
SUBSTITUTE HOUSE BILL 1089

State of Washington

64th Legislature

2015 Regular Session

By House State Government (originally sponsored by Representatives S. Hunt, Moscoso, Robinson, Tarleton, Gregerson, and Pollet; by request of Attorney General)

READ FIRST TIME 01/26/15.

1 AN ACT Relating to adding adherence to state wage payment laws to
2 the state's responsible bidder criteria; amending RCW 39.04.350 and
3 39.26.160; adding a new section to chapter 49.46 RCW; adding a new
4 section to chapter 49.48 RCW; and adding a new section to chapter
5 49.52 RCW.

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

7 **Sec. 1.** RCW 39.04.350 and 2010 c 276 s 2 are each amended to
8 read as follows:

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

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

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

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

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

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

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

14 (g) Within the three-year period immediately preceding the date
15 of the bid solicitation, not have willfully violated, as defined in
16 RCW 49.48.082, or violated more than one time, any provision of
17 chapter 49.46, 49.48, or 49.52 RCW as determined by the department of
18 labor and industries or through a civil judgment entered by a court
19 of limited or general jurisdiction.

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

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

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

34 (b) In a timely manner before the bid submittal deadline, a
35 potential bidder may request that the state or municipality modify
36 the supplemental criteria. The state or municipality must evaluate
37 the information submitted by the potential bidder and respond before
38 the bid submittal deadline. If the evaluation results in a change of
39 the criteria, the state or municipality must issue an addendum to the
40 bidding documents identifying the new criteria.

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

6 (d) If the state or municipality determines a bidder to be not
7 responsible, the state or municipality must provide, in writing, the
8 reasons for the determination. The bidder may appeal the
9 determination within the time period specified in the bidding
10 documents by presenting additional information to the state or
11 municipality. The state or municipality must consider the additional
12 information before issuing its final determination. If the final
13 determination affirms that the bidder is not responsible, the state
14 or municipality may not execute a contract with any other bidder
15 until two business days after the bidder determined to be not
16 responsible has received the final determination.

17 ~~((3))~~(4) The capital projects advisory review board created in
18 RCW 39.10.220 shall develop suggested guidelines to assist the state
19 and municipalities in developing supplemental bidder responsibility
20 criteria. The guidelines must be posted on the board's web site.

21 **Sec. 2.** RCW 39.26.160 and 2012 c 224 s 18 are each amended to
22 read as follows:

23 (1)(a) After bids that are submitted in response to a competitive
24 solicitation process are reviewed by the awarding agency, the
25 awarding agency may:

26 (i) Reject all bids and rebid or cancel the competitive
27 solicitation;

28 (ii) Request best and final offers from responsive and
29 responsible bidders; or

30 (iii) Award the purchase or contract to the lowest responsive and
31 responsible bidder.

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

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

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

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

1 (c) Whether the bidder can perform the contract within the time
2 specified;

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

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

6 (f) Whether, within the three-year period immediately preceding
7 the date of the bid solicitation, the bidder has willfully violated,
8 as defined in RCW 49.48.082, or violated more than one time, any
9 provision of chapter 49.46, 49.48, or 49.52 RCW as determined by the
10 department of labor and industries or through a civil judgment
11 entered by a court of limited or general jurisdiction; and

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

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

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

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

20 (c) Whether the bid provides competitive pricing, economies, and
21 efficiencies;

22 (d) Whether the bid considers human health and environmental
23 impacts;

24 (e) Whether the bid appropriately weighs cost and noncost
25 considerations; and

26 (f) Life-cycle cost.

27 (4) The solicitation document must clearly set forth the
28 requirements and criteria that the agency will apply in evaluating
29 bid submissions. Before award of a contract, a bidder shall submit to
30 the contracting agency a signed statement in accordance with RCW
31 9A.72.085 verifying under penalty of perjury that the bidder is in
32 compliance with the responsible bidder criteria requirement of
33 subsection (2)(f) of this section. A contracting agency may award a
34 contract in reasonable reliance upon such a sworn statement.

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

38 (6) After reviewing all bid submissions, an agency may enter into
39 negotiations with the lowest responsive and responsible bidder in
40 order to determine if the bid may be improved. An agency may not use

1 this negotiation opportunity to permit a bidder to change a
2 nonresponsive bid into a responsive bid.

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

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.46
7 RCW to read as follows:

8 As set forth in RCW 39.04.350 and 39.26.160, willful or repeat
9 violations of this chapter may result in a bidder not meeting
10 responsibility criteria for a public works or public contract.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.48
12 RCW to read as follows:

13 As set forth in RCW 39.04.350 and 39.26.160, willful or repeat
14 violations of this chapter may result in a bidder not meeting
15 responsibility criteria for a public works or public contract.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.52
17 RCW to read as follows:

18 As set forth in RCW 39.04.350 and 39.26.160, willful or repeat
19 violations of this chapter may result in a bidder not meeting
20 responsibility criteria for a public works or public contract.

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