

SENATE BILL REPORT

SHB 2010

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, March 26, 2007

Title: An act relating to bidder responsibility.

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

Sponsors: 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: Passed House: 3/09/07, 76-21.

Committee Activity: Labor, Commerce, Research & Development: 3/22/07, 3/26/07 [DP, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senator Holmquist.

Staff: Jennifer Strus (786-7316)

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 submission; a current state unified business identifier number; and, if applicable, worker's compensation 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 currently 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 require by statute, must be include 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The responsible bidder bill is the top priority of the Capital Projects Advisory Review Board (CPARB) and it voted unanimously to support the bill. This bill meets three important criteria: (1) it puts in one place all the requirements contractors must meet when bidding on public works projects; (2) it makes the contractors responsible for making sure the subcontractors meet all the same requirements; and (3) it provides outreach and education to make sure the contractor has the skill necessary to carry out the project. Without the definition of "responsible" public agencies have been advised to accept the lowest responsive bidder, sometimes with disastrous results.

CON: Small employers are concerned with two parts of the bill: (1) the inclusion of the small works roster projects is unnecessary because it creates additional burdens for small employers; and (2) the inclusion of supplemental criteria because there is no definition of what that criteria might be.

Persons Testifying: PRO: Representative Haigh, prime sponsor; Nancy Deakins, Department of General Administration; Carolyn Crowson, Office of Minority and Women Owned Businesses; Miriam Israel Moses, REBOUND; Dave Johnson, Building Trades; Larry Stevens, Electrical Contractors & Mechanical Contractors.

CON: Cliff Webster, Associated Builders and Contractors.