
HOUSE BILL 2092

State of Washington

67th Legislature

2022 Regular Session

By Representative Klicker

1 AN ACT Relating to incorporating product lead time into
2 competitive solicitation standards for state and local procurement;
3 amending RCW 39.26.090, 39.26.160, 35.23.352, 35A.40.210, 36.32.245,
4 and 54.04.070; adding a new section to chapter 39.26 RCW; and adding
5 a new section to chapter 35.22 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.26
8 RCW to read as follows:

9 State policies, standards, and procedures regarding the
10 procurement of goods and services by state agencies must include
11 consideration of product lead time when economic conditions have
12 caused disruptions to relevant supply chains.

13 **Sec. 2.** RCW 39.26.090 and 2012 c 224 s 10 are each amended to
14 read as follows:

15 The director shall:

16 (1) Establish overall state policies, standards, and procedures
17 regarding the procurement of goods and services by all state
18 agencies, consistent with section 1 of this act;

19 (2) Develop policies and standards for the use of credit cards or
20 similar methods to make purchases;

1 (3) Establish procurement processes for information technology
2 goods and services, using technology standards and policies
3 established by the office of the chief information officer under
4 chapter 43.41A RCW;

5 (4) Enter into contracts or delegate the authority to enter into
6 contracts on behalf of the state to facilitate the purchase, lease,
7 rent, or otherwise acquire all goods and services and equipment
8 needed for the support, maintenance, and use of all state agencies,
9 except as provided in RCW 39.26.100;

10 (5) Have authority to delegate to agencies authorization to
11 purchase goods and services. The authorization must specify
12 restrictions as to dollar amount or to specific types of goods and
13 services, based on a risk assessment process developed by the
14 department. Acceptance of the purchasing authorization by an agency
15 does not relieve the agency from conformance with this chapter or
16 from policies established by the director. Also, the director may not
17 delegate to a state agency the authorization to purchase goods and
18 services if the agency is not in substantial compliance with overall
19 procurement policies as established by the director;

20 (6) Develop procurement policies and procedures, such as
21 unbundled contracting and subcontracting, that encourage and
22 facilitate the purchase of goods and services from Washington small
23 businesses, microbusinesses, and minibusinesses, and minority and
24 women-owned businesses to the maximum extent practicable and
25 consistent with international trade agreement commitments;

26 (7) Develop and implement an enterprise system for electronic
27 procurement;

28 (8) Provide for a commodity classification system and provide for
29 the adoption of goods and services commodity standards;

30 (9) Establish overall state policy for compliance by all agencies
31 regarding:

32 (a) Food procurement procedures and materials that encourage and
33 facilitate the purchase of Washington grown food by state agencies
34 and institutions to the maximum extent practicable and consistent
35 with international trade agreement commitments; and

36 (b) Policies requiring all food contracts to include a plan to
37 maximize to the extent practicable and consistent with international
38 trade agreement commitments the availability of Washington grown food
39 purchased through the contract;

1 (10) Develop guidelines and criteria for the purchase of
2 vehicles, high gas mileage vehicles, and alternate vehicle fuels and
3 systems, equipment, and materials, that reduce overall energy-related
4 costs and energy use by the state, including investigations into all
5 opportunities to aggregate the purchasing of clean technologies by
6 state and local governments, and including the requirement that new
7 passenger vehicles purchased by the state meet the minimum standards
8 for passenger automobile fuel economy established by the United
9 States secretary of transportation pursuant to the energy policy and
10 conservation act (15 U.S.C. Sec. 2002); and

11 (11) Develop and enact rules to implement the provisions of this
12 chapter.

13 **Sec. 3.** RCW 39.26.160 and 2019 c 232 s 16 are each amended to
14 read as follows:

15 (1) (a) After bids that are submitted in response to a competitive
16 solicitation process are reviewed by the awarding agency, the
17 awarding agency may:

18 (i) Reject all bids and rebid or cancel the competitive
19 solicitation;

20 (ii) Request best and final offers from responsive and
21 responsible bidders; or

22 (iii) Award the purchase or contract to the lowest responsive and
23 responsible bidder.

24 (b) The agency may award one or more contracts from a competitive
25 solicitation.

