

HOUSE BILL REPORT

HB 1174

As Reported by House Committee On:
Local Government

Title: An act relating to clarifying the contracting procedures for cities.

Brief Description: Clarifying the contracting procedures for cities.

Sponsors: Representatives Walsh, Blake and Wylie.

Brief History:

Committee Activity:

Local Government: 1/29/19, 2/6/19 [DPS].

Brief Summary of Substitute Bill

- Allows code cities, second class cities, and towns to award a bid to a bidder that was within 5 percent of the lowest bid and the bidder meets other requirements related to successfully delivering a similar project to the city within the past five years.
- Requires a city or town that awards a project to a bidder under the new allowable lowest bidder criteria to make an annual report to the Department of Commerce that includes the total number of bids awarded to minority or women contractors.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pollet, Chair; Peterson, Vice Chair; Kraft, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Appleton, Goehner and Senn.

Staff: Robbi Kesler (786-7153).

Background:

Most public entities are required to use a competitive bid process for public works projects and purchases estimated to cost above a certain dollar figure.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Second-Class Cities and Towns and Procurement of Public Works.

Second-class cities are those cities with a population of 1,500 or more that have not adopted a city charter. Towns have a population of less than 1,500 and do not operate under the Optional Municipal Code. A second class city or town may construct any public works by contract or day labor without a competitive bidding process if the estimated cost of the work does not exceed \$65,000 when more than one craft or trade is involved or \$40,000 if a single craft or trade is involved. If the cost of the public work exceeds these amounts, the work must be completed by contract subject to a competitive bidding process. Whenever possible, a city or town must invite a least one proposal from a minority or woman contractor who otherwise qualifies.

Code Cities.

Cities may incorporate as a code city under the Optional Municipal Code Title 35A RCW. The Optional Municipal Code provides an alternative to the basic statutory classification system of municipal government. It provides broad statutory home rule authority in matters of local concern. Any unincorporated area having a population of at least 1,500 may incorporate as a code city, and any city or town may reorganize as a code city. Code cities with populations over 10,000 may also adopt a charter.

Code cities must follow the same public works procurement process required of second class cities or towns under RCW 35.23.352.

For purchasing, code cities with a population of 20,000 follow the first class city rules under RCW 35.22.620 and code cities with a population under 20,000 follow the second class city and town rules under RCW 35.23.352.

Lowest Responsible Bidder.

Public Works Responsible Bidder Criteria references the requirements in RCW 39.04.350. Public works projects include construction, building, renovation, remodeling, alteration, repair, or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest responsive bid. In order to be considered a responsible bidder, the bidder must have:

- a certificate of registration at the time of bid submission;
- a current state unified business identifier number; and
- if applicable, worker's compensation coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number.

In addition, the bidder must not be currently disqualified from bidding on any public works contracts.

The lowest responsible bidder criteria was amended in 2017, with an effective date of July 1, 2019, to include the requirements that the contractor cannot have been cited by the Department of Labor and Industries (L&I) for having willfully violated: (1) wage payment requirements; (2) minimum wage rate payments; and (3) proper wage deductions for benefits and contributions. Additionally, the bidder must submit a signed statement of being in compliance with the L&I and wage requirements before the contract is awarded.

Summary of Substitute Bill:

The definition of "lowest responsible bidder" for a public works contract procedures for code cities, second-class cities, and towns is amended. A "lowest responsible bidder" must meet all requirements in RCW 39.04.350 and:

- be the lowest bidder; or
- have submitted a bid within 5 percent of the lowest bid and have delivered at least one project of similar size and scope within the last five years for the city that was on time, within budget, and according to required specifications, and not delivered a project to the city within the last five years that was late, over budget, or did not meet specifications.

A city or town that awards a project to a bidder under the new allowable lowest bidder criteria is required to submit an annual report to the Department of Commerce identifying the total number of bids awarded to minority or women contractors.

Substitute Bill Compared to Original Bill:

The substitute bill requires a city or town that awards a project to a bidder under the new allowable lowest bidder criteria to make an annual report to the Department of Commerce that includes the total number of bids awarded to minority or women contractors.

Appropriation: None.**Fiscal Note:** Available.**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.**Staff Summary of Public Testimony:**

(In support) This bill would allow smaller cities the option to consider a bid that is nearly as low as the lowest bid if that bidder has a good work history. The smaller cities can reasonably assume the project will be on time and that project overruns will not be a major problem. Sometimes, a low bidder is not up for the job and can make the project run over time and over budget. Local jurisdictions of smaller cities should be allowed to bring in contractors they know have a good record. The 5 percent guard-rail makes sure the bid is close, to prevent sweetheart deals. This would add rationality to the bidding process.

(Opposed) None.

Persons Testifying: Representative Walsh, prime sponsor; Steve Taylor, City of Kelso; Michael Kardas, City of Kelso; and Josh Weiss, Cities of Port Orchard, SeaTac, and Pasco.

Persons Signed In To Testify But Not Testifying: None.