open to public inspection.~~

~~(h) If an exigency exists, the person or persons designated by the governing body to act in the event of an exigency may declare an exigency situation exists, and use in house employees to address the exigency. If in house personnel are used to address an exigency under this act, written findings of the existence of an exigency must be made by the governing body or its designee and duly~~

~~documented no later than two weeks following the award of the contract or the use of in-house employees.~~

~~(g) Declaration of exigent public works circumstances for public works defined under subsection (2) of this section must may be established by individual action of the governing body or by written policies and procedures adopted by the second-class city or any town. In either case, when the district elects to declare an exigency, it must document the factual basis for the decision, which must be open to public inspection no later than two weeks from the beginning of the project.~~

~~NEW SECTION. Sec. 6. The capital projects advisory review board shall review this act and make recommendations to the appropriate committees of the legislature by December 31, 2023.~~

~~NEW SECTION. Sec. 7. Sections 1 through 5 of this act take effect June 30, 2024.~~

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