
ENGROSSED SENATE BILL 6239

State of Washington

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By Senators Conway, Keiser, Hasegawa, Saldaña, Van De Wege, Lovelett,
and Wilson, C.

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on Labor & Commerce.

1 AN ACT Relating to compliance with apprenticeship utilization
2 requirements and bidding on public works projects; and amending RCW
3 39.04.310 and 39.04.350.

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

5 **Sec. 1.** RCW 39.04.310 and 2015 c 48 s 1 are each amended to read
6 as follows:

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

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

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

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

18 ((+3)) (4) "Labor hours" means the total hours of workers
19 receiving an hourly wage who are directly employed upon the public
20 works project. "Labor hours" includes hours performed by workers
21 employed by the contractor and all subcontractors working on the

1 project. "Labor hours" does not include hours worked by foremen,
2 superintendents, owners, and workers who are not subject to
3 prevailing wage requirements.

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

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

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

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

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

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

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

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

25 (e) If bidding on a public works project subject to the
26 apprenticeship utilization requirements in RCW 39.04.320, not have
27 been found out of compliance by the Washington state apprenticeship
28 and training council for working apprentices out of ratio, without
29 appropriate supervision, or outside their approved work processes as
30 outlined in their standards of apprenticeship under chapter 49.04 RCW
31 for the one-year period immediately preceding the date of the bid
32 solicitation;

33 (f) Have received training on the requirements related to public
34 works and prevailing wage under this chapter and chapter 39.12 RCW.
35 The bidder must designate a person or persons to be trained on these
36 requirements. The training must be provided by the department of
37 labor and industries or by a training provider whose curriculum is
38 approved by the department. The department, in consultation with the
39 prevailing wage advisory committee, must determine the length of the

1 training. Bidders that have completed three or more public works
2 projects and have had a valid business license in Washington for
3 three or more years are exempt from this subsection. The department
4 of labor and industries must keep records of entities that have
5 satisfied the training requirement or are exempt and make the records
6 available on its web site. Responsible parties may rely on the
7 records made available by the department regarding satisfaction of
8 the training requirement or exemption; and

9 (g) Within the three-year period immediately preceding the date
10 of the bid solicitation, not have been determined by a final and
11 binding citation and notice of assessment issued by the department of
12 labor and industries or through a civil judgment entered by a court
13 of limited or general jurisdiction to have willfully violated, as
14 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or
15 49.52 RCW.

16 (2) Before award of a public works contract, a bidder shall
17 submit to the contracting agency a signed statement in accordance
18 with chapter 5.50 RCW verifying under penalty of perjury that the
19 bidder is in compliance with the responsible bidder criteria
20 requirement of subsection (1)(g) of this section. A contracting
21 agency may award a contract in reasonable reliance upon such a sworn
22 statement.

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

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

31 (b) In a timely manner before the bid submittal deadline, a
32 potential bidder may request that the state or municipality modify
33 the supplemental criteria. The state or municipality must evaluate
34 the information submitted by the potential bidder and respond before
35 the bid submittal deadline. If the evaluation results in a change of
36 the criteria, the state or municipality must issue an addendum to the
37 bidding documents identifying the new criteria.

38 (c) If the bidder fails to supply information requested
39 concerning responsibility within the time and manner specified in the
40 bid documents, the state or municipality may base its determination

1 of responsibility upon any available information related to the
2 supplemental criteria or may find the bidder not responsible.

3 (d) If the state or municipality determines a bidder to be not
4 responsible, the state or municipality must provide, in writing, the
5 reasons for the determination. The bidder may appeal the
6 determination within the time period specified in the bidding
7 documents by presenting additional information to the state or
8 municipality. The state or municipality must consider the additional
9 information before issuing its final determination. If the final
10 determination affirms that the bidder is not responsible, the state
11 or municipality may not execute a contract with any other bidder
12 until two business days after the bidder determined to be not
13 responsible has received the final determination.

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

19 (4) The capital projects advisory review board created in RCW
20 39.10.220 shall develop suggested guidelines to assist the state and
21 municipalities in developing supplemental bidder responsibility
22 criteria. The guidelines must be posted on the board's web site.

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