

FINAL BILL REPORT

ESSB 5418

PARTIAL VETO C 434 L 19 Synopsis as Enacted

Brief Description: Concerning local government procurement modernization and efficiency.

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

Senate Committee on Local Government House Committee on Local Government

Background: County–Contracts. Counties with a population of 400,000 or more 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. Counties must also generally contract on a competitive basis for public works except that regular county employees may perform public works of up to 10 percent of the public works construction budget.

Small Works Roster. State agencies and local governments may create a small works roster of contractors for certain work estimated to cost \$300,000 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 work, construction, alteration, repair, or improvement projects estimated to cost less than \$35,000 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.

Public Works Contracts–Protests. Unless an exception applies, all municipalities must contract for the execution of public works after advertisement and competitive bid or by a contract awarded under the small works roster process. Generally, municipality means every

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city, county, town, port district, district, or other public agency authorized by law to require the execution of public work.

If a municipality receives a written protest from a bidder within two business days of a bid opening, the municipality may not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of the municipality's intent to execute a contract for the project.

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. PUDs are governed by a board of either three or five elected commissioners. PUDs are authorized to establish rates and charges for providing water and sewer services.

Public Utility Districts and Contracts. PUDs must contract for the following:

- any items of similar materials, equipment, or supplies estimated to cost more than \$15,000;
- any items of similar materials, equipment, or supplies estimated to cost more than \$7,500, if purchased within a single calendar month; and
- any work ordered by a district commission estimated to cost more than \$25,000.

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 \$150,000 in value without a contract. This limit does not include the value of individual items of equipment purchased or acquired and used as one unit of a project.

Unit price contractors must pay prevailing wages for all public works. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

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.

Second Class Cities or Towns and Public Works Contracts. A second class city or town may contract for public works without a competitive bidding process if:

- the estimated cost is \$65,000 or less and involves more than one craft or trade; or
- the estimated cost is \$40,000 or less and involves a single craft or trade or the public works is street signalization or street lighting.

All other public works contracts must be entered into following either a competitive bidding process or the small works roster process.

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. Responsible bidders must meet a number of mandatory criteria:

- 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 from a violation relating to registration, license, or wages;
- not have any apprenticeship violations, if applicable; and
- certify through a sworn statement that they are not a willful violator of labor laws within the past three years.

Responsible bidders must also choose to:

- have received training, provided by the Department of Labor and Industries (L&I) or by a provider whose curriculum has been approved by L&I, on the requirements related to public works and prevailing wages; or
- have completed three or more public works projects and maintained a valid business license in Washington for at least three years.

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 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 \$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 small works roster 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.

Office of Minority and Women's Business Enterprises. The Office of Minority and Women's Business Enterprises (OMWBE) is the sole authority in Washington for certifying minority, women-owned, and socially and economically disadvantaged business enterprises. Certified business enterprises are listed in the OMWBE database. Cities, counties, state agencies, transportation, and educational institutions use the database to source small and diverse firms for potential contracting opportunities.

Summary: 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.

Unit Priced Contracts. Every public body, including county public transportation authorities, public transportation benefit areas, regional transit authorities, counties, and water-sewer districts 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 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 one year, 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 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 district must invite at least one proposal from a certified 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.

Small Works Roster. State agencies and local governments may use the small works roster process for projects estimated to cost \$350,000 or less. Governments may choose to solicit bids from less than all the appropriate contracts on an appropriate small works roster for projects estimated to cost between \$250,000 and \$350,000. After an award is made, bid

quotations must be made available after either telephonic or electronic request. State agencies and local governments using the small works roster process may waive public improvement contract retainage requirements to assume liability for unpaid wages and taxes, but will still retain rights of recovery against the contractor for payments made on the contractor's behalf.

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 small works roster. These bids must be solicited equitably among contractors willing to perform in the geographic area of the work. State agencies and local governments using the limited public works projects process may waive performance bond and public improvement contract retainage requirements to assume liability for unpaid wages and taxes, but will still retain rights of recovery against the contractor for payments made on the contractor's behalf. The limited public works projects process may be used to solicit bids from minibusinesses and microbusinesses.

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 Districts. 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 district 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 or Towns—Lowest Responsible Bidder. 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 shall invite at least one proposal from a certified minority or woman contractor who shall otherwise qualify 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.

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 \$150,000 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 small works roster 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, taking regional factors into consideration;
- recommendations to increase uniformity and efficiency for local government public works contracting processes; and
- rates of and barriers to participation in the small works roster and limited public works contracting processes.

"Local governments" refers to all counties, cities, towns, other political subdivisions, and special purpose districts. This study is subject to appropriated funds.

Office of Minority and Women's Business Enterprises. The definition of "contractor" is added as "an individual or entity granted state certification and awarded either a direct contract with an agency or an indirect contract as a subcontractor to perform a service or provide goods." Other technical corrections are made.

Alternative Bid Procedure. Cost thresholds for when the alternative bid procedure may be used for purchases is increased from between \$15,000 and \$60,000 per calendar month to between \$30,000 and \$120,000 per calendar month.

Irrigation Districts. In addition to publishing notices soliciting bids for district canal construction projects in newspapers, an irrigation district must also post notices on its website, or the county's website if the district does not have a website. Irrigation districts are granted express authority to use the small works roster process.

Votes on Final Passage:

Senate	45	3	
House	76	22	(House amended)
Senate	40	7	(Senate concurred)

Effective: July 28, 2019

Partial Veto Summary:

- Removed a section allowing irrigation districts to publish notice calling for public works contract proposals on a website and to contract using the small works roster process.