

SB 6239 - S AMD 1097
By Senator Conway

ADOPTED 02/18/2020

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

3 **"Sec. 1.** RCW 39.04.310 and 2015 c 48 s 1 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this section and
6 RCW 39.04.300 and 39.04.320 unless the context clearly requires
7 otherwise.

8 (1) "Apprentice" means an apprentice enrolled in a state-approved
9 apprenticeship training program.

10 (2) "Apprenticeship utilization plan" means a plan submitted by a
11 prospective bidder specifically detailing verifiable efforts to meet
12 the apprenticeship utilization requirements.

13 (3) "Apprentice utilization requirement" means the requirement
14 that the appropriate percentage of labor hours be performed by
15 apprentices.

16 ~~((3))~~ (4) "Labor hours" means the total hours of workers
17 receiving an hourly wage who are directly employed upon the public
18 works project. "Labor hours" includes hours performed by workers
19 employed by the contractor and all subcontractors working on the
20 project. "Labor hours" does not include hours worked by foremen,
21 superintendents, owners, and workers who are not subject to
22 prevailing wage requirements.

23 ~~((4))~~ (5) "School district" has the same meaning as in RCW
24 28A.315.025.

25 ~~((5))~~ (6) "State-approved apprenticeship training program"
26 means an apprenticeship training program approved by the Washington
27 state apprenticeship council.

28 **Sec. 2.** RCW 39.04.350 and 2019 c 232 s 15 are each amended to
29 read as follows:

30 (1) Before award of a public works contract, a bidder must meet
31 the following responsibility criteria to be considered a responsible

1 bidder and qualified to be awarded a public works project. The bidder
2 must:

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

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

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

11 (d) Not be disqualified from bidding on any public works contract
12 under RCW 39.06.010 or 39.12.065(3);

13 (e) If bidding on a public works project subject to the
14 apprenticeship utilization requirements in RCW 39.04.320, not have
15 been found out of compliance by the Washington state apprenticeship
16 and training council for working apprentices out of ratio, without
17 appropriate supervision, or outside their approved work processes as
18 outlined in their standards of apprenticeship under chapter 49.04 RCW
19 for the one-year period immediately preceding the date of the bid
20 solicitation;

21 (f) Have received training on the requirements related to public
22 works and prevailing wage under this chapter and chapter 39.12 RCW.
23 The bidder must designate a person or persons to be trained on these
24 requirements. The training must be provided by the department of
25 labor and industries or by a training provider whose curriculum is
26 approved by the department. The department, in consultation with the
27 prevailing wage advisory committee, must determine the length of the
28 training. Bidders that have completed three or more public works
29 projects and have had a valid business license in Washington for
30 three or more years are exempt from this subsection. The department
31 of labor and industries must keep records of entities that have
32 satisfied the training requirement or are exempt and make the records
33 available on its web site. Responsible parties may rely on the
34 records made available by the department regarding satisfaction of
35 the training requirement or exemption; and

36 (g) Within the three-year period immediately preceding the date
37 of the bid solicitation, not have been determined by a final and
38 binding citation and notice of assessment issued by the department of
39 labor and industries or through a civil judgment entered by a court
40 of limited or general jurisdiction to have willfully violated, as

1 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or
2 49.52 RCW.

3 (2) Before award of a public works contract, a bidder shall
4 submit to the contracting agency a signed statement in accordance
5 with chapter 5.50 RCW verifying under penalty of perjury that the
6 bidder is in compliance with the responsible bidder criteria
7 requirement of subsection (1)(g) of this section. A contracting
8 agency may award a contract in reasonable reliance upon such a sworn
9 statement.

10 (3) In addition to the bidder responsibility criteria in
11 subsection (1) of this section, the state or municipality may adopt
12 relevant supplemental criteria for determining bidder responsibility
13 applicable to a particular project which the bidder must meet.

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

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

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

30 (d) If the state or municipality determines a bidder to be not
31 responsible, the state or municipality must provide, in writing, the
32 reasons for the determination. The bidder may appeal the
33 determination within the time period specified in the bidding
34 documents by presenting additional information to the state or
35 municipality. The state or municipality must consider the additional
36 information before issuing its final determination. If the final
37 determination affirms that the bidder is not responsible, the state
38 or municipality may not execute a contract with any other bidder
39 until two business days after the bidder determined to be not
40 responsible has received the final determination.

1 (e) If the bidder has a history of receiving monetary penalties
2 for not achieving the apprenticeship utilization goals pursuant to
3 RCW 39.04.320, or is habitual in utilizing the good faith effort
4 exception process, the bidder must submit an apprenticeship
5 utilization plan along with its bid documents.

6 (4) 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 2 of the title, after "projects;" strike the
11 remainder of the title and insert "and amending RCW 39.04.310 and
12 39.04.350."

EFFECT: (1) Removes underlying provisions of the bill and instead
requires a bidder on a public works project that has a history of
receiving monetary penalties for not achieving apprenticeship
utilization goals, or is habitual in utilizing the good faith effort
exception process, to submit an apprenticeship utilization plan with
its bid.

(2) Defines "apprenticeship utilization plan" as a plan submitted
by a prospective bidder specifically detailing verifiable efforts to
meet apprenticeship utilization requirements.

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