

# HOUSE BILL REPORT

## SHB 2010

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### As Passed House:

March 9, 2007

**Title:** An act relating to bidder responsibility.

**Brief Description:** Providing responsible bidder criteria and related requirements for public works contracts.

**Sponsors:** By House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Haigh, Hunt, Ericks, Conway, Haler, Green, Hasegawa, Appleton, Campbell, Sells, Kenney, VanDeWege, Cody, Hurst, McDermott, Simpson and Ormsby).

### Brief History:

#### Committee Activity:

State Government & Tribal Affairs: 2/23/07, 2/27/07 [DPS].

#### Floor Activity:

Passed House: 3/9/07, 76-21.

### Brief Summary of Substitute Bill

- Defines "responsible bidder" for purposes of public works contracts.

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## HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Chandler, Ranking Minority Member; Green, McDermott, Miloscia and Ormsby.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Armstrong, Assistant Ranking Minority Member and Kretz.

**Staff:** Marsha Reilly (786-7135).

### Background:

Public works projects include construction, building, renovation, remodeling, alteration, repair or improvement of real property. Most public agencies are required to award public works contracts to the lowest responsible bidder or the responsible bidder who submits the lowest

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responsive bid. In public works statutes, there is no definition of "responsible bidder." Under the small works roster contracting process, the process for contract purchases of materials and equipment, and contracts for third-party cogeneration of power by a state authority, the statutes make reference to the definition of responsible bidder 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.

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### **Summary of Substitute Bill:**

Responsible bidder is defined for purposes of public works contracts. In order to be considered a responsible bidder, the bidder must have a certificate of registration at the time of bid submittal; a current state unified business identifier number; and if applicable, industrial insurance coverage for the bidder's employees working in Washington, an Employment Security Department number, and a state excise tax registration number. In addition, the bidder must not be disqualified from bidding on any public works contracts.

A state or municipality may adopt relevant supplemental criteria for determining bidder responsibility that is applicable to a particular project. Any supplemental criteria must be included in the invitation to bid or the bidding documents.

At the request of a potential bidder, and after evaluation by the state or municipality, the bid criteria may be modified. If a change in criteria results, an addendum to the bidding documents must be issued identifying the new criteria.

If the state or municipality determines that a bidder is not responsible, it must provide the bidder the reasons, in writing, for that determination, and must provide the bidder an opportunity to provide additional information. If the final determination is that the bidder is not responsible, the state or municipality cannot execute a contract with another bidder until two business days have elapsed since the final determination was received by the bidder.

Public works contractors and subcontractors must verify that any subcontractors they directly hire meet the responsibility criteria for the project at the time of award. Verification that a subcontractor have an electrical contractor license or an elevator contractor license, if required by statute, must be included in the verification process.

The Capital Projects Advisory Review Board is to develop guidelines to assist the state and municipalities in developing supplemental responsibility criteria.

For purposes of public works contracts, "award" is defined as the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is recommended by the Capital Projects Advisory Review Board (Board) with a consensus vote. There is support from all sides of public works contracting. An amendment is recommended to address action taken by the Board at their last meeting. The bidder responsibility criteria has been included in the bidding documents and this process has been used for several years. The low bidder is asked to demonstrate they meet the criteria. The proposed process will improve public works and will provide consistency. The bill provides bidders with due process rights. Bidders have an option to provide input if they believe the criteria is too restrictive. It also allows bidders an opportunity to appeal a decision. The building trades have wanted a definition in statute for years. Current law results in taking the lowest responsive bidder. The Joint Legislative Audit and Review Committee recommended further analysis of accepting the lowest responsible bidder, and this recommendation was included as one of the duties of the Board. The bill has a broad coalition of support with lots of stakeholder input and compromise. Owners need to be able to develop additional criteria to address the needs of a particular project, and the supplemental criteria will address those needs. Responsibility criteria has been worked on for four years. There are concerns that bonding companies are providing bonds to firms who are not qualified. The bill also requires that subcontractors must make sure that all their subcontractors meet the responsibility requirements. Determinations of a bidder being not responsible must be provided in writing.

(In support with amendments) The bill, as written, reflects that any bidder who has ever been disqualified from bidding may not be determined responsible. This should be changed to reflect current disqualification. Supplemental criteria should be relevant and objective. There should be public input for setting objective criteria, and agencies need time to respond to input so that bidders who are already preparing documents do not have to prepare the documents a second time.

(Opposed) The policy principle of lowest responsible bidder has a long history. An open and fair process provides an opportunity for all. Public owners want more flexibility. Public owners want to provide work to people in their area, and this is contrary to public policy. Bonding companies provide small contractors an opportunity. There needs to be a transparent and objective process, and the supplemental bid criteria are entirely subjective. Bonding companies will not provide a bond if a contractor is not able to perform or if that contractor has financial problems. This bill ignores the role that the bonding regulations provide.

**Persons Testifying:** (In support) Representative Haigh, prime sponsor; John Lynch, General Administration, Capital Projects Advisory Review Board; Nora Huey, Capital Projects Advisory Review Board; Bob Abbott, Laborers District Council; Carolyn Crowson, Office of

Minority Women Business Enterprises; and Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association.

(In support with amendments) Dave Johnson, Washington State Building and Construction Trades; and Rick Slunaker, Associated General Contractors.

(Opposed) Dave Ducharme, Utility Contractors Association of Washington; and Mel Sorensen, Contractors Trading and Insurance Company.

**Persons Signed In To Testify But Not Testifying:** None.