S-0623.3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5133**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senators Keiser, Conway, Kuderer, Randall, Saldaña, and Valdez)

AN ACT Relating to modifying the responsible bidder criteria for public works projects; and amending RCW 39.04.350 and 39.12.055.

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

**Sec.**  RCW 39.04.350 and 2020 c 255 s 2 are each amended to read as follows:

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

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

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

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

(d) If the project has apprentice utilization requirements pursuant to RCW 39.04.320, be listed as an active training agent in the department of labor and industries' apprenticeship registration tracking system and attest to only subcontract with active training agents for project work in an apprentice-able occupation;

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

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

((~~(f)~~)) (g) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter 39.12 RCW or have completed a public works project in the prior three years and maintained responsible bidder status. ((~~The~~)) At the time of bid submittal, the bidder must ((~~designate a~~)) have a designated person or persons ((~~to be~~)) trained within the last three years prior to bid submittal on these requirements or have completed a public works project within the prior three years without violation pursuant to RCW 39.12.055. The training must be provided by the department of labor and industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. ((~~Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection.~~)) The department of labor and industries must keep records of entities that have satisfied the training requirement ((~~or are exempt~~)) and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement ((~~or exemption~~)); and

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

(2) The department of labor and industries must develop an attestation document listing all responsible bidder criteria in subsection (1) of this section and make it publicly available to prospective bidders. Before award of a public works contract, a bidder shall submit to the contracting agency a ((~~signed statement~~)) completed responsible bidder attestation as provided by the department of labor and industries and signed in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)((~~(g)~~)) of this section. A contracting agency ((~~may award a contract in reasonable reliance upon such a sworn statement~~)) shall verify all responsible bidder criteria are met prior to awarding a contract.

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

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

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

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

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

(e) ((~~If the bidder has a history of receiving~~)) On projects subject to apprenticeship utilization requirements pursuant to RCW 39.04.320, if the bidder has a history of being demonstrated to be out of compliance, receiving monetary penalties for not achieving the apprentice utilization requirements pursuant to RCW 39.04.320, or is habitual in utilizing the good faith effort exception process, the bidder must submit ((~~an apprenticeship~~)) a verifiable apprentice utilization plan ((~~within ten business days immediately following the notice to proceed date~~)) for the awarding agency's review and acceptance prior to award of the public works project.

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

**Sec.**  RCW 39.12.055 and 2009 c 197 s 3 are each amended to read as follows:

((~~A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has~~)) (1) The department of labor and industries shall provide a written warning to a contractor found to have committed any ((~~combination of two~~)) of the following violations or infractions within a five‑year period:

((~~(1)~~)) (a) Violated RCW 51.48.020(1) or 51.48.103;

((~~(2)~~)) (b) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or

((~~(3)~~)) (c) Determined to be out of compliance by the Washington state apprenticeship and training council for not achieving mandatory apprenticeship utilization requirements, or for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW.

(2) If a contractor, within three years of receiving a written warning, is found to have committed any violation listed in this section, the contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination of noncompliance.

**--- END ---**