

SENATE BILL REPORT

SHB 1621

As Reported by Senate Committee On:
Local Government, Land Use & Tribal Affairs, March 28, 2023

Title: An act relating to standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Brief Description: Concerning standardizing local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Ryu, Duerr, Pollet, Kloba and Senn).

Brief History: Passed House: 3/3/23, 97-0.

Committee Activity: Local Government, Land Use & Tribal Affairs: 3/21/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Increases the limit for contracts that require competitive bidding to \$150,000 if two or more trades are involved, or to \$75,000 if only one trade is involved.
- Allows current employees of first-class cities, second-class cities, water-sewer districts, and fire protection districts to perform work under \$300,000 in value without a contract if doing so is accepted industry practice.
- Provides a standard definition of lowest responsible bidder for public utility districts, cities, towns, water-sewer districts, and fire protection districts.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

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.

Majority Report: Do pass as amended.

Signed by Senators Lovelett, Chair; Salomon, Vice Chair; Torres, Ranking Member; Kauffman and Short.

Staff: Maggie Douglas (786-7279)

Background: Public Works. Public work is all work, construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality.

Every city, county, town, port district, district, or other public agency authorized to execute public work must follow specified requirements for competitive bidding for public works projects. Specific requirements vary by the type of municipality and certain exemptions are provided.

Small Works Roster. State agencies and local governments may create a small works roster of contractors for certain work estimated to cost \$350,000 or less. Bids may be solicited from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder.

If the estimated cost of the work is from \$150,000 to \$300,000, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. Notice may be given by newspaper, mail, or electronically.

Limited Public Works Projects. In lieu of the small works roster process, state agencies and local governments may award a contract for certain public works projects estimated to cost less than \$50,000 by soliciting bids from a minimum of three contractors from the appropriate small works roster, and must award the contract to the lowest responsible bidder. After an award is made, the quotations must be open to public inspection and available by electronic request.

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.

A responsible bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;
- have industrial insurance and workers' compensation coverage;
- have an Employment Security Department account;
- have a state excise tax registration number;

- not be disqualified from bidding because of a violation relating to registration, license, or wages;
- not have any apprenticeship violations, if applicable;
- have received training on prevailing wage and public works requirements; and
- within a three-year period immediately preceding the date of the bid solicitation, not have been determined by the Department of Labor and Industries or through a civil judgment to have willfully violated labor laws.

Public Utility Districts. A public utility district (PUD) is a type of special purpose district authorized for generating and distributing electricity, providing water and sewer services, and providing telecommunications services.

A PUD must contract for:

- any items of similar materials, equipment, or supplies estimated to cost more than \$30,000;
- any items of similar materials, equipment, or supplies estimated to cost more than \$12,000, if purchased within a single calendar month; and
- any work ordered by a district commission estimated to cost more than \$50,000.

Contracts are not required for work accepted as an industry practice under prudent utility management. Prudent utility management means performing work with regularly employed personnel, using material of a worth not exceeding \$300,000 in value without a contract. This limit does not include the value of individual items of equipment.

Water-Sewer Districts. Water-sewer districts provide water and sewer services to incorporated and unincorporated areas. District powers include the authority to purchase, construct, maintain, and supply waterworks to furnish water to inhabitants, and to develop and operate systems of sewers and drainage. Districts may also fix rates and charges for services, enter into contracts, levy taxes, and issue bonds. Generally, districts must solicit bids and award contracts for all work estimated to cost over \$50,000.

First-Class Cities. A first-class city may have public works performed by contract following public notice and a call for competitive bids. City employees may perform public works costing 10 percent or less of the city's public works construction budget. Any cost in excess of the allowable 10 percent is deducted from the otherwise permitted amount of public works that may be performed by public employees in the city's next budget period.

In addition to the percentage limitation, a first-class city must contract for public works with a competitive bidding process if:

- the estimated cost is more than \$150,000 and involves more than one craft or trade; or
- the estimated cost is more than \$75,500 and involves a single craft or trade or the public work is street signalization or street lighting.

