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**SUBSTITUTE HOUSE BILL 1174**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** House Local Government (originally sponsored by Representatives Walsh, Blake, and Wylie)

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.

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

1 includes the total number of bids awarded to minority or women  
2 contractors.

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