26 (2) In determining whether the bidder is a responsible bidder,
27 the agency must consider the following elements:

28 (a) The ability, capacity, and skill of the bidder to perform the
29 contract or provide the service required;

30 (b) The character, integrity, reputation, judgment, experience,
31 and efficiency of the bidder;

32 (c) Whether the bidder can perform the contract within the time
33 specified;

34 (d) The quality of performance of previous contracts or services;

35 (e) The previous and existing compliance by the bidder with laws
36 relating to the contract or services;

37 (f) Whether, within the three-year period immediately preceding
38 the date of the bid solicitation, the bidder has been determined by a
39 final and binding citation and notice of assessment issued by the

1 department of labor and industries or through a civil judgment
2 entered by a court of limited or general jurisdiction to have
3 willfully violated, as defined in RCW 49.48.082, any provision of
4 chapter 49.46, 49.48, or 49.52 RCW; (~~and~~)

5 (g) Whether the bidder can guarantee reasonable product lead time
6 during periods when economic conditions have caused disruptions to
7 relevant supply chains; and

8 (h) Such other information as may be secured having a bearing on
9 the decision to award the contract.

10 (3) In determining the lowest responsive and responsible bidder,
11 an agency may consider best value criteria, including but not limited
12 to:

13 (a) Whether the bid satisfies the needs of the state as specified
14 in the solicitation documents;

15 (b) Whether the bid encourages diverse contractor participation;

16 (c) Whether the bid provides competitive pricing, economies, and
17 efficiencies;

18 (d) Whether the bid considers human health and environmental
19 impacts;

20 (e) Whether the bid appropriately weighs cost and noncost
21 considerations; and

22 (f) Life-cycle cost.

23 (4) The solicitation document must clearly set forth the
24 requirements and criteria that the agency will apply in evaluating
25 bid submissions. Before award of a contract, a bidder shall submit to
26 the contracting agency a signed statement in accordance with chapter
27 5.50 RCW verifying under penalty of perjury that the bidder is in
28 compliance with the responsible bidder criteria requirement of
29 subsection (2)(f) of this section. A contracting agency may award a
30 contract in reasonable reliance upon such a sworn statement.

31 (5) The awarding agency may at its discretion reject the bid of
32 any contractor who has failed to perform satisfactorily on a previous
33 contract with the state.

34 (6) After reviewing all bid submissions, an agency may enter into
35 negotiations with the lowest responsive and responsible bidder in
36 order to determine if the bid may be improved. An agency may not use
37 this negotiation opportunity to permit a bidder to change a
38 nonresponsive bid into a responsive bid.

1 (7) The procuring agency must enter into the state's enterprise
2 vendor registration and bid notification system the name of each
3 bidder and an indication as to the successful bidder.

4 **Sec. 4.** RCW 35.23.352 and 2019 c 434 s 1 are each amended to
5 read 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 one hundred sixteen thousand one hundred fifty-
11 five dollars if more than one craft or trade is involved with the
12 public works, or seventy-five thousand five hundred dollars if a
13 single craft or trade is involved with the public works or the public
14 works project is street signalization or street lighting. A public
15 works project means a complete project. The restrictions in this
16 subsection do not permit the division of the project into units of
17 work or classes of work to avoid the restriction on work that may be
18 performed by day labor on a single 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
22 public bidding upon publication of notice calling for sealed bids
23 upon the work. The notice shall be published in the official
24 newspaper, or a newspaper of general circulation most likely to bring
25 responsive bids, at least thirteen days prior to the last date upon
26 which bids will be received. The notice shall generally state the
27 nature of the work to be done that plans and specifications therefor
28 shall then be on file in the city or town hall for public
29 inspections, and require that bids be sealed and filed with the
30 council or commission within the time specified therein. Each bid
31 shall be accompanied by a bid proposal deposit in the form of a
32 cashier's check, postal money order, or surety bond to the council or
33 commission for a sum of not less than five percent of the amount of
34 the bid, and no bid shall be considered unless accompanied by such
35 bid proposal deposit. The council or commission of the city or town
36 shall let the contract to the lowest responsible bidder or shall have
37 power by resolution to reject any or all bids and to make further
38 calls for bids in the same manner as the original call.

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

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

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

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

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

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

37 (5) The form required by RCW 43.09.205 shall be to account and
38 record costs of public works in excess of five thousand dollars that
39 are not let by contract.

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

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

7 (8) Bids shall be called annually and at a time and in the manner
8 prescribed by ordinance for the publication in a newspaper of general
9 circulation in the city or town of all notices or newspaper
10 publications required by law. The contract shall be awarded to the
11 lowest responsible bidder, except that during periods when economic
12 conditions have caused disruptions to relevant supply chains, product
13 lead time must be considered in addition to price.

