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HOUSE BILL 1936

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Hudgins, Johnson, Sawyer, Tarleton, Kilduff, and Ormsby; by request of Attorney General

Read first time 02/03/17. Referred to Committee on Capital Budget.

1 AN ACT Relating to the inclusion of willful violations of  
2 chapters 49.46, 49.48, and 49.52 RCW to the state's responsible  
3 bidder criteria; amending RCW 39.04.350 and 39.26.160; and creating a  
4 new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that government  
7 contracts should not be awarded to those who knowingly and  
8 intentionally violate state laws. The legislature also finds that  
9 businesses that follow the law and pay their workers appropriately  
10 are placed at a competitive disadvantage to those who reduce costs by  
11 willfully violating the minimum wage act and wage payment act. In  
12 order to create a level playing field for businesses and avoid  
13 taxpayer contracts going to those that willfully violate the law and  
14 illegally withhold money from workers, the state should amend the  
15 state responsible bidder criteria to consider whether a company has  
16 knowingly and intentionally violated the state's wage payment laws  
17 over the previous three years.

18 **Sec. 2.** RCW 39.04.350 and 2010 c 276 s 2 are each amended to  
19 read as follows:

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

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

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

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

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

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

23 (f) Until December 31, 2013, not have violated RCW 39.04.370 more  
24 than one time as determined by the department of labor and  
25 industries; and

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

33 (2) Before award of a public works contract, a bidder shall  
34 submit to the contracting agency a signed statement in accordance  
35 with RCW 9A.72.085 verifying under penalty of perjury that the bidder  
36 is in compliance with the responsible bidder criteria requirement of  
37 subsection (1)(g) of this section. A contracting agency may award a  
38 contract in reasonable reliance upon such a sworn statement.

39 (3) In addition to the bidder responsibility criteria in  
40 subsection (1) of this section, the state or municipality may adopt

1 relevant supplemental criteria for determining bidder responsibility  
2 applicable to a particular project which the bidder must meet.

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

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

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

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

30 ~~((+3))~~ (4) The capital projects advisory review board created in  
31 RCW 39.10.220 shall develop suggested guidelines to assist the state  
32 and municipalities in developing supplemental bidder responsibility  
33 criteria. The guidelines must be posted on the board's web site.

34 **Sec. 3.** RCW 39.26.160 and 2012 c 224 s 18 are each amended to  
35 read as follows:

36 (1)(a) After bids that are submitted in response to a competitive  
37 solicitation process are reviewed by the awarding agency, the  
38 awarding agency may:

1 (i) Reject all bids and rebid or cancel the competitive  
2 solicitation;

3 (ii) Request best and final offers from responsive and  
4 responsible bidders; or

5 (iii) Award the purchase or contract to the lowest responsive and  
6 responsible bidder.

7 (b) The agency may award one or more contracts from a competitive  
8 solicitation.

9 (2) In determining whether the bidder is a responsible bidder,  
10 the agency must consider the following elements:

11 (a) The ability, capacity, and skill of the bidder to perform the  
12 contract or provide the service required;

13 (b) The character, integrity, reputation, judgment, experience,  
14 and efficiency of the bidder;

15 (c) Whether the bidder can perform the contract within the time  
16 specified;

17 (d) The quality of performance of previous contracts or services;

18 (e) The previous and existing compliance by the bidder with laws  
19 relating to the contract or services; (~~and~~)

20 (f) Whether, within the three-year period immediately preceding  
21 the date of the bid solicitation, the bidder has been determined by a  
22 final and binding citation and notice of assessment issued by the  
23 department of labor and industries or through a civil judgment  
24 entered by a court of limited or general jurisdiction to have  
25 willfully violated, as defined in RCW 49.48.082, any provision of  
26 chapter 49.46, 49.48, or 49.52 RCW; and

27 (g) Such other information as may be secured having a bearing on  
28 the decision to award the contract.

29 (3) In determining the lowest responsive and responsible bidder,  
30 an agency may consider best value criteria, including but not limited  
31 to:

32 (a) Whether the bid satisfies the needs of the state as specified  
33 in the solicitation documents;

34 (b) Whether the bid encourages diverse contractor participation;

35 (c) Whether the bid provides competitive pricing, economies, and  
36 efficiencies;

37 (d) Whether the bid considers human health and environmental  
38 impacts;

39 (e) Whether the bid appropriately weighs cost and noncost  
40 considerations; and

1 (f) Life-cycle cost.

2 (4) The solicitation document must clearly set forth the  
3 requirements and criteria that the agency will apply in evaluating  
4 bid submissions. Before award of a contract, a bidder shall submit to  
5 the contracting agency a signed statement in accordance with RCW  
6 9A.72.085 verifying under penalty of perjury that the bidder is in  
7 compliance with the responsible bidder criteria requirement of  
8 subsection (2)(f) of this section. A contracting agency may award a  
9 contract in reasonable reliance upon such a sworn statement.

10 (5) The awarding agency may at its discretion reject the bid of  
11 any contractor who has failed to perform satisfactorily on a previous  
12 contract with the state.

13 (6) After reviewing all bid submissions, an agency may enter into  
14 negotiations with the lowest responsive and responsible bidder in  
15 order to determine if the bid may be improved. An agency may not use  
16 this negotiation opportunity to permit a bidder to change a  
17 nonresponsive bid into a responsive bid.

18 (7) The procuring agency must enter into the state's enterprise  
19 vendor (~~(registration)~~) registration and bid notification system  
20 the name of each bidder and an indication as to the successful  
21 bidder.

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