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Public Works Bidder Responsibility Mandated and Defined

Governor Gregoire signed into law on April 19, 2007, statutory provisions that define bidder responsibility for public works contracts (including small works roster contracts) and allow public agencies to add their own supplementary responsibility requirements.

SHB 2010 amends Ch. 39.04 RCW and adds a new section, which expressly defines the basic statutory responsibility requirements. The basic requirements that a public works bidder must satisfy are:

- A certificate of registration, Ch. 18.27 RCW
- A current state unified business identifier number
- If applicable, industrial insurance coverage for bidder employees, an employment security number and a state excise tax registration number
- Not be disqualified from bidding as provided by statutes governing unregistered and unlicensed contractors and/or failing to pay prevailing wages

Importantly, the new law provides that public agencies may establish supplemental criteria for determining bidder responsibility. These criteria must be set forth in the invitation to bid or bidding documents and must include the basis for evaluation of the criteria and a deadline for appealing a determination of non-responsibility. Prior to bid submittal, any bidder may request modification of the supplemental criteria, which if granted must then be published to all bidders by addendum. The Capital Projects Advisory Review Board is mandated to develop guidelines to assist public agencies in developing supplemental bidder responsibility criteria.

If a bidder fails to supply the information, the public agency may base a determination of responsibility upon “any available information related to the supplemental criteria or may find the bidder not responsible.”

If a bidder is determined to be not responsible, the public agency must provide a written determination of the reasons, which may be appealed by the bidder to the agency. If a bidder is still determined to be not responsible then the public agency may not execute a contract with another bidder until two business days after the non-responsible bidder has received the final determination.

Finally, another new section provides that a public works general contractor must verify responsibility criteria for each first tier subcontractor and a subcontractor of any tier must provide the same verification for any of its subcontractors. The verification requirement must be included in every general contract and subcontract of every tier. The verification is limited to the basic statutory criteria and appropriate electrical and elevator licensing, if applicable.

The law enacted can be found online at: <http://www.leg.wa.gov/pub/billinfo/2007-08/Pdf/Bills/House%20Passed%20Legislature/2010-S.PL.pdf>.

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