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**SUBSTITUTE SENATE BILL 5856**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Labor, Commerce, Research & Development  
(originally sponsored by Senators Rockefeller, Kline, Keiser, Kohl-  
Welles, Kauffman, Weinstein, Pridemore and Fairley)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to bidder responsibility; amending RCW 39.04.010  
2 and 39.04.155; adding a new section to chapter 39.04 RCW; and adding a  
3 new section to chapter 39.06 RCW.

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

5 **Sec. 1.** RCW 39.04.010 and 2000 c 138 s 102 are each amended to  
6 read as follows:

7 ~~((The term state shall include the state of Washington and all  
8 departments, supervisors, commissioners and agencies thereof.~~

9 ~~The term))~~ The definitions in this section apply throughout this  
10 chapter unless the context clearly requires otherwise.

11 (1) "Award" means the formal decision by the state or municipality  
12 notifying a responsible bidder with the lowest responsive bid of the  
13 state or municipality's acceptance of the bid and intent to enter into  
14 a contract with the bidder.

15 (2) "Contract" means a contract in writing for the execution of  
16 public work for a fixed or determinable amount duly awarded after  
17 advertisement and competitive bid, or contract awarded under the small  
18 works roster process in RCW 39.04.155.

1       (3) "Municipality" (~~((shall include))~~) means every city, county,  
2 town, district, or other public agency (~~((thereof which is))~~) authorized  
3 by law to require the execution of public work, except drainage  
4 districts, diking districts, diking and drainage improvement districts,  
5 drainage improvement districts, diking improvement districts,  
6 consolidated diking and drainage improvement districts, consolidated  
7 drainage improvement districts, consolidated diking improvement  
8 districts, irrigation districts, or (~~((any such))~~) other districts (~~((as  
9 shall from time to time be))~~) authorized by law for the reclamation or  
10 development of waste or undeveloped lands.

11       (~~((The term))~~) (4) "Public work" (~~((shall include))~~) means all work,  
12 construction, alteration, repair, or improvement other than ordinary  
13 maintenance, executed at the cost of the state or of any municipality,  
14 or which is by law a lien or charge on any property therein. All  
15 public works, including maintenance when performed by contract shall  
16 comply with (~~((the provisions of RCW 39.12.020))~~) chapter 39.12 RCW.  
17 (~~((The term))~~) "Public work" does not include work, construction,  
18 alteration, repair, or improvement performed under contracts entered  
19 into under RCW 36.102.060(4) or under development agreements entered  
20 into under RCW 36.102.060(7) or leases entered into under RCW  
21 36.102.060(8).

22       (~~((The term contract shall mean a contract in writing for the  
23 execution of public work for a fixed or determinable amount duly  
24 awarded after advertisement and competitive bid. However, a contract  
25 which is awarded from a small works roster need not be advertised.))~~)

26       (5) "Responsible bidder" means a contractor who meets the criteria  
27 in section 2 of this act.

28       (6) "State" means the state of Washington and all departments,  
29 supervisors, commissioners, and agencies of the state.

30       NEW SECTION. Sec. 2. A new section is added to chapter 39.04 RCW  
31 to read as follows:

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

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

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

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

6 (d) Not be disqualified from bidding on any public works contract  
7 under RCW 39.06.010 or 39.12.065(3).

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

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

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

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

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

1 (3) The capital projects advisory review board created in RCW  
2 39.10.800 shall develop suggested guidelines to assist the state and  
3 municipalities in developing supplemental bidder responsibility  
4 criteria. The guidelines must be posted on the board's web site.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.06 RCW  
6 to read as follows:

7 A public works contractor must verify responsibility criteria for  
8 each first tier subcontractor, and a subcontractor of any tier that  
9 hires other subcontractors must verify responsibility criteria for each  
10 of its subcontractors. Verification shall include that each  
11 subcontractor, at the time of subcontract execution, meets the  
12 responsibility criteria listed in section 2(1) of this act and  
13 possesses an electrical contractor license, if required by chapter  
14 19.28 RCW, or an elevator contractor license, if required by chapter  
15 70.87 RCW. This verification requirement, as well as the  
16 responsibility criteria, must be included in every public works  
17 contract and subcontract of every tier.

18 **Sec. 4.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read  
19 as follows:

20 (1) This section provides uniform small works roster provisions to  
21 award contracts for construction, building, renovation, remodeling,  
22 alteration, repair, or improvement of real property that may be used by  
23 state agencies and by any local government that is expressly authorized  
24 to use these provisions. These provisions may be used in lieu of other  
25 procedures to award contracts for such work with an estimated cost of  
26 two hundred thousand dollars or less. The small works roster process  
27 includes the limited public works process authorized under subsection  
28 (3) of this section and any local government authorized to award  
29 contracts using the small works roster process under this section may  
30 award contracts using the limited public works process under subsection  
31 (3) of this section.

32 (2)(a) A state agency or authorized local government may create a  
33 single general small works roster, or may create a small works roster  
34 for different specialties or categories of anticipated work. Where  
35 applicable, small works rosters may make distinctions between  
36 contractors based upon different geographic areas served by the

1 contractor. The small works roster or rosters shall consist of all  
2 responsible contractors who have requested to be on the list, and where  
3 required by law are properly licensed or registered to perform such  
4 work in this state. A state agency or local government establishing a  
5 small works roster or rosters may require eligible contractors desiring  
6 to be placed on a roster or rosters to keep current records of any  
7 applicable licenses, certifications, registrations, bonding, insurance,  
8 or other appropriate matters on file with the state agency or local  
9 government as a condition of being placed on a roster or rosters. At  
10 least once a year, the state agency or local government shall publish  
11 in a newspaper of general circulation within the jurisdiction a notice  
12 of the existence of the roster or rosters and solicit the names of  
13 contractors for such roster or rosters. In addition, responsible  
14 contractors shall be added to an appropriate roster or rosters at any  
15 time they submit a written request and necessary records. Master  
16 contracts may be required to be signed that become effective when a  
17 specific award is made using a small works roster.

