

---

**SUBSTITUTE SENATE BILL 5133**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate State Government & Elections (originally sponsored by Senators Keiser, Conway, Kuderer, Randall, Saldaña, and Valdez)

1 AN ACT Relating to modifying the responsible bidder criteria for  
2 public works projects; and amending RCW 39.04.350 and 39.12.055.

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

4 **Sec. 1.** RCW 39.04.350 and 2020 c 255 s 2 are each amended to  
5 read as follows:

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

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

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

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

18 (d) If the project has apprentice utilization requirements  
19 pursuant to RCW 39.04.320, be listed as an active training agent in  
20 the department of labor and industries' apprenticeship registration

1 tracking system and attest to only subcontract with active training  
2 agents for project work in an apprentice-able occupation;

3 (e) Not be disqualified from bidding on any public works contract  
4 under RCW 39.06.010 or 39.12.065(3);

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

14 ~~((f))~~ (g) Have received training on the requirements related to  
15 public works and prevailing wage under this chapter and chapter 39.12  
16 RCW or have completed a public works project in the prior three years  
17 and maintained responsible bidder status. ~~((The))~~ At the time of bid  
18 submittal, the bidder must ~~((designate a))~~ have a designated person  
19 or persons ~~((to be))~~ trained within the last three years prior to bid  
20 submittal on these requirements or have completed a public works  
21 project within the prior three years without violation pursuant to  
22 RCW 39.12.055. The training must be provided by the department of  
23 labor and industries or by a training provider whose curriculum is  
24 approved by the department. The department, in consultation with the  
25 prevailing wage advisory committee, must determine the length of the  
26 training. ~~((Bidders that have completed three or more public works~~  
27 ~~projects and have had a valid business license in Washington for~~  
28 ~~three or more years are exempt from this subsection.))~~ The department  
29 of labor and industries must keep records of entities that have  
30 satisfied the training requirement ~~((or are exempt))~~ and make the  
31 records available on its website. Responsible parties may rely on the  
32 records made available by the department regarding satisfaction of  
33 the training requirement ~~((or exemption));~~ and

34 ~~((g))~~ (h) Within the three-year period immediately preceding  
35 the date of the bid solicitation, not have been determined by a final  
36 and binding citation and notice of assessment issued by the  
37 department of labor and industries or through a civil judgment  
38 entered by a court of limited or general jurisdiction to have  
39 willfully violated, as defined in RCW 49.48.082, any provision of  
40 chapter 49.46, 49.48, or 49.52 RCW.

1       (2) The department of labor and industries must develop an  
2 attestation document listing all responsible bidder criteria in  
3 subsection (1) of this section and make it publicly available to  
4 prospective bidders. Before award of a public works contract, a  
5 bidder shall submit to the contracting agency a (~~signed statement~~)  
6 completed responsible bidder attestation as provided by the  
7 department of labor and industries and signed in accordance with  
8 chapter 5.50 RCW verifying under penalty of perjury that the bidder  
9 is in compliance with the responsible bidder criteria requirement of  
10 subsection (1) (~~(g)~~) of this section. A contracting agency (~~may~~  
11 ~~award a contract in reasonable reliance upon such a sworn statement~~)  
12 shall verify all responsible bidder criteria are met prior to  
13 awarding a contract.

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

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

22       (b) In a timely manner before the bid submittal deadline, a  
23 potential bidder may request that the state or municipality modify  
24 the supplemental criteria. The state or municipality must evaluate  
25 the information submitted by the potential bidder and respond before  
26 the bid submittal deadline. If the evaluation results in a change of  
27 the criteria, the state or municipality must issue an addendum to the  
28 bidding documents identifying the new criteria.

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

34       (d) If the state or municipality determines a bidder to be not  
35 responsible, the state or municipality must provide, in writing, the  
36 reasons for the determination. The bidder may appeal the  
37 determination within the time period specified in the bidding  
38 documents by presenting additional information to the state or  
39 municipality. The state or municipality must consider the additional  
40 information before issuing its final determination. If the final

1 determination affirms that the bidder is not responsible, the state  
2 or municipality may not execute a contract with any other bidder  
3 until two business days after the bidder determined to be not  
4 responsible has received the final determination.

5 (e) (~~If the bidder has a history of receiving~~) On projects  
6 subject to apprenticeship utilization requirements pursuant to RCW  
7 39.04.320, if the bidder has a history of being demonstrated to be  
8 out of compliance, receiving monetary penalties for not achieving the  
9 apprentice utilization requirements pursuant to RCW 39.04.320, or is  
10 habitual in utilizing the good faith effort exception process, the  
11 bidder must submit (~~an apprenticeship~~) a verifiable apprentice  
12 utilization plan (~~within ten business days immediately following the~~  
13 notice to proceed date) for the awarding agency's review and  
14 acceptance prior to award of the public works project.

15 (4) The capital projects advisory review board created in RCW  
16 39.10.220 shall develop suggested guidelines to assist the state and  
17 municipalities in developing supplemental bidder responsibility  
18 criteria. The guidelines must be posted on the board's website.

19 **Sec. 2.** RCW 39.12.055 and 2009 c 197 s 3 are each amended to  
20 read as follows:

21 (~~A contractor shall not be allowed to bid on any public works~~  
22 ~~contract for one year from the date of a final determination that the~~  
23 ~~contractor has~~) (1) The department of labor and industries shall  
24 provide a written warning to a contractor found to have committed any  
25 (~~combination of two~~) of the following violations or infractions  
26 within a five-year period:

27 (~~(1)~~) (a) Violated RCW 51.48.020(1) or 51.48.103;

28 (~~(2)~~) (b) Committed an infraction or violation under chapter  
29 18.27 RCW for performing work as an unregistered contractor; or

30 (~~(3)~~) (c) Determined to be out of compliance by the Washington  
31 state apprenticeship and training council for not achieving mandatory  
32 apprenticeship utilization requirements, or for working apprentices  
33 out of ratio, without appropriate supervision, or outside their  
34 approved work processes as outlined in their standards of  
35 apprenticeship under chapter 49.04 RCW.

36 (2) If a contractor, within three years of receiving a written  
37 warning, is found to have committed any violation listed in this  
38 section, the contractor shall not be allowed to bid on any public

1 works contract for one year from the date of a final determination of  
2 noncompliance.

--- **END** ---