

ESSB 5418 - H AMD TO LG COMM AMD (H-2648.1/19) **737**
By Representative Pollet

ADOPTED 04/16/2019

1 Beginning on page 2, line 24, after "section" strike all material
2 through "specifications" on page 3, line 3, and insert ", 'lowest
3 responsible bidder" means a bid that meets the criteria under RCW
4 39.04.350 and has the lowest bid; provided, that if the city issues a
5 written finding that the lowest bidder has delivered a project to the
6 city within the last three years which was late, over budget, or did
7 not meet specifications, and the city does not find in writing that
8 such bidder has shown how they would improve performance to be likely
9 to meet project specifications then the city may choose the second
10 lowest bidder whose bid is within five percent of the lowest bid and
11 meets the same criteria as the lowest bidder"

12 On page 8, at the beginning of line 36, strike "~~((may))~~ must" and
13 insert "may"

14 On page 9, line 33, strike "retainage" and insert "contract"

15 On page 11, line 11, after "Equitably" strike "distributes" and
16 insert "distribute opportunities"

17 Beginning on page 31, line 15, strike all of section 16 and
18 insert the following:

19 "NEW SECTION. Sec. 16. (1) The legislature finds that there are
20 hundreds of local governments and special purpose districts and due
21 to their existing authority and structure, partial legislative
22 measures are introduced each year to amend the procurement thresholds
23 for each individual entity. Therefore the legislature intends to
24 require a comprehensive review of all local government bid limits for
25 public works projects and purchases, including the small works roster
26 and limited public works processes, rather than amend procurement
27 rules and contract thresholds on a case-by-case basis.

28 (2) Subject to funds appropriated for this purpose, the capital
29 projects advisory review board must review the public works
30 contracting processes for local governments, including the small

1 works roster and limited public works processes provided in RCW
2 39.04.155, and report to the governor and appropriate committees of
3 the legislature by November 1, 2020. The report must include the
4 following:

5 (a) Identification of the most common contracting procedures used
6 by local governments;

7 (b) Identification of the dollar amounts set for local government
8 public works contracting processes;

9 (c) Analysis of whether the dollar amounts identified in (b) of
10 this subsection comport with estimated project costs within the
11 relevant industries;

12 (d) An analysis of the potential application of an inflation-
13 based increaser, taking regional factors into consideration, to the
14 dollar amounts identified in (b) of this subsection, for example:

15 (i) Applying the implicit price deflator for state and local
16 government purchases of goods and services for the United States as
17 published by the bureau of economic analysis of the federal
18 department of commerce; and

19 (ii) Adjusting the bid limit dollar thresholds for inflation, on
20 a regional basis, by the building cost index during that time period;

21 (e) Recommendations to increase uniformity and efficiency for
22 local government public works contracting and procurement processes;

23 (f) Rates of participation of all contractor types, including
24 qualified minority and women-owned and controlled businesses, in the
25 small works roster and limited public works contracting processes;
26 and

27 (g) Barriers to improving the participation rate in the small
28 works roster and limited public works contracting processes.

29 (3) For purposes of this section:

30 (a) "Local governments" refers to all counties, cities, towns,
31 other political subdivisions, and special purpose districts.

32 (b) "Building cost index" means the building cost index for
33 Seattle, Washington, compiled by engineering news record, a
34 nationally recognized professional construction trade periodical. The
35 building cost index uses average skilled construction labor rates,
36 structural steel, concrete, and lumber as the basis of measurement."

37 Correct the title.

EFFECT: (1) Redefines "lowest responsible bidder" as the person with the lowest bid. However, authorizes a city to award the contract to the second lowest bidder (whose bid is within 5% of the lowest bid) if the city finds in writing that the lowest bidder has delivered a project to the city within the last 3 years that was late, over budget, or not meeting specifications and has not shown how they would improve performance to be likely to meet project specifications.

(2) Restores the statutory language to current law, relating to the small works roster, and as a result, authorizes local governments to solicit bids from all contractors who have requested to be on the appropriate small works roster or from at least five of the listed contractors who have indicated the capability of performing the kind of work being contracted.

(3) Eliminates the provisions that: (a) Required the Office of Financial Management (OFM) to adjust the bid limit thresholds (for inflation) for public works contracting processes and purchases, based upon changes in the consumer price index during that time period; and (b) required OFM to calculate the new dollar thresholds and transmit them to the Code Reviser for publication in the Washington State Register.

(4) Adds provisions that require the Capital Projects Advisory Review Board, subject to appropriation, to review the public works contracting processes for local governments, including the small works roster (SWR) and limited public works processes, and report to the Governor and the Legislature by November 1, 2020. Requires the report to include the following:

(a) Identification of the most common contracting procedures used by local governments;

(b) Identification of the dollar amounts set for local government public works contracting processes;

(c) Analysis of whether the dollar amounts comport with estimated project costs within the relevant industries;

(d) An analysis of the potential application of an inflation-based increaser to the dollar amounts, such as by: (i) Applying the implicit price deflator for government purchases of goods and services; and (ii) adjusting the bid limit thresholds for inflation, on a regional basis, by the building cost index during that time period;

(e) Recommendations to increase uniformity and efficiency for local government public works contracting processes; and

(f) Rates of and barriers to participation in the SWR and limited public works contracting processes.

(5) Defines building cost index to mean the building cost index for Seattle, Washington, compiled by engineering news record, a nationally recognized professional construction trade periodical. The building cost index uses average skilled construction labor rates, structural steel, concrete, and lumber as the basis of measurement.

(6) Makes other technical corrections and clarifications.

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