

# SENATE BILL REPORT

## SB 5225

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As of January 30, 2019

**Title:** An act relating to clarifying the contracting procedures for cities.

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

**Sponsors:** Senators Takko and Short.

**Brief History:**

**Committee Activity:** Local Government: 1/29/19.

**Brief Summary of Bill**

- Allows a second-class city, town, or code city to award a competitive public works contract to a bid within 5 percent of the lowest bid, if it meets certain supplemental criteria.

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### SENATE COMMITTEE ON LOCAL GOVERNMENT

**Staff:** Greg Vogel (786-7413)

**Background:** Cities. Cities in Washington are municipal corporations classified according to their population at the time of organization. There are four classification types: first-class city, second-class city, town, or code city. First-class cities are those cities with a population of 10,000 or more that have adopted a city charter, while second class cities are those cities with a population of 1500 or more that have not adopted a city charter. Towns are smaller municipalities that have a population of less than 1500. Code cities are those cities with a population of 1500 or more that operate under the Optional Municipal Code, which grants broad home rule powers.

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 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. 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.

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*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.*

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;
- 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/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.

**Summary of Bill:** As an alternative to awarding competitive public works contracts to the lowest responsible bidder, second-class cities, towns, and code cities may award the contract to a responsive bid that meets responsible bidder criteria and is within 5 percent of the lowest bid. Additionally, the bidder must have delivered at least one project of similar size and scope within the last five years for the city on time, within budget, and according to required specifications; and not have 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:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: It is not necessarily the lowest bid that gets you the best job. Sometimes awarding to the lowest bid can cause a lot of problems afterwards. Contractors may take on some things they really did not have the expertise for. For instance, there was a contractor that was the lowest bidder by \$8,000 over a contractor the city had considerable positive experience with. There were no negative findings as far as capability, so the contract was let. The contractor was clearly not ready for a project of this size. The contractor delayed the project eight weeks in a downtown business area and wound up costing the city more than they should have had to pay.

Cities are looking for a little bit of flexibility to allow them to deliver the best project to the citizens. When running into the situation of a nominal difference between two bids, cities want to take into account whether they have had a positive or negative experience with the contractor. With the robust economy, there are a lot of contractors moving up to the next level, where they are barely making money and delivering a low quality project. City staff bears the burden under these situations.

OTHER: This is an interesting approach to bidding, call it an alternative to public works in terms of 5 percent flexibility. Having said that, there should be some legislative review or capital projects advisory board review to consider this as a pilot to see if there are upsides or downsides to implementing this. A review is urged to determine its efficacy and how it works in practice. Additionally, counties also have the occasion where they have work history with the lowest bidder, and would also like to have flexibility to do this. There should be an amendment to include counties as well.

**Persons Testifying:** PRO: Senator Dean Takko, Prime Sponsor; Steve Taylor, Manager, City of Kelso; Michael Kardas, Engineer, City of Kelso; Steve Taylor, City Manager, City of Kelso; Michael Kardas, City Engineer, City of Kelso.

OTHER: Mellani McAleenan, Washington State Association of Counties; Michael Transue, Mechanical Contractors Association of Western Washington.

**Persons Signed In To Testify But Not Testifying:** No one.