

SENATE BILL REPORT

SB 5856

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 27, 2007

Title: An act relating to bidder responsibility.

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

Sponsors: Senators Rockefeller, Kline, Keiser, Kohl-Welles, Kauffman, Weinstein, Pridemore and Fairley.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/20/07, 2/27/07 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5856 be substituted therefor, and the substitute bill 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: Bids for public works projects are considered responsive if they are received at the proper place and time, they meet the stated requirements of the specific bid proposal; the bid is submitted by a contractor licensed under RCW 18.27 and the contractor is not banned from bidding by the Department of Labor and Industries; and it is accompanied by a bid guarantee, if required.

When the sum of the base bid is greater than \$35,000, a bid guarantee of 5 percent of the base bid amount is required. If the bidder fails to provide a bid guarantee when required, his or her bid is considered non-responsive. Acceptable forms of bid guarantees are: a bid bond or postal money order, or certified check or cashier's check.

Generally, the contract is awarded to the lowest responsive bidder.

Summary of Bill: A bidder must meet the following responsibility criteria before he or she can be awarded a public works contract: (1) at the time the bid is submitted, the bidder must

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be a registered contractor under RCW 18.27; (2) the bidder must have a current state unified business identifier number; (3) if applicable, the bidder must have worker's compensation coverage, an Department of Employment Security number and a state excise tax registration number; and (4) the bidder cannot have been disqualified from bidding on public works contracts.

In addition to the above criteria, a state or municipality may adopt supplemental criteria for determining whether bidders are responsible. If the state or municipality chooses to use supplemental criteria, that criteria must be included in the invitation to bid or the bidding documents. A potential bidder may request that the state or a municipality modify the supplemental criteria.

If the state or municipality requests information from the bidder concerning responsibility within the time frame specified in the bid, the state or municipality may base its determination of responsibility on any available information related to the supplemental criteria or may find the bidder not responsible.

If the state or municipality determines that a bidder is not responsible, it must provide the bidder, in writing, the reasons for that determination. The bidder may appeal the determination. 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 bidder received the final determination.

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

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): It is clarified that a bidder must not be currently disqualified from bidding on a contract. It is clarified that a bidder must meet any supplemental responsibility criteria adopted. It is stipulated that any supplemental criteria adopted must be relevant. Verification of subcontractor responsibility criteria is required to include that a subcontractor has an electrical contractor license or an elevator contractor license if required by statute.

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: This bill was a consensus bill and recommended by CPARB. The Department of General Administration has used the process outlined in the bill for many years and it has worked very well for them. The goal of the bill is to make sure there are qualified bidders bidding against other qualified bidders. CPARB has already accepted technical changes to the bill and those should be included in a proposed sub. The nonspecified extra criteria that local governments can adopt might make it too easy for them to adopt nonrelevant criteria. This is a post bid responsible bidder bill. State law requires that a public works contract be awarded to the lowest responsive and responsible

bidder. There is currently no definition of "responsible bidder" in the statute and that is the reason for this bill. This bill strikes a delicate balance and should remain unamended.

CON: The supplemental bid criteria that the locals can add is not supported. The process used has served the public very well for decades. If the Legislature allows subjective criteria to be used, it might exclude qualified bidders. The supplemental criteria has no parameters; they should be included in this bill and not left to the CPARB to develop.

OTHER: Small contractors could be left out of the small works roster process. Another issue is that the second and third tier subcontractors must also follow this process and that is very onerous to them. The subject items in the bill should be removed.

Persons Testifying: PRO: Senator Rockefeller, prime sponsor; Lee Newgent, Seattle Building Trades; Bob Abbott, Laborer's District Council; Doug Smith, Ironworkers Local 86; John Lynch, Department of General Administration; Rick Slunaker, Associated General Contractors of Washington; Larry Stevens, Mechanical Contractors & Electrical Contractors; Dave Johnson, Washington Building Trades.

CON: Mel Sorenson, Contractors Bonding and Insurance Co.; Cliff Webster, Associated Builders and Contractors.

OTHER: Gary Smith, Independent Business Association.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Dave Ducharme, Utility Contractors Association of Washington.