
SENATE BILL 5752

State of Washington

68th Legislature

2023 Regular Session

By Senator Boehnke

1 AN ACT Relating to procurement requirements for joint operating
2 agencies and their member districts; and amending RCW 43.52.560,
3 43.52.300, and 54.04.070.

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

5 **Sec. 1.** RCW 43.52.560 and 2015 c 73 s 1 are each amended to read
6 as follows:

7 Except as provided otherwise in this chapter, a joint operating
8 agency shall purchase any item or items of materials, equipment, or
9 supplies, the estimated cost of which is more than (~~fifteen thousand~~
10 ~~dollars~~) \$30,000 exclusive of sales tax, or order work for
11 construction of generating projects and associated facilities, the
12 estimated cost of which is more than (~~twenty-five thousand dollars~~)
13 \$50,000 exclusive of sales tax, by contract in accordance with RCW
14 54.04.070 and 54.04.080, which require sealed bids for contracts.

15 **Sec. 2.** RCW 43.52.300 and 1977 ex.s. c 184 s 4 are each amended
16 to read as follows:

17 An operating agency formed under RCW 43.52.360 shall have
18 authority:

1 (1) To generate, produce, transmit, deliver, exchange, purchase
2 or sell electric energy and to enter into contracts for any or all
3 such purposes((-));

4 (2) To construct, condemn, purchase, lease, acquire, add to,
5 extend, maintain, improve, operate, develop and regulate plants,
6 works and facilities for the generation and/or transmission of
7 electric energy, either within or without the state of Washington,
8 and to take, condemn, purchase, lease and acquire any real or
9 personal, public or private property, franchise and property rights,
10 including but not limited to state, county and school lands and
11 properties, for any of the purposes herein set forth and for any
12 facilities or works necessary or convenient for use in the
13 construction, maintenance or operation of any such works, plants and
14 facilities; provided that an operating agency shall not be authorized
15 to acquire by condemnation any plants, works and facilities owned and
16 operated by any city or district, or by a privately owned public
17 utility. An operating agency shall be authorized to contract for and
18 to acquire by lease or purchase from the United States or any of its
19 agencies, any plants, works or facilities for the generation and
20 transmission of electricity and any real or personal property
21 necessary or convenient for use in connection therewith((-));

22 (3) To negotiate and enter into contracts with the United States
23 or any of its agencies, with any state or its agencies, with Canada
24 or its agencies or with any district or city of this state, for the
25 lease, purchase, construction, extension, betterment, acquisition,
26 operation and maintenance of all or any part of any electric
27 generating and transmission plants and reservoirs, works and
28 facilities or rights necessary thereto, either within or without the
29 state of Washington, and for the marketing of the energy produced
30 therefrom. Such negotiations or contracts shall be carried on and
31 concluded with due regard to the position and laws of the United
32 States in respect to international agreements((-));

33 (4) To negotiate and enter into contracts for the purchase, sale,
34 exchange, transmission or use of electric energy or falling water
35 with any person, firm or corporation, including political
36 subdivisions and agencies of any state, of Canada, or of the United
37 States, at fair and nondiscriminating rates((-));

38 (5) To apply to the appropriate agencies of the state of
39 Washington, the United States or any thereof, and to Canada and/or to
40 any other proper agency for such permits, licenses or approvals as

1 may be necessary, and to construct, maintain and operate works,
2 plants and facilities in accordance with such licenses or permits,
3 and to obtain, hold and use such licenses and permits in the same
4 manner as any other person or operating unit((-));

5 (6) To establish rates for electric energy sold or transmitted by
6 the operating agency. When any revenue bonds or warrants are
7 outstanding the operating agency shall have the power and shall be
8 required to establish and maintain and collect rates or charges for
9 electric energy, falling water and other services sold, furnished or
10 supplied by the operating agency which shall be fair and
11 nondiscriminatory and adequate to provide revenues sufficient for the
12 payment of the principal and interest on such bonds or warrants and
13 all payments which the operating agency is obligated to set aside in
14 any special fund or funds created for such purposes, and for the
15 proper operation and maintenance of the public utility owned by the
16 operating agency and all necessary repairs, replacements and renewals
17 thereof((-));

18 (7) To act as agent for the purchase and sale at wholesale of
19 electricity for any city or district whenever requested so to do by
20 such city or district((-));

21 (8) To contract for and to construct, operate and maintain
22 fishways, fish protective devices and facilities and hatcheries as
23 necessary to preserve or compensate for projects operated by the
24 operating agency((-));

25 (9) To construct, operate and maintain channels, locks, canals
26 and other navigational, reclamation, flood control and fisheries
27 facilities as may be necessary or incidental to the construction of
28 any electric generating project, and to enter into agreements and
29 contracts with any person, firm or corporation, including political
30 subdivisions of any state, of Canada or the United States for such
31 construction, operation and maintenance, and for the distribution and
32 payment of the costs thereof((-));

