
SENATE BILL 5133

State of Washington

68th Legislature

2023 Regular Session

By Senators Keiser, Conway, Kuderer, Randall, Saldaña, and Valdez

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

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

4 **Sec. 1.** RCW 39.04.350 and 2020 c 255 s 2 are each amended to
5 read as follows:

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

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

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

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

18 (d) Be listed as an active training agent on the department of
19 labor and industries' website;

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

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

10 ~~((f))~~ (g) Have received training on the requirements related to
11 public works and prevailing wage under this chapter and chapter 39.12
12 RCW. ~~((The))~~ At the time of bid submittal, the bidder must
13 ~~((designate a))~~ have a designated person or persons ~~((to be))~~
14 within the previous three years on these requirements. The training
15 must be provided by the department of labor and industries or by a
16 training provider whose curriculum is approved by the department. The
17 department, in consultation with the prevailing wage advisory
18 committee, must determine the length of the training. ~~((Bidders that~~
19 ~~have completed three or more public works projects and have had a~~
20 ~~valid business license in Washington for three or more years are~~
21 ~~exempt from this subsection.))~~ The department of labor and industries
22 must keep records of entities that have satisfied the training
23 requirement ~~((or are exempt))~~ and make the records available on its
24 website. Responsible parties may rely on the records made available
25 by the department regarding satisfaction of the training requirement
26 ~~((or exemption));~~ and

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

34 (2) The department of labor and industries must keep records of
35 contractors' compliance with the responsible bidder criteria in
36 subsection (1) of this section and make the records available on its
37 website. Before award of a public works contract, ~~((a bidder shall~~
38 ~~submit to))~~ the contracting agency ~~((a signed statement in accordance~~
39 ~~with chapter 5.50 RCW verifying under penalty of perjury))~~ must
40 verify that the bidder is listed on the department of labor and

1 industries' website as in compliance with the responsible bidder
2 criteria requirement of subsection (1) (~~(g)~~) (h) of this section.
3 (~~(A contracting agency may award a contract in reasonable reliance~~
4 ~~upon such a sworn statement.)~~)

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

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

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

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

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

36 (e) (~~(If the bidder)~~) On projects subject to apprenticeship
37 utilization requirements pursuant to RCW 39.04.320, if the bidder has
38 a demonstrated history of being out of compliance with apprenticeship
39 utilization requirements, or has a history of receiving monetary
40 penalties for not achieving the apprentice utilization requirements

1 pursuant to RCW 39.04.320, or is habitual in utilizing the good faith
2 effort exception process, the bidder must submit ((~~an~~)) a verifiable
3 apprenticeship utilization plan ((~~within ten business days~~
4 ~~immediately following the notice to proceed date~~)) for the awarding
5 agency's review and acceptance prior to award of the public works
6 project.

7 (4) The capital projects advisory review board created in RCW
8 39.10.220 shall develop suggested guidelines to assist the state and
9 municipalities in developing supplemental bidder responsibility
10 criteria. The guidelines must be posted on the board's website.

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