

HOUSE BILL REPORT

HB 2597

As Reported by House Committee On:

State Government

Title: An act relating to the selection of responsible contractors bidding on public works.

Brief Description: Allowing governmental entities that award publicly funded contracts to select contractors using the lowest responsible bidder method.

Sponsors: Representatives Conway, Wood and McIntire.

Brief History:

Committee Activity:

State Government: 1/31/02, 2/8/02 [DPS].

Brief Summary of Substitute Bill

- Allows state and local government agencies to use the lowest responsible bidder method in awarding contracts for public works projects.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Romero, Chair; Miloscia, Vice Chair; McDermott and Upthegrove.

Minority Report: Without recommendation. Signed by 2 members: Representatives Schindler and Schmidt.

Staff: Catherine Blinn (786-7114).

Background:

Public works projects include the construction, building, renovation, remodeling, alteration, repair, or improvement of real property. The process for public works contracting varies based on the size of the government entity and the size of the contract.

Very low cost projects may be completed by in-house labor or by contract without a bid process. Contracts of a low estimated cost may be awarded using a limited public works

process for contracts under \$35,000, or using a small works roster process for contracts under \$200,000. Contracts of a medium estimated cost, over \$200,000, are awarded to the lowest bidder following publication of the call for bids and a formal sealed bid process. High cost contracts, over \$12 million, may be awarded by authorized state agencies and local governments through one of the alternative public works contracting procedures, either the "design-build" procedure or the "general contractor/construction manager (GCCM)" procedure.

Both alternative public works procedures require extensive preparation and evaluation of the bids, and require government entities to consider, among other factors, the ability of the professional personnel, a firm's past performance on similarly complex projects, a firm's ability to meet time and budget requirements, the scope of the work the firm proposes to perform itself and its ability to perform it, location, current and projected work loads of the firm, and the concept of the proposal. Firms awarded a contract under the GCCM process may judge subcontractor eligibility by considering whether the financial resources of the subcontractor are adequate or can be adequately secured, history of successful completion of a contract of similar type and scope, the project management, whether the supervising personnel have experience on similar projects, the availability of such personnel for the project, the current and projected workload of the subcontractor, ability to accurately estimate the bid package, the eligibility to receive an award under applicable laws and regulations, and the ability to meet scheduling requirements.

When purchasing material, supplies, services, and equipment for state agencies through a formal sealed bid process, the Office of General Administration (GA) must usually award the contract to the lowest responsible bidder. In determining "lowest responsible bidder", the GA must consider, in addition to price, the ability, capacity, and skill of the bidder to perform the contract or provide the service; the character, integrity, reputation, judgment, experience, and efficiency of the bidder; whether the bidder can perform the contract within the time specified; the quality of previous performance; and the bidder's previous and current compliance with relevant law.

Summary of Substitute Bill:

State and local governments may use the lowest responsible bidder method when awarding contracts for public works projects. The government entity must make an affirmative determination that the lowest responsive bidder is responsible.

In determining whether the lowest responsive bidder is responsible, the government entity must consider: the ability, capacity, and skill of the bidder to perform the contract or provide the service required; the experience of the bidder; whether the bidder has historically demonstrated the ability to perform the contract within the time specified; the satisfactory completion of previous contracts or services by the bidder; and previous and

current compliance by the bidder with contracting laws. Government entities must use, in substantial form, a questionnaire created by the GA to determine whether a bidder meets the requirements. Modifications to the GA form may be made for a specific project if the government agency notifies bidders before requesting bids on the project.

The apparent low bidder must supply the requested information within three business days of the bid opening. Failing to timely submit the information, or providing materially false information, will render the bid non-responsible. Immediately after an award is made, the bids received are open for public inspection. If the lowest responsive bidder is determined to be not responsible, the public agency must notify the bidder of the reasons why. The bidder may provide additional information within three days to prove responsibility. The government agency must then reconsider the bid, and make a second, final determination of responsibility.

Substitute Bill Compared to Original Bill:

The substitute bill explicitly states that the lowest responsible bidder requirements do not supersede the design-build or the GCCM bidding procedures. Government agencies are no longer required to examine all bids, but must determine whether the lowest responsive bidder is responsible. The reputation of the bidder is no longer among the considerations. The criteria, "whether the bidder has demonstrated the ability to perform the contract within the time specified" is changed to "whether the bidder has historically demonstrated the ability to perform the contract within the time specified." The criteria, "the quality of performance of previous contracts or services by the bidder" is changed to "the satisfactory completion of previous contracts or services by the bidder." The criteria of the bidder's existing compliance with contracting laws is changed to the bidder's current compliance with contracting laws.

Government agencies are not explicitly allowed to create their own questionnaire, but must use, in substantial form, a questionnaire created by the GA. Modifications to the GA form may be made for a specific project if the government agency notifies bidders before requesting bids on the project. The questionnaire must be submitted within three business days, rather than two business days, of the bid opening. Instead of a hearing, a rejected bidder may provide additional information to prove responsibility, at which point the government agency must reconsider the bid and make a second, final determination of responsibility.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The bill is good public policy because public agencies are sometime unable to determine which contractors are responsible. Many schools across Washington have been built poorly because they were awarded to the lowest bidder who was not responsible. The bill was recommended by the AG a few years ago. Millions of tax dollars are spent every year fixing public buildings built by non-responsible contractors. Contractors who violate building codes are repeatedly awarded new contracts because the public agencies cannot reject their bids.

Testimony Against: There are better ways to determine if a low bidder is responsible. The current language is too broad. The bill would not solve the problems that exist in the building industry. The bill will place a tremendous administrative burden on government entities to make an affirmative decision of responsibility on all bids submitted, even those that are unlikely to be considered. The bill would dramatically alter the level playing field that currently exists, giving all the power to the public entity. The cities and counties are opposed because it creates an administrative nightmare and would be very time-consuming to administer. Many government entities have internal or unwritten methods to determine whether a bidder is responsible.

Testified: (In support) Terry Tilton, Rebound; Mitch Seaman, Washington State Labor Council, AFL-CIO; Kyle Simon and Thelma Simon; and John Eidukas, IBEW #191.

(Opposed) Rick Slunaker, Associated General Contractors of Washington; Ron English, Seattle Schools, and Bill Vogler, Washington State Association of Counties.

(Concerns) Ashley Probart, Association of Washington Counties.