
Local Government Committee

ESSB 5418

Brief Description: Concerning local government procurement modernization and efficiency.

Sponsors: Senate Committee on Local Government (originally sponsored by Senators Takko, Zeiger and Lias).

Brief Summary of Engrossed Substitute Bill

- Allows counties and water-sewer districts to procure public works with a unit-priced contract.
- Increases the small works roster process and limited public works project cost thresholds.
- Requires a municipality soliciting competitive bids for public works to disclose all bids received if requested by a bidder.
- Changes the date by which a bidder must protest to within two business days of when a municipality discloses all bids received or, if no request is made, bid opening.
- Increases public works contract thresholds for public utility districts, second-class cities and towns, first-class cities, and fire protection districts.
- Allows a second-class city or town to award certain competitive public works contracts to a bid within 5 percent of the lowest bid until July 2022.
- Requires a Capital Projects Advisory Review Board study of local government public works contracting processes by November 1, 2020.
- Expires all provisions in the act on March 31, 2021.

Hearing Date: 3/26/19

Staff: Robbi Kesler (786-7153). Yvonne Walker (786-7841).

Background:

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.

Public Works.

"Public works" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality. All public works, including maintenance when performed by contract, must comply with prevailing wage statutes.

County employees may perform public works in an annual or biennial budget period if the work does not exceed 10 percent of the public works construction budget. Counties with a population of 400,000 or more shall not have public employees perform a public works project:

- in excess of \$90,000 if more than one single craft or trade is involved with the public works project; or
- in excess of \$45,000 if only a single craft or trade is involved.

A "public works project" means a complete project; counties are not permitted to divide the project into units of work or classes of work to avoid meeting the contract limits. The cost of a separate public works project is the cost of materials, supplies, equipment, and labor on the construction of that project.

Water-Sewer Districts.

Water-sewer districts provide water and sewer services to incorporated and unincorporated areas. Water-sewer 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. Water-sewer districts may also fix rates and charges for services, enter into contracts, levy taxes, and issue bonds. Generally, water-sewer districts must solicit bids and award contracts for all work estimated to cost over \$50,000.

Unit-Priced Contracts.

"Unit-priced contract" is defined as a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the county, under which the contractor agrees to a fixed period, indefinite quantity delivery of work, at a defined unit-price, for each category of work. Legislation enacted in 2017 and 2018 provided cities, public utility districts (PUDs), and port districts have statutory authority to enter into unit-priced contracts for public works.

Small Works Roster Process.

For public works projects estimated to cost \$300,000 or less, state agencies and local governments may use the small works roster (SWR) process to award contracts. Any responsible contractor may request to be on a SWR, which may be a single general list or may include lists for various specialties or categories of work. Under the SWR process, no advertising of such contract opportunities is required. Instead, a state agency or local government will solicit bids from all contractors who have requested to be on the appropriate SWR or from at least five of the listed contractors.

Public Utility District Bid Thresholds.

A public utility district is a type of special purpose district (SPD) that is authorized to provide electricity, water, sewer, and telecommunications services to its jurisdiction. Each PUD is governed by a board of three to five elected commissioners.

Under certain circumstances, PUDs are required to enter into contracts for the purchase of materials or work. PUDs must contract for the purchase of materials, of the same kind, when such materials, equipment, or supplies have an estimated cost exceeding \$15,000. If a PUD purchases the same kind of materials, equipment, or supplies in excess of \$7,500 in one calendar month, the excess must be purchased by contract.

Public utility districts must contract for work ordered by a PUD commission when the estimated cost exceeds \$25,000. However, a district may have its own employees perform work, which is an accepted industry practice under prudent utility, without a contract. "Prudent utility management" means performing work with regular employees utilizing materials under \$150,000 in value without a contract.

When a PUD commission is required to purchase materials or work by contract, the commission must publish notice inviting sealed proposals for the contract. The notice must be published at least 13 days before the last date upon which bids will be received. Plans and specifications for the work or materials must be on file at the PUD office at the time of publication and be subject to public inspection. The PUD may also utilize an informal vendor list process for purchases of materials of one kind worth over \$15,000, but less than \$60,000. This process requires the PUD to solicit quotations from at least three vendors on the vendor list whenever possible to assure that a competitive price is established and the contract is awarded to the lowest responsible bidder. The vendor list is established and revised by the PUD publishing a notice, at least twice a year, soliciting vendors for inclusion on the list.

Second-Class Cities and Towns and Procurement of Public Works and Lowest Responsible Bidder.

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.

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 (ESD) number, and a state excise tax registration number.

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

First-Class Cities and Public Works Contracts.

Generally, a first-class city may have public works performed by contract following public notice and 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 \$90,000 and involves more than one craft or trade; or
- the estimated cost is more than \$45,000 and involves a single craft or trade or the public works is street signalization or street lighting.

Fire Protection Districts.

