

SENATE BILL REPORT

ESB 5017

As Passed Senate, January 19, 2022

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 service contracts for construction management, value engineering, constructibility review, and building commissioning.

Sponsors: Senators Wellman, Honeyford, Mullet and Wilson, C..

Brief History:

Committee Activity: Early Learning & K-12 Education: 1/15/21, 2/03/21 [DP].

Floor Activity: Passed Senate: 2/16/21, 47-0; 1/19/22, 28-20.

Brief Summary of Engrossed Bill

- 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.
- Provides an enumerated list of services that are not "construction work" and requires that such services meet certain procurement requirements.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass.

Signed by Senators Wellman, Chair; Nobles, Vice Chair, K-12; Wilson, C., Vice Chair, Early Learning; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

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.

Staff: Alexandra Fairfortune (786-7416)

Background: School District Bid Requirements. When the estimated cost of furniture, supplies, equipment, building, improvements, repairs, or other work or purchase exceeds a certain threshold, 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 Engrossed Bill: The list of school district purchases that require public notification and bidding is modified to include construction work by a contractor who meets the public works responsible bidder criteria, where previously it included "other work" generally.

"Construction work" does not include construction management services, value engineering, constructability review, building commissioning, and other construction-related professional and personal services. Beginning January 1, 2023, these enumerated services outside the definition of construction work are subject to the following requirements:

- requests for proposals or qualifications, advertisements, bids, or calls for bids for such services must include the standard clauses required by the Office of Minority and Women's Business Enterprises;
- requests for proposals or qualifications, advertisements, bids, or calls for bids for such services are subject to the alternative public works procurement requirements or architectural and engineering service contract requirements, as applicable to the

- method of delivery; and
- school districts may use interlocal agreements to procure such services only if the agreements are executed following a competitive, qualification-based procurement process pursuant to the alternative public works procurement requirements or architectural and engineering service contract requirements.

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: School districts go through a standard request for proposal process to hire professional services, however a recent attorney general opinion interpreted that these professional services must go through the public bidding process. This is a cleanup to clarify the statute's intent and codify a historic practice that certain professional services are outside the bidding statute. This allows districts to assess a firm's fit and retain the same firm for multiple projects at a lower cost.

Persons Testifying: PRO: Senator Lisa Wellman, Prime Sponsor; Marissa Rathbone, Washington State School Directors' Association; Shelly Henderson, Mukilteo School District.

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