

# HOUSE BILL REPORT

## HB 2409

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*As Reported By House Committee on:  
Commerce & Labor*

**Title:** An act relating to public works contracts.

**Brief Description:** Changing requirements for public works contracts bid awards.

**Sponsor(s):** Representatives Franklin, Heavey, Winsley, R. King, Jones, Orr, Jacobsen, Prentice, G. Cole, Day and Valle.

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, January 30, 1992, DPS.

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**HOUSE COMMITTEE ON  
COMMERCE & LABOR**

**Majority Report:** *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 11 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; Vance; and Wilson.

**Staff:** Chris Cordes (786-7117).

**Background:** Most public agencies are required to award public works contracts to the lowest responsible bidder. This requirement applies specifically to cities, counties, school districts, institutions of higher education, housing authorities, certain state agencies, public hospital districts, port districts, public utility districts, sewer districts, water districts, diking and draining districts, and irrigation districts.

For the purpose of awarding public works contracts, there is no definition of "lowest responsible bidder." However, in determining the lowest responsible bidder when the state purchases goods or services, the state must consider the ability of the bidder to perform the contract, the reputation and experience of the bidder, whether the bidder can perform in the time specified, the quality of performance under previous contracts, and previous compliance by the bidder with laws relating to the contract.

**Summary of Substitute Bill:** The requirement for cities, counties, water districts, and sewer districts to determine the lowest responsible bidder on public works projects is changed. In determining the lowest responsible bidder, the agency is required to give consideration to both price and other specified criteria. The criteria to be considered are: the quality of the contractor's past performance on contracts if the contractor had performed similar contracts with the agency; the ability of the contractor to complete the contract within the specified time in the contract; and the compliance of the contractor with federal, state, and local laws pertaining to the contract.

The authority of a state contracting authority to negotiate bid price adjustments is changed to require the state to negotiate with a bidder who is both the low responsive and lowest responsible bidder, using the same criteria used by local governments to determine the lowest responsible bidder.

**Substitute Bill Compared to Original Bill:** The proposed substitute bill makes the following changes: (1) the changes affecting school districts are deleted; (2) cities, counties, water districts, and sewer districts would continue to award contracts to the lowest responsible bidder. However, in determining the lowest responsible bidder, the agency is required to give consideration to both price and other specified criteria. The criteria to be considered are: the quality of the contractor's past performance on contracts if the contractor had performed similar contracts with the agency; the ability of the contractor to complete the contract within the specified time in the contract; and the compliance of the contractor with federal, state, and local laws pertaining to the contract; and (3) the authority of a state contracting authority to negotiate bid price adjustments is changed to require the state to negotiate with a bidder who is both the low responsive and lowest responsible bidder, using the same criteria used by local governments to determine the lowest responsible bidder.

**Fiscal Note:** Available.

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

**Testimony For:** Agencies sometimes feel constrained to accept the lowest bid even though the bidder has not had satisfactory performance on past contracts. The statute should specify the criteria that agencies will use to determine which bidders are responsible. The criteria in

the original bill could be revised to meet expressed concerns.

**Testimony Against:** The criteria in the original bill for determining the lowest responsible bidder are too subjective. Contractors must already supply bonds and have retainage held. Does this amount to "responsibility?" If criteria are to be stated in the law, they must be flexible enough for administration of contracts.

**Witnesses:** (In favor) Robert Dilger, Washington State Building and Construction Trades Council. (In favor, with concerns) Joe Daniels, Wastewater Districts. (Opposed) Duke Schaub, Associated General Contractors; Vern Wagar, County Road Administration Board; and Bob Berg, Lewis County Department of Public Services.