

HOUSE BILL REPORT

ESB 5017

As Passed House:

March 4, 2022

Title: An act relating to clarifying school district procurement requirements for personal service contracts for construction management, value engineering, constructibility review, and building commissioning.

Brief Description: Clarifying school district procurement requirements for service contracts for construction management, value engineering, constructibility review, and building commissioning.

Sponsors: Senators Wellman, Honeyford, Mullet and Wilson, C..

Brief History:

Committee Activity:

Capital Budget: 3/16/21, 3/31/21 [DPA], 2/25/22, 2/28/22 [DP].

Floor Activity:

Passed House: 3/4/22, 96-2.

Brief Summary of Engrossed Bill

- Modifies the list of school district purchases that require public notification and bidding to include construction work by a contractor who meets the public works responsible bidder criteria, rather than "other work" generally.
- Provides an enumerated list of services that are not "construction work" and requires that such services meet certain procurement requirements, beginning January 1, 2023.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 22 members: Representatives Tharinger, Chair;

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.

Callan, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman, Dye, Eslick, Gilday, Kloba, Kraft, Leavitt, MacEwen, Maycumber, Mosbrucker, Peterson, Riccelli, Rule, Santos, Sells, Shewmake and Volz.

Staff: John Wilson-Tepeli (786-7115).

Background:

School District Bid Requirements.

When the estimated cost of furniture, supplies, equipment, building, improvements, repairs, or other work or purchases exceeds a certain threshold, a school district must follow a public notification and bidding process. The contract for the work or purchase must be awarded to the lowest responsible bidder after considering the following:

- the ability, capacity, and skill of the bidder to perform the contract;
- the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- whether the bidder can perform the contract within the time frame required;
- the quality of performance from previous contracts;
- the bidder's past compliance with state law regarding contracts and with state wage payment laws; and
- other relevant information.

Responsible Bidder Criteria.

A contractor bidding on a public works project must meet certain responsible bidder criteria, to be awarded a public works contract. To be a responsible bidder, the bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;
- have applicable industrial insurance coverage, an Employment Security Department number, and a state excise tax registration number;
- not be disqualified from bidding due to previous noncompliance with registration or prevailing wage requirements;
- not have been found out of compliance with certain apprenticeship requirements if the project is subject to apprenticeship utilization requirements; and
- meet various training requirements for public works and prevailing wage.

Summary of Bill:

The list of school district purchases that require public notification and bidding is modified to include construction work by a contractor who meets the public works responsible bidder criteria, where previously it included "other work" generally.

"Construction work" does not include construction management services, value engineering, constructability review, building commissioning, and other construction-

related professional and personal services. Beginning January 1, 2023, these enumerated services, which are not included in the definition of "construction work," are subject to the following requirements:

- requests for proposals or qualifications, advertisements, bids, or calls for bids for such services must include the standard clauses required by the Office of Minority and Women's Business Enterprises;
- requests for proposals or qualifications, advertisements, bids, or calls for bids for such services are subject to the alternative public works procurement requirements or architectural and engineering service contract requirements, as applicable to the method of delivery; and
- school districts may use interlocal agreements to procure such services only if the agreements are executed following a competitive, qualification-based procurement process pursuant to the alternative public works procurement requirements or architectural and engineering service contract requirements.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) School districts go through a standard request for proposal process to hire professional architectural and engineering services; however, a recent Attorney General Opinion interpreted that these professional services must go through the public bidding process. This is a cleanup bill to clarify the statute's intent and codify a historic practice that certain professional services are outside the lowest responsible bidding requirements. The bill does not alter the standard of the competitive bid process.

Going through the request for proposal process can help support local contractors working in a region. This process is also supportive of local control. The request for qualification process is important to school districts because it helps districts access the expertise they need as opposed to selecting someone based on low bid. This process leads to the best outcomes for students and the current economic model supports the continuation of the current practice. The request for proposal process results in the highest quality service, projects, and return on investment of public funds. Small and medium-sized districts benefit from this process as they generally lack the expertise to manage and develop projects on their own.

Educational service districts have been unilaterally creating and operating their own construction services groups. It is not clear why the educational service districts need to provide services that are already provided by the private sector. School districts have not

been required to procure these services through an open process. While there are remaining concerns regarding educational service districts providing construction services in competition with the private sector, the bill in its current form would at least require school districts to procure these services on a competitive basis.

(Opposed) None.

Persons Testifying: Peter Keithly; Marissa Rathbone, Washington State School Directors' Association and School Funding Coalition; Martin Brewer, Port Angeles School District; Linda Quinn; Tim Jewett, Dykeman Architecture and Design; Scott Westlund, Kelso School District; and Andrew Kelly, North Beach School District.

Persons Signed In To Testify But Not Testifying: None.