Second-Class Cities or Towns. A second-class city or town may contract for public works

without a competitive bidding process if:

- the estimated cost is \$116,155 or less and involves more than one craft or trade; or
- the estimated cost is \$75,500 or less and involves a single craft or trade or the public work is street signalization or street lighting.

Any purchase of supplies, material, or equipment that exceeds \$7,500 must be done through competitive bidding. This requirement does not apply to public work or improvements.

Fire Protection Districts. A fire protection district is a type of special purpose district created to provide fire prevention, fire suppression, and emergency medical services within a district's boundaries, which can include incorporated and unincorporated areas.

A formal sealed bid procedure must be used for purchases and contracts for purchases made by the board of commissioners. Formal sealed bidding is not required for:

- the purchase of materials when such materials, equipment, or supplies have an estimated cost not exceeding \$40,000; however, whenever the estimated cost does not exceed \$75,000, the commissioners may by resolution use the alternative bidding process available for municipalities;
- contracting for work involving the construction or improvement of a fire station or other buildings where the estimated cost does not exceed \$30,000;
- contracts using the small works roster process; and
- any contract for purchases or public work which are exempt from competitive bidding requirements.

Summary of Amended Bill: A definition of lowest responsible bidder is added for public utility districts, water-sewer districts, first-class cities, and fire protection districts.

A definition of equipment and prudent utility management is added for water-sewer districts, first-class cities, second-class cities, and fire protection districts.

Public Utility Districts. The amount for which any work ordered by a PUD commission must be by contract is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

Water-Sewer Districts. The amount for work for which water-sewer districts must solicit bids and award contracts is increased from \$50,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

A water-sewer district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract.

First-Class Cities. A first-class city may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract.

Second-Class Cities. The amount for which a second-class city may contract for public works that involve more than one craft or trade without a competitive bidding process is increased from \$116,155 to \$150,000. Any purchase of supplies, material, or equipment, except for public works improvements, with an estimated cost over \$40,000 must be by contract. Any purchase of materials, supplies, or equipment with an estimated cost of less than \$50,000 must be made using the process for limited public works projects.

Any second-class city or town may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract.

Fire Protection Districts. The amount for projects and materials for which formal sealed bids are not required is increased from \$40,000 to \$75,500. The amount for projects for which the limited public works process may be used is increased from \$75,000 to \$150,000.

The amount for projects that involve the construction or improvement of a fire station or other buildings is increased from \$30,000 to \$150,000 if more than a single craft or trade is involved, or to \$75,500 if only a single craft or trade is involved.

A fire protection district may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract.

EFFECT OF LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS COMMITTEE AMENDMENT(S):

- Delays the implementation of sections 1 through 5 of this act until after the capital projects advisory review board (CPARB) is able to review the processes and make recommendations to the appropriate legislative committees.

Appropriation: None.

Fiscal Note: Available.

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 on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill aligns local government contracting thresholds and standardizes their contracting and procurement processes. The bill addresses the challenges local governments face when hiring contractors for small projects, such as contracting with the lowest responsible bidder. This bill provides

another tool in toolbox of delivering time critical work when absolutely needed, such as a major natural disaster or extreme weather event. The bill would provide an opportunity for new staff to train alongside seasoned staff during a time that the industry is experiencing large number of retirements.

CON: This bill did not go before CPARB review. The bill needs to go before CPARB for a comprehensive in-depth review with all stakeholders. The language of the bill creates discretion and flexibility that is concerning for labor industries and is moving work from the labor industry to the municipalities. This bill is not in alignment with legislation that is supported by CPARB.

Persons Testifying: PRO: Representative Cindy Ryu, Prime Sponsor; Brandy DeLange, Association of Washington Cities; Joren Clowers, Washington Association of Sewer & Water Districts; Diane Pottinger, North City Water District; Darcey Peterson, King County Water District #90.

CON: Mark Riker, Washington State Building & Construction Trades Council; Michael Transue, Mechanical Contractors Association of Western Washington.

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