

HOUSE BILL REPORT

HB 1147

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to public works contracts.

Brief Description: Requiring considerations for public works contract bids.

Sponsors: Representatives King, G. Cole, Veloria, Orr, Heavey, Franklin, Scott, Ludwig, Jones, Basich, Quall and J. Kohl.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 2, 1993, DP.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; King; and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

Background: Most public agencies are required to award public works contracts to the lowest responsible bidder. This requirement applies specifically to cities, counties, school districts, institutions of higher education, housing authorities, certain state agencies, public hospital districts, port districts, public utility districts, sewer districts, water districts, diking and draining districts, and irrigation districts.

In most public works statutes, there is no definition of "lowest responsible bidder." School district public works, county small works rosters, and contracts for third-party cogeneration of power by a state authority use the definition of lowest responsible bidder that the state uses for purchasing goods or services. Under this definition, the agency must consider the ability of the bidder to perform the contract, the reputation and experience of the bidder, whether the bidder can perform in the time

specified, the quality of performance under previous contracts, and previous compliance by the bidder with laws relating to the contract.

Summary of Bill: The requirement for the state, cities, counties, municipalities, or political subdivisions to determine the lowest responsible bidder on public works projects is changed. In determining the lowest responsible bidder, the awarding agency is required to give consideration to price and the following criteria: (1) the quality of the contractor's past performance on similar contracts, if any, with the agency; (2) the ability of the contractor to complete the contract within the specified time in the contract; and (3) the compliance of the contractor with federal, state, and local laws pertaining to the contract.

For county small works rosters, the definition of "lowest responsible bidder" is changed from the definition used by the state for purchasing goods and services to the new definition in the bill.

The new "lowest responsible bidder" requirements apply to the alternative construction procedures authorized for certain projects for the Department of Corrections.

The authority of the state to negotiate bid price adjustments with a low responsive bidder on public works is changed to require the state to negotiate with a bidder who is both a low responsive and responsible bidder, using the new criteria to determine a low responsible bidder.

Contracts awarded to the "next lowest bidder" when necessary to meet the certification requirements under the Office of Minority and Women's Business Enterprises must be awarded to the next "lowest responsible bidder."

The state's requirements for determining the lowest responsible bidder when purchasing goods and services also includes the new requirements for determining the lowest responsible bidder on public works.

Fiscal Note: Requested January 25, 1993.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is needed because too many contractors who do not observe the law continue to be the lowest bidder on public contracts. There needs to be a process for more effective determination of responsibility for contract work. Many local governments have difficulty

refusing the bid of a poorly performing contractor. Even serious violations may not prevent a contractor from being the lowest responsible bidder. In effect, contractors are "buying" jobs by submitting artificially low bids.

Testimony Against: The requirements for lowest responsible bidders have been discussed for many years in other committees. Contracts must be awarded on objective criteria or an atmosphere will be created in which contractors "buy" jobs. The law already requires contractors to submit bid bonds, payments bonds, and performance bonds. To get these bonds, a contractor must be an acceptable risk to the bonding company. Adding subjective requirements to the lowest responsible bidder determination will lead to costly delays and lawsuits.

Witnesses: (In favor): Cindy Zehnder, Joint Council of Teamsters; Bob Dilger, Washington Building and Construction Trades Council; and Allan Darr, International Union of Operating Engineers. (Opposed): Dick Ducharme, Utility Contractors Association of Washington; and James Elder, Associated Builders & Contractors.