

SENATE BILL REPORT

SHB 1089

As Reported by Senate Committee On:
Commerce & Labor, March 27, 2015

Title: An act relating to adding adherence to state wage payment laws to the state's responsible bidder criteria.

Brief Description: Adding adherence to state wage payment laws to the state's responsible bidder criteria.

Sponsors: House Committee on State Government (originally sponsored by Representatives S. Hunt, Moscoso, Robinson, Tarleton, Gregerson and Pollet; by request of Attorney General).

Brief History: Passed House: 2/16/15, 60-38.

Committee Activity: Commerce & Labor: 3/27/15 [DP].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Braun, Vice Chair; Hasegawa, Ranking Minority Member; Conway, Keiser, King and Warnick.

Staff: Richard Rodger (786-7461)

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

To be considered a "responsible bidder" who is qualified to be awarded a public works project the bidder must: (1) be a registered contractor; (2) have a current state unified business identifier number; (3) if applicable, have industrial insurance coverage for employees working in Washington, have an Employment Security Department number, and an excise tax registration number; (4) not be disqualified for being unlicensed or unregistered, and have kept accurate records regarding subcontractors over the last two years; (5) have maintained compliance with apprenticeship utilization requirements over the past one year; and (6) have met any supplemental criteria as established by the state or municipality.

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.

A contractor is not permitted to bid on a public works contract if they were assessed a civil penalty by the Department of Labor and Industries (L&I) for the failure to pay prevailing wages, and the penalty remains unpaid. The failure to pay prevailing wages twice in a five-year period disqualifies a bidder for two years.

A contractor is barred from bidding on any public works contract for one year if the contractor committed any two of the following violations within a five-year period: (1) failing to register as a contractor; (2) filing false payroll reports; (3) failing to obtain industrial insurance coverage; or (4) working apprentices out of ratio, without supervision, or outside their approved work processes.

Public procurement of goods and services is generally handled through a competitive solicitation and bidding process. The award for the purchase or contract is given to the lowest responsive and responsible bidder. Under this process, the agency determining a responsible bidder must consider elements such as the bidder's ability, capacity, and skill; character, integrity, reputation, judgment, experience, and efficiency; quality of previous performance; and compliance with related contracting laws. When considering the lowest responsive and responsible bidder, the agency may consider a best value criteria.

Summary of Bill: The responsible bidder criteria for public works projects and for the public procurement of goods and services are modified.

A bidder is not considered a responsible bidder if during the immediately preceding three years they willfully: (1) deprived an employee of any part of their wage or paid the employee a lower wage than required by law or contract; (2) paid an employee less than required by the state minimum wage law; (3) failed to pay an employee for wages due; (4) failed to make contributions from monies collected for an employee's benefit plans; (5) collected a rebate on wages of an employee; or (6) falsified records on the payment of wages in an amount greater than the wages paid to the employee. The bidder is also disqualified if they violated these laws more than one time in previous three years. Violations are determined by L&I or through a civil judgment entered by a court of limited or general jurisdiction.

Bidders must submit, prior to the award of a contract, a statement signed under oath verifying their compliance with the new bidding criteria. A contracting agency may award a contract in reasonable reliance upon a sworn statement.

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 bill makes it clear that we will not reward those who willfully or repeatedly violate the state's laws regarding wage payments, minimum wages, or illegal deductions. It supports a level playing field for employers and contractors

who play by the rules and do not seek a competitive advantage by violating state laws. The bill addresses both one-time willful violators and also repeat violators where their actions were not willful. The bill does not in any way deal with prevailing wages or misclassification. The bill supports workers, businesses, and taxpayers.

Persons Testifying: PRO: Representative Hunt, prime sponsor; Bob Ferguson, Attorney General; Steve Reinmuth, Office of the Attorney General.

Persons Signed in to Testify But Not Testifying: No one.