

HOUSE BILL REPORT

SHB 1621

As Passed Legislature

Title: An act relating to standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Brief Description: Concerning standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Ryu, Duerr, Pollet, Kloba and Senn).

Brief History:

Committee Activity:

Local Government: 2/1/23, 2/10/23 [DPS].

Floor Activity:

Passed House: 3/3/23, 97-0.

Senate Amended.

Passed Senate: 4/11/23, 49-0.

House Concurred.

Passed House: 4/13/23, 96-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Increases the limit for contracts that require competitive bidding to \$150,000 if two or more trades are involved, or to \$75,000 if only one trade is involved.
- Allows current employees of first-class cities, second-class cities, water-sewer districts, and fire protection districts to perform work under \$300,000 in value without a contract if doing so is accepted industry practice.
- Provides a standard definition of "lowest responsible bidder" for public utility districts, cities, towns, water-sewer districts, and fire protection

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

districts.

- Requires the Capital Projects Advisory Review Board to review the provisions and make recommendations to the Legislature by December 31, 2023.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Duerr, Chair; Alvarado, Vice Chair; Goehner, Ranking Minority Member; Jacobsen, Assistant Ranking Minority Member; Berg, Griffey and Riccelli.

Staff: Elizabeth Allison (786-7129).

Background:

Public Works.

Public work is all work, construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality.

Every city, county, town, port district, district, or other public agency authorized to execute public work must follow specified requirements for competitive bidding for public works projects. Specific requirements vary by the type of municipality and certain exemptions are provided.

Small Works Roster.

State agencies and local governments may create a small works roster of contractors for certain work estimated to cost \$350,000 or less. Bids may be solicited from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder. However, if the estimated cost of the work is from \$150,000 to \$300,000, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. Notice may be given by newspaper, mail, or electronically.

Limited Public Works Projects.

In lieu of the small works roster process, state agencies and local governments may award a contract for certain public works projects estimated to cost less than \$50,000 by soliciting bids from a minimum of three contractors from the appropriate small works roster, and must award the contract to the lowest responsible bidder. After an award is made, the quotations must be open to public inspection and available by electronic request.

Lowest Responsible Bidder.

State law requires local agencies to award public works contracts to a responsible bidder with the lowest responsive bid, otherwise referred to as the lowest responsible bidder. Responsive bids are bids submitted on time with all of the information the agency requested. A responsible bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;
- have industrial insurance and workers' compensation coverage;
- have an Employment Security Department account;
- have a state excise tax registration number;
- not be disqualified from bidding because of a violation relating to registration, license, or wages;
- not have any apprenticeship violations, if applicable;
- have received training on prevailing wage and public works requirements; and
- within a three-year period immediately preceding the date of the bid solicitation, not have been determined by the Department of Labor and Industries or through a civil judgment to have willfully violated labor laws.

Public Utility Districts.

A public utility district (PUD) is a type of special purpose district authorized for the purpose of generating and distributing electricity, providing water and sewer services, and providing telecommunications services. A PUD is governed by a board of either three or five elected commissioners. A PUD is authorized to establish rates and charges for providing water and sewer services.

A PUD must contract for:

- any items of similar materials, equipment, or supplies estimated to cost more than \$30,000;
- any items of similar materials, equipment, or supplies estimated to cost more than \$12,000, if purchased within a single calendar month; and
- any work ordered by a district commission estimated to cost more than \$50,000.

Contracts are not required for work accepted as an industry practice under prudent utility management. 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 does not include the value of individual items of equipment.

Unit price contractors must pay prevailing wages for all public works. Prevailing wage rates must be those in effect at the beginning date of 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 12-month period of the unit priced contract.

Water-Sewer Districts.

Water-sewer districts provide water and sewer services to incorporated and unincorporated areas. District powers include the authority to purchase, construct, maintain, and supply waterworks to furnish water to inhabitants, and to develop and operate systems of sewers and drainage. Districts may also fix rates and charges for services, enter into contracts, levy taxes, and issue bonds. Generally, districts must solicit bids and award contracts for all work estimated to cost over \$50,000.

First-Class Cities.