A fire protection district is a type of SPD 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 \$10,000; however, whenever the estimated cost does not exceed \$50,000, 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 \$20,000;
- contracts using the SWR process; and
- any contract for purchases or public work which are exempt from competitive bidding requirements.

Alternative Bidding Process.

Municipalities are offered an alternative process for competitive bidding of purchases through a vendor list process. The process may be used only by those municipalities having statutory authorization. Statutes governing which municipalities may use the process must include the maximum dollar thresholds for contracts awarded under the process. Contracts awarded using this process do not need to be advertised.

Capital Projects Advisory Review Board.

The 2005 legislature created the Capital Projects Advisory Review Board (CPARB) to review alternative public works contracting procedures and provide guidance to state policymakers on ways to further enhance the quality, efficiency and accountability of public works contracting methods.

Summary of Bill:

Unit-Priced Contracts - Counties and Water-Sewer Districts.

A county and a water-sewer district may procure public works with a unit-priced contract to complete anticipated types of work based on hourly rates or unit-pricing for one or more categories of work or trades. "Unit-priced contract" is defined as a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs

of a county or a water-sewer district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit-price, for each category of work. Although an initial contract term may not exceed three years, water-sewer districts may extend or renew a contract for one additional year.

Invitations for unit-price bids must include the following information:

- estimated quantities of the anticipated types of work or trades; and
- how the county or a water-sewer district will issue or release work assignments, work orders, or task authorizations for projects based on the hourly rates or unit-prices bid by the contractor.

Whenever possible, a county or a water-sewer district must invite at least one proposal from a minority or woman contractor. Contracts must be awarded to the lowest responsible bidder. Unit-price contractors must pay prevailing wages for all public works that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work must be the rates in effect at the beginning date for each contract year. Unit-priced contracts must have prevailing wage rates updated annually.

County - Contracts.

All counties may establish by resolution a purchasing department to enter into personal property leases on a competitive basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county.

Small Works Roster.

State agencies and local governments may use the SWR process for projects estimated to cost \$500,000 or less. Governments may choose to solicit bids from less than all the appropriate contracts on an appropriate SWR for projects estimated to cost between \$150,000 and \$500,000.

Limited Public Works Projects.

State agencies and local governments may award a contract for certain work, construction, alteration, repair, or improvement projects estimated to cost less than \$50,000 by soliciting bids from a minimum of three contractors from the appropriate SWR.

Public Works Contracts - Protests.

A municipality soliciting competitive bids for a public works project must provide copies of bids received if requested to do so. A bidder must now submit a written protest to a municipality soliciting bids within two business days of the municipality disclosing all bids received or, if no request is made, bid opening.

Public Utility District Bid Thresholds.

Contract thresholds for when competitive bidding is required for PUDs are increased as follows:

- 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 PUD commission estimated to cost more than \$50,000.

"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, regardless of whether they are purchased or acquired and used as one unit of a project. "Equipment" is defined to include a conductor, cabling, wire, pipe, or lines used for electrical, water, fiber optic, or telecommunications.

Prevailing wage rates must be those in effect at the beginning date for 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.

Second-Class Cities and Towns and Procurement of Public Works and Lowest Responsible Bidder.

Until July 28, 2022, as an alternative to awarding competitive public works contracts to the lowest responsible bidder, second-class cities may award the contract to a responsive bid that meets responsible bidder criteria and is within 5 percent of the lowest bid. Additionally, the bidder must have delivered at least one project of similar size and scope within the last five years for the city on time, within budget, and according to required specifications; and not have delivered a project to the city within the last five years that was late, over budget, or did not meet specifications.

Cities - Public Works Contracts.

Contract thresholds for when competitive bidding is required for a first-class city, second-class city, or town are increased as follows:

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

Fire Protection Districts.

Contract thresholds for when competitive bidding is required for a fire protection district are increased as follows:

- the estimated cost exceeds \$40,000;
- the estimated cost exceeds \$75,000, when using the alternative bidding process; and
- the estimated cost exceeds \$30,000, when contracting for work involving the construction or improvement of a fire station or other buildings.

Capital Projects Advisory Review Board Study.

The Capital Projects Advisory Review Board must review the public works contracting processes for local governments, including the SWR and limited public works processes, and report to the governor and appropriate committees of the Legislature by November 1, 2020. The report must include the following:

- identification of the most common contracting procedures used by local governments;
- identification of the dollar amounts set for local government public works contracting processes;
- analysis of whether the dollar amounts comport with estimated project costs within the relevant industries;
- an analysis of the potential application of an inflation-based increaser to the dollar amounts;

- recommendations to increase uniformity and efficiency for local government public works contracting processes; and
- rates of and barriers to participation in the SWR and limited public works contracting processes.

This Act expires on March 31, 2021.

Appropriation: None.

Fiscal Note: Requested on March 21, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.