

HOUSE BILL REPORT

SB 5017

As Reported by House Committee On:
Capital Budget

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 personal 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].

Brief Summary of Bill
(As Amended By Committee)

- 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.
- Requires that specified types of school district solicitations, advertisements, and bids, issued for certain services, must include the standard clauses required by the Office of Minority and Women's Business Enterprises.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended. Signed by 12 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Bateman, Kloba, Leavitt,

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.

Peterson, Riccelli, Rule, Santos, Sells and Shewmake.

Minority Report: Do not pass. Signed by 8 members: Representatives Steele, Ranking Minority Member; Dye, Eslick, Gilday, Kraft, MacEwen, Maycumber and Mosbrucker.

Minority Report: Without recommendation. Signed by 2 members: Representatives Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member.

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 purchase exceeds certain thresholds, 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 timeframe 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 non-compliance with registration or prevailing wage requirements; and
- not have been found out of compliance with certain apprenticeship requirements, if the project is subject to apprenticeship utilization requirements.

Summary of Amended Bill:

The list of school district purchases that require public notification and bidding is modified to include "other construction work by a contractor" that meets the public works responsible

bidder criteria. This work is not specifically mentioned in the current list of purchases, which instead makes a general reference to "other work or purchases" as requiring public notification and bidding. Construction management services, value engineering, constructability review, building commissioning, and other construction related engineering and personal services are excluded from the possible definitions of "construction work." School district requests for proposals or qualifications, advertisements, bids, or calls for bids, issued for these services must include the standard clauses required by the Office of Minority and Women's Business Enterprises.

Amended Bill Compared to Original Bill:

The amended bill does the following: (a) excludes construction management services, value engineering, constructability review, building commissioning, and other construction-related engineering and personal services from the possible definitions of the phrase "construction work," which is a term created by the bill; and (b) requires that specified types of school district solicitations, advertisements, and bids, issued for these services, must include the standard clauses required by the Office of Minority and Women's Business Enterprises.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The bill will codify the historic convention that construction management, value engineering, constructability review, and building commissioning are not subject to low bid requirements. This practice is important to school district projects because it allows companies to develop expertise in a particular project area, which streamlines the process and prevents piecemeal project management. Allowing school districts to consider qualifications and experience leads to more efficient and successful projects.

The design and condition of school buildings affects student learning. The School Construction Assistance Program's funding of construction management, value engineering, constructability review and building commissioning helps avoid costs overruns, ensures value from scarce resources, and ensures new schools operate as intended. School districts procure these services through a request for proposal process that prioritizes quality and experience, as well as price. The Attorney General Opinion relies on the term "other work" to draw its conclusions about construction management, value engineering, constructability review and building commissioning services, which the bill would address. The Attorney

General Opinion also indicates that Educational School District (ESD) 112 is permitted to provide these services to school districts.

(Opposed) This bill was specifically designed and promoted in response to a recent Washington State Attorney General Opinion regarding the legal requirements for procurement of various school construction related services including construction management, value engineering, constructability reviews and building commissioning. These services are required by existing law for virtually all new school construction projects in Washington state. The Attorney General's Opinion indicates that these services are public works and must be procured in a manner compliant with existing state public works laws. This bill effectively negates the Attorney General Opinion and allows school districts to ignore these requirements and contract for these specific services without compliance with any competitive based selection process.

Those in favor of Senate Bill 5017 have promoted it as a clean-up or technical fix of existing law. This is a misleading and inaccurate description of the bill. The bill will allow school districts to completely avoid any requirements for providing a fair and competitive procurement process for these services and will allow the school districts to contract for these services with any source they desire, completely at their sole discretion. Work should not be simply handed to the ESD 112 Construction Services Group on a fixed fee, lump sum basis, based merely on convenience for the school districts. There is a concern about the bill being filed on an emergency basis, without a detailed description of what qualifies this bill for this status.

Persons Testifying: (In support) Shelly Henderson, Puget Sound School Coalition; and Brian Sims, Washington State School Directors' Association.

(Opposed) Peter Keithly, Boomerz Bicycle Accessories.

Persons Signed In To Testify But Not Testifying: None.