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**ENGROSSED HOUSE BILL 2805**

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**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; adding a new section to chapter 39.04 RCW;  
3 creating a new section; and providing an expiration date.

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

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

7       (1) For any public work estimated to cost over one million dollars,  
8 the contract must contain a provision requiring the contractor to  
9 submit certain information about off-site, prefabricated, nonstandard,  
10 project specific items produced under the terms of the contract and  
11 produced outside Washington. The information must be submitted to the  
12 awarding agency and to the department of general administration within  
13 ten days of delivery of the item under the contract. The information  
14 that must be provided is:

15       (a) The total cost of the public works project;

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

1 (c) 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 on forms made available by the department of general  
6 administration.

7 (b) The department of general administration shall develop standard  
8 contract language to meet the requirements of subsection (1)(a) of this  
9 section and make the language available on its web site.

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

18 (4) The department of general administration shall compile  
19 information collected under this section and submit it on an annual  
20 basis to the capital projects advisory review board created in RCW  
21 39.10.220 for review and public hearing.

22 (5) This section applies to contracts entered into on or after  
23 September 1, 2010, and expires December 31, 2015.

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

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

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

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

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

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

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

9 (f) Until December 31, 2015, not have violated section 1 of this  
10 act more than one time.

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

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

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

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

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

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

4 (3) The capital projects advisory review board created in RCW  
5 39.10.220 shall develop suggested guidelines to assist the state and  
6 municipalities in developing supplemental bidder responsibility  
7 criteria. The guidelines must be posted on the board's web site.

8 NEW SECTION. **Sec. 3.** The expiration of section 1 of this act does  
9 not affect any request or proceeding instituted prior to the expiration  
10 of section 1 of this act.

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