

# HOUSE BILL REPORT

## ESSB 6143

---

### As Reported by House Committee On: Local Government

**Title:** An act relating to clarifying the authority and procedures for unit priced contracting by cities.

**Brief Description:** Concerning unit priced contracting by cities.

**Sponsors:** Senate Committee on Local Government (originally sponsored by Senator Takko).

#### **Brief History:**

##### **Committee Activity:**

Local Government: 2/15/18, 2/22/18 [DP].

#### **Brief Summary of Engrossed Substitute Bill**

- Allows a city or town to procure public works with a unit-priced contract and establishes bidding and other procedures for such contracts.

---

### HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** Do pass. Signed by 4 members: Representatives Appleton, Chair; McBride, Vice Chair; Gregerson and Peterson.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Pike, Assistant Ranking Minority Member; Taylor.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Griffey, Ranking Minority Member.

**Staff:** Cassie Jones (786-7303).

#### **Background:**

##### 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, or which is by

---

*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.*

law a lien or charge on any property in the jurisdiction. All public works, including maintenance when performed by contract, must comply with prevailing wage statutes.

#### Prevailing Wages on Public Works.

The hourly wages to be paid to workers on all public works and under all public building service maintenance contracts of the state, county, municipality, or political subdivision must not be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed. The prevailing rate of wage is the rate of hourly wage, usual benefits, and overtime paid in the locality to the majority of workers in the same trade or occupation. Contractors and subcontractors on public works projects must submit to the awarding agency an "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid. An awarding agency may not release payment of sums due on account of a public works contract until an affidavit is submitted.

#### 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.

#### First-Class Cities and Procurement of Public Works.

First-class cities are those cities with a population of 10,000 or more that have adopted a city charter. Generally, a first-class city may have public works performed by contract following public notice and a call for competitive bids. Public 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. Once the 10 percent cap is reached, all remaining public works must be performed by contract following a competitive bidding process. In addition, public employees may not perform a public works project in excess of \$90,000 if more than a single craft or trade is involved or a project in excess of \$45,000 if only a single craft or trade is involved. In lieu of competitive bidding procedures, a city may let contracts using the SWR process. Whenever possible, a city must invite a least one proposal from a minority or woman contractor who otherwise qualifies.

#### 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. In lieu of competitive bidding, a city or town may let contracts using the SWR process. Whenever possible, a city or town must invite a least one proposal from a minority or woman contractor who otherwise qualifies.

---

**Summary of Bill:**

A city or town 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 the city or town, under which the contractor agrees to a fixed period, indefinite quantity delivery of work, at a defined unit price, for each category of work. An initial contract term may not exceed three years, and cities or towns 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.

Contracts must be awarded to the lowest responsible bidder. Whenever possible, the city or town must invite at least one proposal from a minority or woman contractor who otherwise qualifies.

Unit-price contractors must pay prevailing wages for all public works that are otherwise subject to prevailing wage requirements under existing statutes. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit-priced contracts must have prevailing wage rates updated annually. An "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid must be submitted annually for all work completed within the previous 12-month period of the unit-priced contract.

---

**Appropriation:** None.

**Fiscal Note:** Not requested.

**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) There is concern that unit-priced contracting may not be legal, according to the State Auditor, and jurisdictions would like to keep doing it. These contracts are appropriate for projects such as repairs that will be needed but are unpredictable, such as a broken piling or damage from a storm. This bill allows for greater efficiency and flexibility in completing projects, especially in an emergency. It would also ease administrative burdens on cities.

(Opposed) None.

**Persons Testifying:** Senator Takko, prime sponsor; Jane Wall, Association of Washington Cities; and Hannah Jones, City of Tacoma.

**Persons Signed In To Testify But Not Testifying:** None.