Generally, a first-class city may have public works performed by contract following public notice and a call for competitive bids. City employees may perform public works costing 10 percent or less of the city's public works construction budget. Any cost in excess of the allowable 10 percent is deducted from the otherwise permitted amount of public works that may be performed by public employees in the city's next budget period.

In addition to the percentage limitation, a first-class city must contract for public works with a competitive bidding process if:

- the estimated cost is more than \$150,000 and involves more than one craft or trade; or
- the estimated cost is more than \$75,500 and involves a single craft or trade or the public work is street signalization or street lighting.

Second-Class Cities or Towns.

A second-class city or town may contract for public works without a competitive bidding process if:

- the estimated cost is \$116,155 or less and involves more than one craft or trade; or
- the estimated cost is \$75,500 or less and involves a single craft or trade or the public work is street signalization or street lighting.

Any purchase of supplies, material, or equipment that exceeds \$7,500 must be done through competitive bidding. This requirement does not apply to public work or improvements.

If a second-class city or town issues a written finding that the lowest bidder has delivered a project to the city within the last three years that 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 5 percent of the lowest bid and meets the same criteria as the lowest bidder. 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. Any second-class city or town that awards a project to the second-lowest bidder 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 describe how notice was provided to potential certified minority or women contractors.

Fire Protection Districts.

A fire protection district is a type of special purpose district created to provide fire prevention, fire suppression, and emergency medical services within a district's boundaries, which can include incorporated and unincorporated areas. A formal sealed bid procedure must be used for purchases and contracts for purchases made by the board of commissioners. Formal sealed bidding is not required for:

- the purchase of materials when such materials, equipment, or supplies have an estimated cost not exceeding \$40,000; however, whenever the estimated cost does not exceed \$75,000, the commissioners may by resolution use the alternative bidding process available for municipalities;
- contracting for work involving the construction or improvement of a fire station or other buildings where the estimated cost does not exceed \$30,000;
- contracts using the small works roster process; and
- any contract for purchases or public work which are exempt from competitive bidding requirements.

Capital Projects Advisory Review Board.

The Capital Projects Advisory Review Board, in the Department of Enterprise Services, provides evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and advises the Legislature on policies related to public-works delivery methods and alternative public works contracting procedures.

Summary of Substitute Bill:

A definition of "lowest responsible bidder" is added for public utility districts, water-sewer districts, and fire protection districts.

Public Utility Districts.

The amount for which any work ordered by a PUD commission must be by contract is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

Water-Sewer Districts.

The amount for work for which water-sewer districts must solicit bids and award contracts is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

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.

First-Class Cities.

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.

Second-Class Cities.

The amount for which a second-class city may contract for public works that involve more than one craft or trade without a competitive bidding process is increased from \$116,155 to \$150,000. Any purchase of supplies, material, or equipment, except for public works improvements, with an estimated cost over \$40,000 must be by contract. Any purchase of materials, supplies, or equipment with an estimated cost of less than \$50,000 must be made using the process for limited public works projects.

Any second-class city or town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract.

Fire Protection Districts.

The amount for projects and materials for which formal sealed bids are not required is increased from \$40,000 to \$75,500. The amount for projects for which the limited public works process may be used is increased from \$75,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

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.

Capital Projects Advisory Review Board.

The Capital Projects Advisory Review Board is required to review the provisions of this act and make recommendations to the Legislature by December 31, 2023. The provisions of the act become effective on June 30, 2024, after this review has taken place.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The bill is taking existing statutes for first-class and second-class cities and public utility districts and applying them to other districts. This allows them to better serve customers in a timely and efficient manner. It puts water-sewer providers on an equal playing field with other districts and cities for doing in-house work. This standardizes services across the board.

Among other items, this bill allows special districts to accept the second lowest bidder if the first lowest bidder completed a project in the last three years and it did not meet expectations. It aligns districts and second-class cities with first-class cities by expanding the amount for projects that can be done in-house.

There are a great number of employees retiring and the more practice existing crews can get the better.

(Opposed) None.

Persons Testifying: Joren Clowers, Washington Association of Sewer and Water Districts; and Diane Pottinger and Max Woody, North City Water District.

Persons Signed In To Testify But Not Testifying: None.