33 (10) To employ legal, engineering and other professional services
34 and fix the compensation of a managing director and such other
35 employees as the operating agency may deem necessary to carry on its
36 business, and to delegate to such manager or other employees such
37 authority as the operating agency shall determine. Such manager and
38 employees shall be appointed for an indefinite time and be removable
39 at the will of the operating agency((-));

1 (11) To study, analyze and make reports concerning the
2 development, utilization and integration of electric generating
3 facilities and requirements within the state and without the state in
4 that region which affects the electric resources of the state(~~(-)~~);

5 (12) To acquire any land bearing coal, uranium, geothermal, or
6 other energy resources, within or without the state, or any rights
7 therein, for the purpose of assuring a long-term, adequate supply of
8 coal, uranium, geothermal, or other energy resources to supply its
9 needs, both actual and prospective, for the generation of power and
10 may make such contracts with respect to the extraction, sale, or
11 disposal of such energy resources that it deems proper(~~(-)~~); and

12 (13) To perform work on behalf of public utility districts
13 authorized by RCW 54.04.020 by having its own regularly employed
14 personnel perform any function set forth in this section without the
15 need for compliance with bidding or procurement statutes applicable
16 to districts.

17 **Sec. 3.** RCW 54.04.070 and 2019 c 434 s 7 are each amended to
18 read as follows:

19 (1) Any item, or items of the same kind of materials, equipment,
20 or supplies purchased, the estimated cost of which is in excess of
21 (~~(thirty thousand dollars)~~) \$30,000, exclusive of sales tax, shall be
22 by contract. However, a district may make purchases of the same kind
23 of items of materials, equipment, and supplies not exceeding (~~(twelve~~
24 ~~thousand dollars)~~) \$12,000 in any calendar month without a contract,
25 purchasing any excess thereof over twelve thousand dollars by
26 contract.

27 (2) Any work ordered by a district commission, the estimated cost
28 of which is in excess of (~~(fifty thousand dollars)~~) \$50,000,
29 exclusive of sales tax, shall be by contract. However, a district
30 commission may have its own regularly employed personnel or those of
31 a joint operating agency formed pursuant to chapter 43.52 RCW perform
32 work which is an accepted industry practice under prudent utility
33 management without a contract and without complying with bidding or
34 procurement statutes applicable to districts. For purposes of this
35 section, "prudent utility management" means performing work with
36 regularly employed personnel utilizing material of a worth not
37 exceeding (~~(three hundred thousand dollars)~~) \$300,000 in value
38 without a contract. This limit on the value of material being
39 utilized in work being performed by regularly employed personnel

1 shall not include the value of individual items of equipment. For the
2 purposes of this section, the term "equipment" includes but is not
3 limited to conductor, cabling, wire, pipe, or lines used for
4 electrical, water, fiber optic, or telecommunications.

5 (3) Before awarding a contract required under subsection (1) or
6 (2) of this section, the commission shall publish a notice once or
7 more in a newspaper of general circulation in the district at least
8 thirteen days before the last date upon which bids will be received,
9 inviting sealed proposals for the work or materials. Plans and
10 specifications for the work or materials shall at the time of
11 publication be on file at the office of the district and subject to
12 public inspection. Any published notice ordering work to be performed
13 for the district shall be mailed at the time of publication to any
14 established trade association which files a written request with the
15 district to receive such notices. The commission may, at the same
16 time and as part of the same notice, invite tenders for the work or
17 materials upon plans and specifications to be submitted by the
18 bidders.

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

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

28 (6) Pursuant to RCW 39.04.280, the commission may waive the
29 competitive bidding requirements of this section and RCW 54.04.080 if
30 an exemption contained within RCW 39.04.280 applies to the purchase
31 or public work.

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

36 (b) For the purposes of this section, unit priced contract means
37 a competitively bid contract in which public works are anticipated on
38 a recurring basis to meet the business or operational needs of a
39 district, under which the contractor agrees to a fixed period

1 indefinite quantity delivery of work, at a defined unit price, for
2 each category of work.

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

7 (d) Invitations for unit price bids shall include, for purposes
8 of the bid evaluation, estimated quantities of the anticipated types
9 of work or trades, and specify how the district will issue or release
10 work assignments, work orders, or task authorizations pursuant to a
11 unit priced contract for projects, tasks, or other work based on the
12 hourly rates or unit prices bid by the contractor. Where electrical
13 facility construction or improvement work is anticipated, contractors
14 on a unit priced contract shall comply with the requirements under
15 RCW 54.04.085 (1) through (5). Contracts must be awarded to the
16 lowest responsible bidder as per RCW 39.04.010.

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

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