

# SENATE BILL REPORT

## SB 5133

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As Reported by Senate Committee On:  
State Government & Elections, January 27, 2023

**Title:** An act relating to modifying the responsible bidder criteria for public works projects.

**Brief Description:** Modifying the responsible bidder criteria for public works projects.

**Sponsors:** Senators Keiser, Conway, Kuderer, Randall, Saldaña and Valdez.

**Brief History:**

**Committee Activity:** State Government & Elections: 1/13/23, 1/27/23 [DPS-WM, DNP, w/oRec].

### Brief Summary of First Substitute Bill

- Requires bidders to be listed as an active training agent on the Department of Labor and Industries (L&I) website to meet responsible bidder criteria.
- Adds language to ensure public works projects subject to the apprenticeship utilization requirements adhere to said requirements for the one-year period immediately preceding the date of the bid solicitation.
- Requires bidders who have a demonstrated history of noncompliance with apprenticeship utilization requirements to submit an apprenticeship utilization plan to obtain contracts.
- Requires all bidders at the time of bid submittal to have at least one designated person trained on public works and wages within the last three years.

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## SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** That Substitute Senate Bill No. 5133 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Hasegawa and Kuderer.

**Minority Report:** Do not pass.

Signed by Senators Dozier and Fortunato.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Wilson, J., Ranking Member.

**Staff:** Danielle Creech (786-7412)

**Background:** Responsible Bidder Criteria. Responsible bidder criteria was established in 2007. Current law stipulates that the bidders must have:

- a certificate of registration;
- a current state unified business identifier number;
- if applicable, industrial insurance coverage, an employment security department number, and a state excise tax registration number;
- received training on the requirements related to public works, with the exception of bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years; and
- 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 or through a civil judgment to have willfully violated any statutory provisions relating to minimum wage requirements and labor standards, or deductions, contributions, and payment of wages.

Before a public works contract is awarded, bidders must submit a signed statement verifying under penalty of perjury that they have not been found to make such violations. The Department of Labor and Industries (L&I) must keep records of entities that have satisfied training requirements or are exempt, and make the records available on its website.

Supplemental Responsible Bidder Criteria. In addition to the bidder responsibility criteria listed above, the state or municipality may adopt relevant supplemental responsible bidder criteria applicable to a particular project. This information must be provided in the invitation to bid or bidding documents. In a timely manner before the bid submittal deadline, potential bidders may make requests for modification to the supplemental criteria. The state or municipality must evaluate the information and respond prior to the bid submittal deadline. If the request results in a change to criteria, the state or municipality must issue an addendum to the bidding documents detailing the new criteria. If a bidder fails to supply requested information concerning responsibility within the time and manner requested, the state or municipality may base its determination on any related available information, or find the bidder not responsible.

The state or municipality must provide in writing the reasons for determination if the bidder is found not responsible. Bidders may present additional information to the state or municipality to appeal the determination within the timeline specified in the bidding documents, which the state or municipality must consider before issuing final determination. If the determination affirms the bidder is not responsible, the state or municipality cannot execute a contract with any other bidder until two days after the bidder found not responsible has received the final determination.

The Capital Projects Advisory Review Board (CPARB) must develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility guidelines, which must be posted on the CPARB's website.

Apprenticeship Utilization Plans. If the bidder has a history of receiving monetary penalties for not fulfilling the apprentice utilization requirements, or is habitual in its use of the good faith effort exception process, the bidder must submit an apprenticeship utilization plan within ten days immediately following the notice to proceed date.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** Responsible Bidder Criteria. Before award of a public works contract, a bidder must be listed as an active training agent in the L&I apprenticeship registration tracking system, if an apprentice-able occupation is available. The bidder must attest to only subcontract with active training agents on project work in an apprentice-able occupation. If bidding on a public works project subject to the apprenticeship utilization requirements, the bidder must not have been found out of compliance for not achieving mandatory apprenticeship utilization requirements.

The exemption to the requirement that bidders have at least one designated person who has been trained on public works and wages within the last three years for bidders that have completed three or more public works project and have a valid business license in Washington for three or more years is removed.

Attestation Document. L&I must develop an attestation document listing all required responsible bidder criteria. Before an award of a public works contract, the bidder must submit a completed and signed responsible bidder attestation to the contracting agency.

Apprenticeship Utilization. On projects subject to apprenticeship utilization requirements, if the bidder has a demonstrated history of noncompliance, the bidder must submit a verifiable Apprenticeship utilization plans, if required, must be submitted for the awarding agency's review and acceptance prior to the award of the public works project. A contractor that fails to achieve mandatory apprenticeship utilization requirements is prohibited from bidding on any public works contract for one year.

## **EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS**

**COMMITTEE (First Substitute):**

- Establishes a procedure whereby contractors found out of compliance receive one warning before being barred from bidding on public works projects for one year.
- Ensures training agent requirements only apply to apprenticeship utilization projects.
- Provides that compliant contractors are not required to retake the prevailing wage training.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will ensure a robust workforce for the next generation. It is good for contractors to be trained on public contracting policy within the last three years so labor and wage standards are met. It will increase clarity and standards for bidder metrics in performing public works projects. This will level the playing field between reputable contractors and dishonest contractors, and will allow the responsible contractors who follow through with their expectations and hire apprentices and win bids

CON: A threshold for these new requirements should be established. This bill will eliminate nearly every non-union contractor from bidding on public works. Small business contractors will not be able to participate and will be considered irresponsible bidders by the state. It attempts to stop on the job training, which is the most flexible option for contractors and should be embraced as an accessible option, rather than frowned upon. In order to become a registered training agent, they must be a part of an approved apprenticeship program which are not available to most small, rural, disadvantaged contractors. Washington does not have enough of these programs and is unable to create legitimate new programs as they would be prey to system abuse from industry competitors. Requiring these new criteria will ensure workforce shortages. This bill will not promote apprenticeship opportunities, but rather suppress the labor market and increase construction costs. This hurts Washington State, the trades, and the employees.

OTHER: Responsible bidder criteria ensures that public dollars are spent appropriately. The training that will be required is already available, and the removal of the grandfathering clause will increase demand. The Department of Labor and Industries will require time to implement these new criteria and change their website, and will need funding for additional

staff. Concern about impacts that are not yet known.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Mark Riker, Washington State Building & Construction Trades Council; Mike Bridges, IBEW L 48; Richard Geyer, Roofers L 153; Mario Silva, Cement Masons & Plasterers L 528; Chad Campbell, Operating Engineers L 612; Todd Mitchell, Heat & Frost Insulators L 7; Betsy Shedd, Operating Engineers L 302.

CON: James King, Independent Business Association; Sophia Steele, Associated Builders and Contractors; Nathan Turner, WSECA; Jerry VanderWood, Associated General Contractors (AGC).

OTHER: Tammy Fellin, Labor & Industries; Brandy DeLange, Assoc. of Washington Cities; Axel Swanson, Assoc. of Washington Counties; Chris Herman, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying:** No one.