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

18 (10) The city or town legislative authority may waive the
19 competitive bidding requirements of this section pursuant to RCW
20 39.04.280 if an exemption contained within that section applies to
21 the purchase or public work.

22 (11) This section does not apply to performance-based contracts,
23 as defined in RCW 39.35A.020(4), that are negotiated under chapter
24 39.35A RCW.

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

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

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

38 (c) Unit priced contracts must be executed for an initial
39 contract term not to exceed three years, with the city or town having

1 the option of extending or renewing the unit priced contract for one
2 additional year.

3 (d) Invitations for unit price bids shall include, for purposes
4 of the bid evaluation, estimated quantities of the anticipated types
5 of work or trades, and specify how the city or town will issue or
6 release work assignments, work orders, or task authorizations
7 pursuant to a unit priced contract for projects, tasks, or other work
8 based on the hourly rates or unit prices bid by the contractor.
9 Contracts must be awarded to the lowest responsible bidder as per RCW
10 39.04.010. Whenever possible, the city or town must invite at least
11 one proposal from a certified minority or woman contractor who
12 otherwise qualifies under this section.

13 (e) Unit price contractors shall pay prevailing wages for all
14 work that would otherwise be subject to the requirements of chapter
15 39.12 RCW. Prevailing wages for all work performed pursuant to each
16 work order must be the prevailing wage rates in effect at the
17 beginning date for each contract year. Unit priced contracts must
18 have prevailing wage rates updated annually. Intents and affidavits
19 for prevailing wages paid must be submitted annually for all work
20 completed within the previous twelve-month period of the unit priced
21 contract.

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

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.22
29 RCW to read as follows:

30 For any purchase of supplies, materials, or equipment, except for
31 public works or improvements, that are subject to competitive bidding
32 requirements and are made during periods when economic conditions
33 have caused disruptions to relevant supply chains, first-class cities
34 must consider product lead time in addition to price when awarding
35 contracts.

36 **Sec. 6.** RCW 35A.40.210 and 2009 c 229 s 5 are each amended to
37 read as follows:

1 Procedures for any public work or improvement for code cities
2 shall be governed by RCW 35.23.352.

3 Purchases for code cities with twenty thousand population or more
4 shall be governed by RCW 35.22.620 and section 5 of this act.
5 Purchases for code cities with under twenty thousand population shall
6 be governed by RCW 35.23.352.

7 **Sec. 7.** RCW 36.32.245 and 2016 c 95 s 9 are each amended to read
8 as follows:

9 (1) No contract for the purchase of materials, equipment, or
10 supplies may be entered into by the county legislative authority or
11 by any elected or appointed officer of the county until after bids
12 have been submitted to the county. Bid specifications shall be in
13 writing and shall be filed with the clerk of the county legislative
14 authority for public inspection. An advertisement shall be published
15 in the official newspaper of the county stating the time and place
16 where bids will be opened, the time after which bids will not be
17 received, the materials, equipment, supplies, or services to be
18 purchased, and that the specifications may be seen at the office of
19 the clerk of the county legislative authority. The advertisement
20 shall be published at least once at least thirteen days prior to the
21 last date upon which bids will be received.

22 (2) The bids shall be in writing, may be in either hard copy or
23 electronic form as specified by the county, and shall be filed with
24 the clerk. The bids shall be opened and read in public at the time
25 and place named in the advertisement. Contracts requiring competitive
26 bidding under this section may be awarded only to the lowest
27 responsible bidder; except that during periods when economic
28 conditions have caused disruptions to relevant supply chains, product
29 lead time must be considered in addition to price. Immediately after
30 the award is made, the bid quotations shall be recorded and open to
31 public inspection and shall be available by telephone inquiry. Any or
32 all bids may be rejected for good cause.

33 (3) For advertisement and formal sealed bidding to be dispensed
34 with as to purchases between ten thousand and fifty thousand dollars,
35 the county legislative authority must use the uniform process to
36 award contracts as provided in RCW 39.04.190. Advertisement and
37 formal sealed bidding may be dispensed with as to purchases of less
38 than ten thousand dollars upon the order of the county legislative
39 authority.

1 (4) This section does not apply to performance-based contracts,
2 as defined in RCW 39.35A.020(4), that are negotiated under chapter
3 39.35A RCW; or contracts and purchases for the printing of election
4 ballots, voting machine labels, and all other election material
5 containing the names of candidates and ballot titles.

6 (5) Nothing in this section shall prohibit the legislative
7 authority of any county from allowing for preferential purchase of
8 products made from recycled materials or products that may be
9 recycled or reused.

