
SENATE BILL 5662

State of Washington

62nd Legislature

2011 Regular Session

By Senators Conway, Chase, Kline, Shin, Keiser, Kohl-Welles, White, Roach, Hobbs, Nelson, Prentice, Haugen, and Fraser

Read first time 02/03/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to establishing a preference for resident
2 contractors on public works; amending RCW 39.04.010; adding a new
3 section to chapter 39.04 RCW; creating new sections; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Award" means the formal decision by the state or municipality
11 notifying a responsible bidder with the lowest responsive bid of the
12 state's or municipality's acceptance of the bid and intent to enter
13 into a contract with the bidder.

14 (2) "Contract" means a contract in writing for the execution of
15 public work for a fixed or determinable amount duly awarded after
16 advertisement and competitive bid, or a contract awarded under the
17 small works roster process in RCW 39.04.155.

18 (3) "Municipality" means every city, county, town, port district,
19 district, or other public agency authorized by law to require the

1 execution of public work, except drainage districts, diking districts,
2 diking and drainage improvement districts, drainage improvement
3 districts, diking improvement districts, consolidated diking and
4 drainage improvement districts, consolidated drainage improvement
5 districts, consolidated diking improvement districts, irrigation
6 districts, or other districts authorized by law for the reclamation or
7 development of waste or undeveloped lands.

8 (4) "Public work" means all work, construction, alteration, repair,
9 or improvement other than ordinary maintenance, executed at the cost of
10 the state or of any municipality, or which is by law a lien or charge
11 on any property therein. All public works, including maintenance when
12 performed by contract shall comply with chapter 39.12 RCW. "Public
13 work" does not include work, construction, alteration, repair, or
14 improvement performed under contracts entered into under RCW
15 36.102.060(4) or under development agreements entered into under RCW
16 36.102.060(7) or leases entered into under RCW 36.102.060(8).

17 (5) "Resident contractor" means a contractor certified by the
18 department of general administration as:

19 (a) Registered as a contractor under chapter 18.27 RCW or licensed
20 as an electrical contractor under chapter 19.28 RCW;

21 (b) Maintaining a place of business within the state staffed by the
22 contractor or an employee of the contractor for a period of six months
23 immediately preceding the date of the bid;

24 (c)(i) Paying residents of the state at least eighty-five percent
25 of its payroll, in dollar volume; or

26 (ii) Employing residents of the state as at least eighty-five
27 percent of its employees; and

28 (d)(i) Incorporated or qualified to do business under Title 25 RCW;

29 (ii) A sole proprietorship and the proprietor is a resident of the
30 state;

31 (iii) A limited liability company organized under chapter 25.15 RCW
32 and all members are residents of the state;

33 (iv) A partnership under chapter 25.05 or 25.10 RCW and all
34 partners are residents of the state; or

35 (v) If a joint venture, composed entirely of ventures that qualify
36 under (c) of this subsection.

37 (6) "Responsible bidder" means a contractor who meets the criteria
38 in RCW 39.04.350.

1 ((+6+)) (7) "State" means the state of Washington and all
2 departments, supervisors, commissioners, and agencies of the state.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
4 to read as follows:

5 (1) The state or municipality shall award a contract to the
6 responsible bidder with the lowest responsive bid after a resident
7 contractor preference of seven percent has been applied.

8 (2) A contractor shall be considered a resident contractor only if
9 the contractor is certified as a resident contractor by the department.
10 The procedure for application and certification is as follows:

11 (a) The department shall prepare an application form for
12 certification as a resident contractor, and require such information
13 and proof as the department deems necessary to certify the applicant as
14 a resident contractor;

15 (b) The contractor seeking certification as a resident contractor
16 shall complete the application form and submit it to the department
17 prior to the submission of a bid on which the contractor desires to be
18 given a preference;

19 (c) The department shall examine the application and may seek
20 additional information or proof if necessary;

21 (d) The department shall issue the contractor a certification
22 number which shall be valid until revoked and which, when used on a bid
23 for a contract, entitles the contractor to be considered as a resident
24 contractor; and

25 (e) The department shall revoke the certification number issued to
26 a contractor upon making a determination that the contractor no longer
27 meets the definition of resident contractor in RCW 39.04.010.

28 (3)(a) A contractor that receives the resident contractor
29 preference provided for in this section based on false information,
30 whether that information was provided or withheld, and which by reason
31 of the information has been awarded a contract to which it would not
32 otherwise have been entitled:

33 (i) Must pay the state an assessment equal to the difference
34 between the contract amount and what the state's cost would have been
35 if the contract had been properly awarded;

36 (ii) In addition to the amount specified in this subsection (3)(a)

1 and except as provided in (b) of this subsection, must pay a civil
2 penalty of ten percent of the amount of the contract involved or one
3 thousand dollars, whichever is less; and

4 (iii) Is ineligible to directly or indirectly transact any business
5 with the state for a period of not less than six months and not more
6 than three years, as determined by the director of the department.
7 This ineligibility applies to the principals of the business and any
8 subsequent businesses formed by those principals.

9 (b) In addition to being subject to the penalties under (a)(i) and
10 (iii) of this subsection, a contractor that knowingly and with intent
11 to defraud makes a false statement or fails to provide or conceals, or
12 attempts to conceal, material information for the purpose of obtaining,
13 or aiding another in obtaining, a preference under this section is
14 subject to a civil penalty of ten percent of the amount of the contract
15 involved or ten thousand dollars, whichever is greater.

16 (c)(i) A contractor subject to sanction under this subsection may
17 request, within thirty days of the date of issuance of the notice of
18 sanction, a hearing conducted pursuant to chapter 34.05 RCW.

19 (ii) If a contractor fails to pay an assessment or civil penalty
20 after it has become final and not subject to further appeal, or after
21 the court has entered final judgment in favor of the state, the
22 attorney general may recover the assessment or penalty by action in the
23 appropriate superior court. In such action, the validity and
24 appropriateness of the final order imposing the assessment or penalty
25 is not subject to review.

26 (4) For the purposes of this section, "department" means the
27 department of general administration.

28 NEW SECTION. **Sec. 3.** All contracts entered into under this
29 chapter on or after the effective date of this section are subject to
30 the requirements established under section 2 of this act.

31 NEW SECTION. **Sec. 4.** If any part of this act is found to be in
32 conflict with federal requirements that are a prescribed condition to
33 the allocation of federal funds to the state, the conflicting part of
34 this act is inoperative solely to the extent of the conflict and with
35 respect to the agencies directly affected, and this finding does not
36 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state.

4 NEW SECTION. **Sec. 5.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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