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## Local Government Committee

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### HB 1174

**Brief Description:** Clarifying the contracting procedures for cities.

**Sponsors:** Representatives Walsh, Blake and Wylie.

#### Brief Summary of Bill

- Allows code cities, second-class cities, and towns to award a bid to the bidder that was within 5 percent of the lowest bid and the bidder meets other requirements related to successfully delivering a similar project to the city within the past five years.

**Hearing Date:** 1/29/19

**Staff:** Robbi Kesler (786-7153).

#### **Background:**

Most public entities are required to use a competitive bid process for public works projects and purchases estimated to cost above a certain dollar figure.

#### 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. Whenever possible, a city or town must invite a least one proposal from a minority or woman contractor who otherwise qualifies.

#### Code Cities.

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Cities may incorporate as a code city under the Optional Municipal Code Title 35A RCW. The Optional Municipal Code provides an alternative to the basic statutory classification system of municipal government. It provides broad statutory home rule authority in matters of local concern. Any unincorporated area having a population of at least 1,500 may incorporate as a code city, and any city or town may reorganize as a code city. Code cities with populations over 10,000 may also adopt a charter.

Code cities must follow the same public works procurement process required of second-class cities or towns under RCW 35.23.352.

For purchasing, code cities with a population of 20,000 follow the first-class city rules under RCW 35.22.620 and code cities with a population under 20,000 follow the second-class city and town rules under RCW 35.23.352.

#### Lowest Responsible Bidder.

Public Works Responsible Bidder Criteria references the requirements in 39.04.350 RCW. 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 number, and a state excise tax registration number.

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

The lowest responsible bidder criteria was amended in 2017, with an effective date of July 1, 2019, to include the requirements that the contractor cannot have been cited by the Department of Labor and Industries (DOL) for having willfully violated: (1) wage payment requirements; (2) minimum wage rate payments; and (3) proper wage deductions for benefits and contributions. Additionally, the bidder must submit a signed statement of being in compliance with the DOL and Industries wage requirements before the contract is awarded.

#### **Summary of Bill:**

The definition of "lowest responsible bidder" for a public works contact procedures for code cities, second-class cities, and towns is amended. A "lowest responsible bidder" must meet all requirements in 39.04.350 RCW, and:

- be the lowest bidder; or
- have submitted a bid within five percent of the lowest bid and have delivered at least one project of similar size and scope within the last five years for the city that was on time, within budget, and according to required specifications and not delivered a project to the city within the last five years that was late, over budget, or did not meet specifications.

**Appropriation:** None.

**Fiscal Note:** Available.

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