

CERTIFICATION OF ENROLLMENT

**ENGROSSED HOUSE BILL 2805**

61st Legislature  
2010 Regular Session

Passed by the House March 6, 2010  
Yeas 52 Nays 42

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**Speaker of the House of Representatives**

Passed by the Senate March 3, 2010  
Yeas 28 Nays 18

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 2805** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED HOUSE BILL 2805

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AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

**State of Washington**                      **61st Legislature**                      **2010 Regular Session**

**By** Representatives Ormsby, Campbell, Williams, Van De Wege, Simpson, White, Chase, Hasegawa, Rolfes, and Conway

Read first time 01/14/10. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to public works involving off-site prefabrication;  
2 amending RCW 39.04.350; and adding a new section to chapter 39.04 RCW.

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

4            NEW SECTION.    **Sec. 1.** A new section is added to chapter 39.04 RCW  
5 to read as follows:

6            (1) For any public work estimated to cost over one million dollars,  
7 the contract must contain a provision requiring the submission of  
8 certain information about off-site, prefabricated, nonstandard, project  
9 specific items produced under the terms of the contract and produced  
10 outside Washington. The information must be submitted to the  
11 department of labor and industries under subsection (2) of this  
12 section. The information that must be provided is:

13            (a) The estimated cost of the public works project;

14            (b) The name of the awarding agency and the title of the public  
15 works project;

16            (c) The contract value of the off-site, prefabricated, nonstandard,  
17 project specific items produced outside Washington, including labor and  
18 materials; and

1 (d) The name, address, and federal employer identification number  
2 of the contractor that produced the off-site, prefabricated,  
3 nonstandard, project specific items.

4 (2)(a) The required information under this section must be  
5 submitted by the contractor or subcontractor as a part of the affidavit  
6 of wages paid form filed with the department of labor and industries  
7 under RCW 39.12.040. This information is only required to be submitted  
8 by the contractor or subcontractor who directly contracted for the off-  
9 site, prefabricated, nonstandard, project specific items produced  
10 outside Washington.

11 (b) The department of labor and industries shall include requests  
12 for the information about off-site, prefabricated, nonstandard, project  
13 specific items produced outside Washington on the affidavit of wages  
14 paid form required under RCW 39.12.040.

15 (c) The department of general administration shall develop standard  
16 contract language to meet the requirements of subsection (1) of this  
17 section and make the language available on its web site.

18 (d) Failure to submit the information required in subsection (1) of  
19 this section as part of the affidavit of wages paid form does not  
20 constitute a violation of RCW 39.12.050.

21 (3) For the purposes of this section, "off-site, prefabricated,  
22 nonstandard, project specific items" means products or items that are:  
23 (a) Made primarily of architectural or structural precast concrete,  
24 fabricated steel, pipe and pipe systems, or sheet metal and sheet metal  
25 duct work; (b) produced specifically for the public work and not  
26 considered to be regularly available shelf items; (c) produced or  
27 manufactured by labor expended to assemble or modify standard items;  
28 and (d) produced at an off-site location.

29 (4) The department of labor and industries shall transmit  
30 information collected under this section to the capital projects  
31 advisory review board created in RCW 39.10.220 for review.

32 (5) This section applies to contracts entered into between  
33 September 1, 2010, and December 31, 2013.

34 (6) This section does not apply to department of transportation  
35 public works projects.

36 (7) This section does not apply to local transportation public  
37 works projects.

1       **Sec. 2.** RCW 39.04.350 and 2009 c 197 s 2 are each amended to read  
2 as follows:

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

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

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

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

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

15       (e) If bidding on a public works project subject to the  
16 apprenticeship utilization requirements in RCW 39.04.320, not have been  
17 found out of compliance by the Washington state apprenticeship and  
18 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 section 1 of this  
24 act more than one time as determined by the department of labor and  
25 industries.

26       (2) In addition to the bidder responsibility criteria in subsection  
27 (1) of this section, the state or municipality may adopt relevant  
28 supplemental criteria for determining bidder responsibility applicable  
29 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 the  
33 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 the  
36 supplemental criteria. The state or municipality must evaluate the  
37 information submitted by the potential bidder and respond before the

1 bid submittal deadline. If the evaluation results in a change of the  
2 criteria, the state or municipality must issue an addendum to the  
3 bidding documents identifying the new criteria.

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

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

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

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