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SENATE BILL 5050

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State of Washington

64th Legislature

2015 Regular Session

By Senators Roach, Conway, McCoy, Darneille, and Hobbs; by request of Attorney General

Prefiled 01/08/15.

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) Not have willfully violated, as defined in RCW 49.48.082, or  
15 violated more than one time, any provision of chapter 49.46, 49.48,  
16 or 49.52 RCW within the three-year period immediately preceding the  
17 date of the bid solicitation.

18 (2) A bidder responding to a bid solicitation shall submit to the  
19 contracting agency a signed statement under oath by an owner or  
20 officer verifying compliance with the responsible bidder criteria  
21 requirement of subsection (1)(g) of this section. A contracting  
22 agency may award a contract in reasonable reliance upon such a sworn  
23 statement and accept it as sufficient to demonstrate that a vendor is  
24 a responsible bidder.

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

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

33 (b) In a timely manner before the bid submittal deadline, a  
34 potential bidder may request that the state or municipality modify  
35 the supplemental criteria. The state or municipality must evaluate  
36 the information submitted by the potential bidder and respond before  
37 the bid submittal deadline. If the evaluation results in a change of  
38 the criteria, the state or municipality must issue an addendum to the  
39 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 the bidder has willfully violated, as defined in RCW  
7 49.48.082, or violated more than one time, any provision of chapter  
8 49.46, 49.48, or 49.52 RCW within the three-year period immediately  
9 preceding the date of the bid solicitation; and

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

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

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

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

18 (c) Whether the bid provides competitive pricing, economies, and  
19 efficiencies;

20 (d) Whether the bid considers human health and environmental  
21 impacts;

22 (e) Whether the bid appropriately weighs cost and noncost  
23 considerations; and

24 (f) Life-cycle cost.

25 (4) The solicitation document must clearly set forth the  
26 requirements and criteria that the agency will apply in evaluating  
27 bid submissions. A vendor responding to a bid solicitation shall  
28 submit to the contracting agency a signed statement under oath by an  
29 owner or officer verifying compliance with the responsible bidder  
30 criteria requirement of subsection (2)(f) of this section. A  
31 contracting agency may award a contract in reasonable reliance upon  
32 such a sworn statement and accept it as sufficient to demonstrate  
33 that a vendor is a responsible bidder.

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

37 (6) After reviewing all bid submissions, an agency may enter into  
38 negotiations with the lowest responsive and responsible bidder in  
39 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  
5 the name of each bidder and an indication as to the successful  
6 bidder.

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

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

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

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

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

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

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