
State Government Committee

ESSB 6528

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

Sponsors: Senate Committee on State & Local Government (originally sponsored by Senators Keiser, Eide and Costa).

Brief Summary of Engrossed Substitute Bill

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

Hearing Date: 2/26/02

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 Department 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 Bill:

State and local governments may use the lowest responsible bidder method when awarding contracts for public works projects. A government entity that awards a public works contract estimated to cost over \$200,000 must make an affirmative determination that the lowest responsive bidder is responsible after considering the following criteria:

- 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 demonstrated the ability to perform within the time specified by previous contracts;
- 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 will render the bid nonresponsive and will cause the bidder to forfeit any bid deposit submitted in support of the bid.

Providing materially false information on the questionnaire will also render the bid nonresponsive. 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 within three business days.

Rulemaking Authority: No express authority.

Appropriation: None.

Fiscal Note: Not Requested.

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