

## SHB 1621 Review Committee

July 18, 2023

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### SHB 1621 History of 2<sup>nd</sup>-Class Cities Added Responsibility Language

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*This research is in response to the CPARB's SHB 1621 Review Committee's question about how the language was added to the second-class cities statute prior to SHB 1621 passing the Legislature in spring of 2023.*

#### RCW 35.23.352

(2) For the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW [39.04.350](#) and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.

From <<https://app.leg.wa.gov/RCW/default.aspx?cite=35.23.352>>

[[2019 c 434 § 1](#); [2018 c 74 § 2](#); [2009 c 229 § 4](#); [2002 c 94 § 2](#); [2000 c 138 § 204](#); [1998 c 278 § 3](#); [1996 c 18 § 2](#). Prior: [1994 c 273 § 9](#); [1994 c 81 § 18](#); [1993 c 198 § 10](#); [1989 c 431 § 56](#); [1988 c 168 § 3](#); [1987 c 120 § 2](#); prior: [1985 c 469 § 24](#); [1985 c 219 § 2](#);

From <<https://app.leg.wa.gov/RCW/default.aspx?cite=35.23.352>>

Paragraph (2) was added in 2019 in [ESSB 5418](#),

Concerning local government procurement modernization and efficiency.

Along with paragraph (14) which states:

(14) Any second-class city or town that awards a project to a bidder under the criteria described in subsection (2) of this section must make an annual report to the department of commerce that includes the total number of bids awarded to certified minority or women contractors and describing how notice was provided to potential certified minority or women contractors.

From <<https://app.leg.wa.gov/billsummary?BillNumber=5418&Initiative=false&Year=2019>>

ESSB 5418 also charged CPARB with the task of reviewing public works contracting processes for local governments:

This is the description from the final bill report:

#### **Capital Projects Advisory Review Board Study**

The Capital Projects Advisory Review Board must review the public works contracting processes for local governments, including the small works roster and limited public works processes, and report to the Governor and appropriate committees of the Legislature by November 1, 2020. The report must include the following:

- identification of the most common contracting procedures used by local governments;
- identification of the dollar amounts set for local government public works contracting processes;
- analysis of whether the dollar amounts comport with estimated project costs within the relevant industries;
- an analysis of the potential application of an inflation-based increaser to the dollar amounts, taking regional factors into consideration;
- recommendations to increase uniformity and efficiency for local government public works contracting processes; and
- rates of and barriers to participation in the small works roster and limited public works contracting processes.

"Local governments" refers to all counties, cities, towns, other political subdivisions, and special purpose districts. This study is subject to appropriated funds.

CPARB formed a committee and produced its study which can be found on the CPARB website/Background and Reference page called:

- [Local Government Public Works Study Report, July 2021](#)
  - [Memo to Legislature from DES](#) on Local Government Public Works Study Report
- [Local Government Public Works Study Report Presentation](#) to House Local Govt Committee, 9/16/2021

From <<https://www.des.wa.gov/about/committees-groups/capital-projects-advisory-review-board-cparb/background-and-reference>>

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**Of note:**

- The original bill SB 5418 was only addressing counties in RCW 36.23.235
- The first substitute added a number of other local governments including slightly different language than in paragraph (2):  
From bill report: Second Class Cities or Towns—Lowest Responsible Bidder. Until July 28, 2022, as an alternative to awarding competitive public works contracts to the lowest responsible bidder, second-class 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.

**Substitute (and engrossed substitute) bill language:**

(2) Until July 28, 2022, for the purposes of this section, "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350; and has the lowest bid, or has a bid that is within five percent of the lowest bid and meets the following supplemental criteria: (a) The bidder has 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 37 (b) The bidder has not delivered a project to the city within the last five years that was late, over budget, or did not meet specifications.

- There is some testimony summary in the House Bill Report that can be viewed [here](#) (on page 9 of 10).  
Unfortunately, when the house bill report came out, it did not pick up the change/elimination of the time limitation in paragraph (2) in its summary.
- On the day the final bill was passed, Representative Pollet, introduced a (house) floor amendment that was adopted on 4/16/19  
Beginning on page 2, line 24, after "section" strike all material through "specifications" on page 3, line 3, and insert ", "lowest responsible bidder" means a bid that meets the criteria under RCW 39.04.350 and has the lowest bid; provided, that if the city issues a written finding that the lowest bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications then the city may choose the second lowest bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest bidder.