18 (b) A state agency establishing a small works roster or rosters  
19 shall adopt rules implementing this subsection. A local government  
20 establishing a small works roster or rosters shall adopt an ordinance  
21 or resolution implementing this subsection. Procedures included in  
22 rules adopted by the department of general administration in  
23 implementing this subsection must be included in any rules providing  
24 for a small works roster or rosters that is adopted by another state  
25 agency, if the authority for that state agency to engage in these  
26 activities has been delegated to it by the department of general  
27 administration under chapter 43.19 RCW. An interlocal contract or  
28 agreement between two or more state agencies or local governments  
29 establishing a small works roster or rosters to be used by the parties  
30 to the agreement or contract must clearly identify the lead entity that  
31 is responsible for implementing the provisions of this subsection.

32 (c) Procedures shall be established for securing telephone,  
33 written, or electronic quotations from contractors on the appropriate  
34 small works roster to assure that a competitive price is established  
35 and to award contracts to the lowest responsible bidder((7)) as defined  
36 in RCW ((43.19.1911)) 39.04.010. Invitations for quotations shall  
37 include an estimate of the scope and nature of the work to be performed  
38 as well as materials and equipment to be furnished. However, detailed

1 plans and specifications need not be included in the invitation. This  
2 subsection does not eliminate other requirements for architectural or  
3 engineering approvals as to quality and compliance with building codes.  
4 Quotations may be invited from all appropriate contractors on the  
5 appropriate small works roster. As an alternative, quotations may be  
6 invited from at least five contractors on the appropriate small works  
7 roster who have indicated the capability of performing the kind of work  
8 being contracted, in a manner that will equitably distribute the  
9 opportunity among the contractors on the appropriate roster. However,  
10 if the estimated cost of the work is from one hundred thousand dollars  
11 to two hundred thousand dollars, a state agency or local government,  
12 other than a port district, that chooses to solicit bids from less than  
13 all the appropriate contractors on the appropriate small works roster  
14 must also notify the remaining contractors on the appropriate small  
15 works roster that quotations on the work are being sought. The  
16 government has the sole option of determining whether this notice to  
17 the remaining contractors is made by: (i) Publishing notice in a legal  
18 newspaper in general circulation in the area where the work is to be  
19 done; (ii) mailing a notice to these contractors; or (iii) sending a  
20 notice to these contractors by facsimile or other electronic means.  
21 For purposes of this subsection (2)(c), "equitably distribute" means  
22 that a state agency or local government soliciting bids may not favor  
23 certain contractors on the appropriate small works roster over other  
24 contractors on the appropriate small works roster who perform similar  
25 services.

26 (d) A contract awarded from a small works roster under this section  
27 need not be advertised.

28 (e) Immediately after an award is made, the bid quotations obtained  
29 shall be recorded, open to public inspection, and available by  
30 telephone inquiry.

31 (3) In lieu of awarding contracts under subsection (2) of this  
32 section, a state agency or authorized local government may award a  
33 contract for work, construction, alteration, repair, or improvement  
34 (~~(project [projects])~~) projects estimated to cost less than thirty-five  
35 thousand dollars using the limited public works process provided under  
36 this subsection. Public works projects awarded under this subsection  
37 are exempt from the other requirements of the small works roster

1 process provided under subsection (2) of this section and are exempt  
2 from the requirement that contracts be awarded after advertisement as  
3 provided under RCW 39.04.010.

4 For limited public works projects, a state agency or authorized  
5 local government shall solicit electronic or written quotations from a  
6 minimum of three contractors from the appropriate small works roster  
7 and shall award the contract to the lowest responsible bidder as  
8 defined under RCW (~~(43.19.1911)~~) 39.04.010. After an award is made,  
9 the quotations shall be open to public inspection and available by  
10 electronic request. A state agency or authorized local government  
11 shall attempt to distribute opportunities for limited public works  
12 projects equitably among contractors willing to perform in the  
13 geographic area of the work. A state agency or authorized local  
14 government shall maintain a list of the contractors contacted and the  
15 contracts awarded during the previous twenty-four months under the  
16 limited public works process, including the name of the contractor, the  
17 contractor's registration number, the amount of the contract, a brief  
18 description of the type of work performed, and the date the contract  
19 was awarded. For limited public works projects, a state agency or  
20 authorized local government may waive the payment and performance bond  
21 requirements of chapter 39.08 RCW and the retainage requirements of  
22 chapter 60.28 RCW, thereby assuming the liability for the contractor's  
23 nonpayment of laborers, mechanics, subcontractors, materialmen,  
24 suppliers, and taxes imposed under Title 82 RCW that may be due from  
25 the contractor for the limited public works project, however the state  
26 agency or authorized local government shall have the right of recovery  
27 against the contractor for any payments made on the contractor's  
28 behalf.

29 (4) The breaking of any project into units or accomplishing any  
30 projects by phases is prohibited if it is done for the purpose of  
31 avoiding the maximum dollar amount of a contract that may be let using  
32 the small works roster process or limited public works process.

33 (5) As used in this section, "state agency" means the department of  
34 general administration, the state parks and recreation commission, the  
35 department of natural resources, the department of fish and wildlife,  
36 the department of transportation, any institution of higher education  
37 as defined under RCW 28B.10.016, and any other state agency delegated

1 authority by the department of general administration to engage in  
2 construction, building, renovation, remodeling, alteration,  
3 improvement, or repair activities.

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