

EHB 2805 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED AND ENGROSSED 03/03/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW
4 to read as follows:

5 (1) For any public work estimated to cost over one million dollars,
6 the contract must contain a provision requiring the submission of
7 certain information about off-site, prefabricated, nonstandard, project
8 specific items produced under the terms of the contract and produced
9 outside Washington. The information must be submitted to the
10 department of labor and industries under subsection (2) of this
11 section. The information that must be provided is:

12 (a) The estimated cost of the public works project;

13 (b) The name of the awarding agency and the title of the public
14 works project;

15 (c) The contract value of the off-site, prefabricated, nonstandard,
16 project specific items produced outside Washington, including labor and
17 materials; and

18 (d) The name, address, and federal employer identification number
19 of the contractor that produced the off-site, prefabricated,
20 nonstandard, project specific items.

21 (2)(a) The required information under this section must be
22 submitted by the contractor or subcontractor as a part of the affidavit
23 of wages paid form filed with the department of labor and industries
24 under RCW 39.12.040. This information is only required to be submitted
25 by the contractor or subcontractor who directly contracted for the off-
26 site, prefabricated, nonstandard, project specific items produced
27 outside Washington.

28 (b) The department of labor and industries shall include requests
29 for the information about off-site, prefabricated, nonstandard, project

1 specific items produced outside Washington on the affidavit of wages
2 paid form required under RCW 39.12.040.

3 (c) The department of general administration shall develop standard
4 contract language to meet the requirements of subsection (1) of this
5 section and make the language available on its web site.

6 (d) Failure to submit the information required in subsection (1) of
7 this section as part of the affidavit of wages paid form does not
8 constitute a violation of RCW 39.12.050.

9 (3) For the purposes of this section, "off-site, prefabricated,
10 nonstandard, project specific items" means products or items that are:
11 (a) Made primarily of architectural or structural precast concrete,
12 fabricated steel, pipe and pipe systems, or sheet metal and sheet metal
13 duct work; (b) produced specifically for the public work and not
14 considered to be regularly available shelf items; (c) produced or
15 manufactured by labor expended to assemble or modify standard items;
16 and (d) produced at an off-site location.

17 (4) The department of labor and industries shall transmit
18 information collected under this section to the capital projects
19 advisory review board created in RCW 39.10.220 for review.

20 (5) This section applies to contracts entered into between
21 September 1, 2010, and December 31, 2013.

22 (6) This section does not apply to department of transportation
23 public works projects.

24 (7) This section does not apply to local transportation public
25 works projects.

26 **Sec. 2.** RCW 39.04.350 and 2009 c 197 s 2 are each amended to read
27 as follows:

28 (1) Before award of a public works contract, a bidder must meet the
29 following responsibility criteria to be considered a responsible bidder
30 and qualified to be awarded a public works project. The bidder must:

31 (a) At the time of bid submittal, have a certificate of
32 registration in compliance with chapter 18.27 RCW;

33 (b) Have a current state unified business identifier number;

34 (c) If applicable, have industrial insurance coverage for the
35 bidder's employees working in Washington as required in Title 51 RCW;
36 an employment security department number as required in Title 50 RCW;
37 and a state excise tax registration number as required in Title 82 RCW;

1 (d) Not be disqualified from bidding on any public works contract
2 under RCW 39.06.010 or 39.12.065(3); (~~and~~)

3 (e) If bidding on a public works project subject to the
4 apprenticeship utilization requirements in RCW 39.04.320, not have been
5 found out of compliance by the Washington state apprenticeship and
6 training council for working apprentices out of ratio, without
7 appropriate supervision, or outside their approved work processes as
8 outlined in their standards of apprenticeship under chapter 49.04 RCW
9 for the one-year period immediately preceding the date of the bid
10 solicitation; and

11 (f) Until December 31, 2013, not have violated section 1 of this
12 act more than one time as determined by the department of labor and
13 industries.

14 (2) In addition to the bidder responsibility criteria in subsection
15 (1) of this section, the state or municipality may adopt relevant
16 supplemental criteria for determining bidder responsibility applicable
17 to a particular project which the bidder must meet.

18 (a) Supplemental criteria for determining bidder responsibility,
19 including the basis for evaluation and the deadline for appealing a
20 determination that a bidder is not responsible, must be provided in the
21 invitation to bid or bidding documents.

22 (b) In a timely manner before the bid submittal deadline, a
23 potential bidder may request that the state or municipality modify the
24 supplemental criteria. The state or municipality must evaluate the
25 information submitted by the potential bidder and respond before the
26 bid submittal deadline. If the evaluation results in a change of the
27 criteria, the state or municipality must issue an addendum to the
28 bidding documents identifying the new criteria.

29 (c) If the bidder fails to supply information requested concerning
30 responsibility within the time and manner specified in the bid
31 documents, the state or municipality may base its determination of
32 responsibility upon any available information related to the
33 supplemental criteria or may find the bidder not responsible.

34 (d) If the state or municipality determines a bidder to be not
35 responsible, the state or municipality must provide, in writing, the
36 reasons for the determination. The bidder may appeal the determination
37 within the time period specified in the bidding documents by presenting
38 additional information to the state or municipality. The state or

1 municipality must consider the additional information before issuing
2 its final determination. If the final determination affirms that the
3 bidder is not responsible, the state or municipality may not execute a
4 contract with any other bidder until two business days after the bidder
5 determined to be not responsible has received the final determination.

6 (3) The capital projects advisory review board created in RCW
7 39.10.220 shall develop suggested guidelines to assist the state and
8 municipalities in developing supplemental bidder responsibility
9 criteria. The guidelines must be posted on the board's web site."

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10 On page 1, line 1 of the title, after "prefabrication;" strike the
11 remainder of the title and insert "amending RCW 39.04.350; and adding
12 a new section to chapter 39.04 RCW."

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