

SENATE BILL REPORT

SB 6167

As of January 18, 2024

Title: An act relating to adopting the recommendations of the capital projects advisory review board regarding local government procurement rules among special purpose districts, first-class and second-class cities, and public utility districts.

Brief Description: Concerning local government procurement rules.

Sponsors: Senator Hasegawa.

Brief History:

Committee Activity: Local Government, Land Use & Tribal Affairs: 1/18/24.

Brief Summary of Bill

- Temporarily increases the limit for certain contracts that require competitive bidding to \$150,000 if two or more trades are involved, or to \$75,500 if only one trade is involved.
- Requires the Capital Projects Advisory Review Board to review provisions and make recommendations to the Legislature no later than October 31, 2024.

SENATE COMMITTEE ON LOCAL GOVERNMENT, LAND USE & TRIBAL AFFAIRS

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

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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 \$250,000 to \$350,000, 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 the purpose of 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 \$150,000 if more than a single craft or trade is involved, or \$75,500 if only a single craft or trade is involved with the public works project.

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.

A water-sewer district may contract for public works without a competitive bidding process if:

- the estimated cost is \$150,000 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 except for public work or improvement that exceeds \$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.

First-Class Cities. Generally, 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 \$150,000 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, except for public work or improvement, that exceeds \$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.

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 \$75,500; however, whenever the estimated cost does not exceed \$150,000, 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 \$150,000 if more than a single craft or trade is involved, or \$75,500 if only a single craft or trade is involved;
- contracts using the small works roster process; and
- any contract for purchases or public work which are exempt from competitive bidding requirements.

Capital Projects Advisory Review Board. The Capital Projects Advisory Review Board (CPARB), in the Department of Enterprise Services, was created to provide evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the Legislature on policies related to public-works delivery methods and alternative public-works contracting procedures.

The CPARB members are required to be knowledgeable or have experience in state and federal laws, rules, and best practices concerning public contracting for minority, women, and veteran-owned businesses and small businesses. The CPARB must reflect the gender, racial, ethnic, and geographic diversity of the state, including the interests of persons with disabilities. The CPARB consists of 25 members, including four nonvoting legislative members—two from the House of Representatives and two from the Senate.

2023 Legislative Updates to Local Government Procurement Rules. In 2023 the Legislature amended statutes governing local procurement rules. The amendments:

- added a definition of lowest responsible bidder for first-class cities, PUDs, water-sewer districts, and fire protection districts;
- increased the limit for contracts that require competitive bidding; and
- authorized 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.

Summary of Bill: Beginning July 1, 2025:

- current employees of first-class cities, second-class cities, water-sewer districts, and fire protection districts are authorized to perform work under \$300,000 in value without a contract; and
- the definition of lowest responsible bidder is applied to first-class cities, public utility districts, water-sewer districts, and fire protection districts.

Until July 1, 2026:

- any work ordered by PUDs must be by contract if costs exceed \$150,000 if two or more trades are involved, or to \$75,500 if only one trade is involved;
- any work ordered by a second-class city or town may be by contract or day labor if costs do not exceed \$150,000 if two or more trades are involved, or to \$75,500 if only one trade is involved;
- any work ordered by a water-sewer district must be by contract and competitive bidding if costs exceed \$150,000 if two or more trades are involved, or to \$75,500 if only one trade is involved; and
- for a fire protection district, formal sealed bidding must not be required for contracting for work to be done involving the construction or improvement of a fire station or other buildings where costs will exceed \$150,000 if two or more trades are involved, or to \$75,500 if only one trade is involved.

Beginning July 1, 2026:

- any work ordered by PUDs with costs greater than \$50,000 exclusive of sales tax must be by contract;
- any work ordered by water-sewer districts with costs greater than \$50,000 exclusive of sales tax must be by contract and competitive bidding;
- for a fire protection district, formal sealed bidding must not be required for contracting any work to be done involving the construction or improvement of a fire station or other buildings where the estimated costs do not exceed \$30,000; and
- any work ordered by a second-class city or town may be by contract if:
 1. costs will not exceed \$116,155 if two or more trades are involved;
 2. costs will not exceed \$75,500 if a single craft or trade is involved; or
 3. the public works project is street signalization or street lighting.

CPARB must review the provisions of this bill and make recommendations to the appropriate committees of the Legislature no later than October 31, 2024.

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: HB 1621 (2023) was passed unanimously through the Legislature last year but there were some concerns from certain stakeholders, so the bill was delayed until 2026. CPARB did an analysis of the bill and built consensus about the contracting requirements. CPARB assembled a committee and reached unanimous consensus of the requirements reflected in this bill. This bill reflects the threshold levels that area appropriate for each local government. The adjusted thresholds will allow local governments to be nimble and respond to emergency situations if needed. We would like a better definition for prudent utility management.

CON: We believe that prudent utility management needs better definition. Small fire districts are working to update the complicated legal and policy updates based upon HB 1621. The updates take a lot of time, effort, and resources to implement. This bill would require another quick turnaround for small districts with limited resources to implement. The committee that CPARB put together did not include fire protection districts or water-sewer districts and they did not have formal input into this bill. We believe that HB 1621 was passed unanimously and deserves to be implemented before its amended.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Brandy DeLange, Association of Washington Cities; Janice Zahn; Keith Michele; Michael Transue, Mechanical Contractors Association of SWestern WA.

CON: Scott Hazlegrove, WA Association of Sewer & Water Districts; Joren Clowers, Sno-King Water District Coalition; Brian Snure, Washington Fire Commissioners Association.

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