10 (6) This section does not apply to contracting for public
11 defender services by a county.

12 **Sec. 8.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to
13 read as follows:

14 (1) Any item, or items of the same kind of materials, equipment,
15 or supplies purchased, the estimated cost of which is in excess of
16 thirty thousand dollars, exclusive of sales tax, shall be by
17 contract. However, a district may make purchases of the same kind of
18 items of materials, equipment, and supplies not exceeding twelve
19 thousand dollars in any calendar month without a contract, purchasing
20 any excess thereof over twelve thousand dollars by contract.

21 (2) Any work ordered by a district commission, the estimated cost
22 of which is in excess of fifty thousand dollars, exclusive of sales
23 tax, shall be by contract. However, a district commission may have
24 its own regularly employed personnel perform work which is an
25 accepted industry practice under prudent utility management without a
26 contract. For purposes of this section, "prudent utility management"
27 means performing work with regularly employed personnel utilizing
28 material of a worth not exceeding three hundred thousand dollars in
29 value without a contract. This limit on the value of material being
30 utilized in work being performed by regularly employed personnel
31 shall not include the value of individual items of equipment. For the
32 purposes of this section, the term "equipment" includes but is not
33 limited to conductor, cabling, wire, pipe, or lines used for
34 electrical, water, fiber optic, or telecommunications.

35 (3) Before awarding a contract required under subsection (1) or
36 (2) of this section, the commission shall publish a notice once or
37 more in a newspaper of general circulation in the district at least
38 thirteen days before the last date upon which bids will be received,
39 inviting sealed proposals for the work or materials. Plans and

1 specifications for the work or materials shall at the time of
2 publication be on file at the office of the district and subject to
3 public inspection. Any published notice ordering work to be performed
4 for the district shall be mailed at the time of publication to any
5 established trade association which files a written request with the
6 district to receive such notices. The commission may, at the same
7 time and as part of the same notice, invite tenders for the work or
8 materials upon plans and specifications to be submitted by the
9 bidders.

10 (4) As an alternative to the competitive bidding requirements of
11 this section and RCW 54.04.080, a district may let contracts using
12 the small works roster process under RCW 39.04.155.

13 (5) Whenever equipment or materials required by a district are
14 held by a governmental agency and are available for sale but such
15 agency is unwilling to submit a proposal, the commission may
16 ascertain the price of such items and file a statement of such price
17 supported by the sworn affidavit of one member of the commission, and
18 may consider such price as a bid without a deposit or bond.

19 (6) Pursuant to RCW 39.04.280, the commission may waive the
20 competitive bidding requirements of this section and RCW 54.04.080 if
21 an exemption contained within RCW 39.04.280 applies to the purchase
22 or public work.

23 (7)(a) A district may procure public works with a unit priced
24 contract under this section, RCW 54.04.080, or 54.04.085 for the
25 purpose of completing anticipated types of work based on hourly rates
26 or unit pricing for one or more categories of work or trades.

27 (b) For the purposes of this section, unit priced contract means
28 a competitively bid contract in which public works are anticipated on
29 a recurring basis to meet the business or operational needs of a
30 district, under which the contractor agrees to a fixed period
31 indefinite quantity delivery of work, at a defined unit price, for
32 each category of work.

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

37 (d) Invitations for unit price bids shall include, for purposes
38 of the bid evaluation, estimated quantities of the anticipated types
39 of work or trades, and specify how the district will issue or release
40 work assignments, work orders, or task authorizations pursuant to a

1 unit priced contract for projects, tasks, or other work based on the
2 hourly rates or unit prices bid by the contractor. Where electrical
3 facility construction or improvement work is anticipated, contractors
4 on a unit priced contract shall comply with the requirements under
5 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
6 lowest responsible bidder as per RCW 39.04.010.

7 (e) Unit price contractors shall pay prevailing wages for all
8 work that would otherwise be subject to the requirements of chapter
9 39.12 RCW. Prevailing wages for all work performed pursuant to each
10 work order must be the prevailing wage rates in effect at the
11 beginning date for each contract year. Unit priced contracts must
12 have prevailing wage rates updated annually. Intents and affidavits
13 for prevailing wages paid must be submitted annually for all work
14 completed within the previous twelve-month period of the unit priced
15 contract.

16 (8) For any purchase of supplies, materials, or equipment, except
17 for public works or improvements, that are subject to competitive
18 bidding requirements under this chapter and are made during periods
19 when economic conditions have caused disruptions to relevant supply
20 chains, districts must consider product lead time in addition to
21 price when awarding contracts.

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