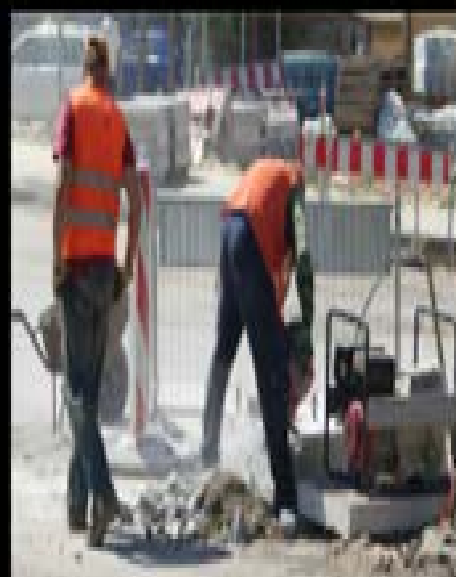


WA State Contractor Certification and Wage Theft Prevention for Goods and Services Contracts



**WA-STATE CONTRACTOR
CERTIFICATION – WAGE THEFT
PREVENTION:
GOODS & SERVICES CONTRACTS**

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AGENDA

- Wage Theft
- Legislative Change: SSB5301
- Contractor Certification
- Contracts: Looking Forward
- Takeaway Messages
- Additional Resources

GOALS & TOOLS

TEAM GOALS

- Understand statutory change
- Have operational tools to implement Legislative direction efficiently

TOOLS

- Template
- Backgrounder
- Training Deck

WAGE THEFT

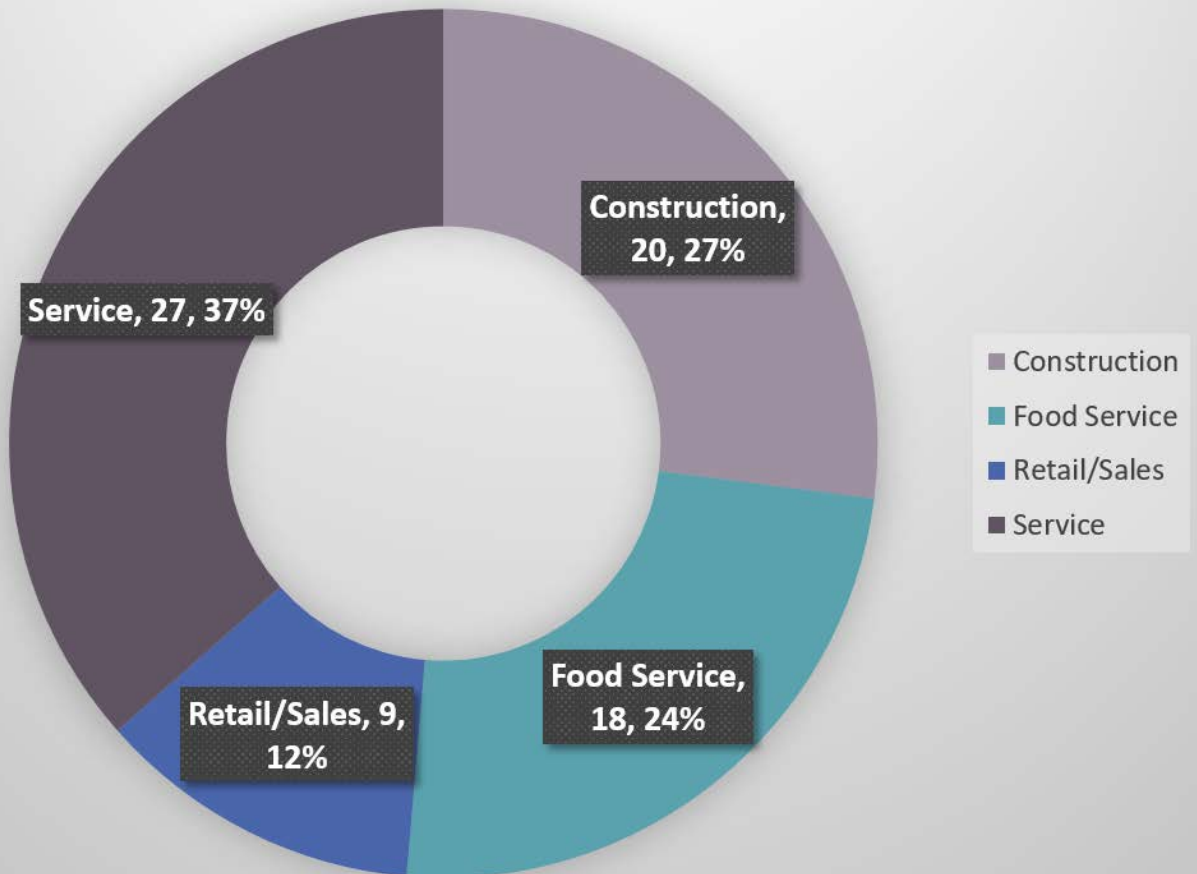
Background

WHAT IS WAGE THEFT?

- Failure to pay required employee wages or benefits
- Examples –
 - Nonpayment/underpayment of wages
 - Overtime violations
 - Missed breaks
 - Tipped job violations
 - Deduction violations
 - Misclassification of employees

WAGE THEFT OCCURRENCE

Wage Theft Percentage of Claims



HOW TO COMBAT WAGE THEFT

- Education
- Enforcement
- Legislation

REMEDIES

- Workplace Rights Complaint
Filed with the Washington Dep't of
Labor & Industries
- FLSA Complaint
U.S. Dep't of Labor
- Private Lawsuit
Filed lawsuit in Superior Court against
employer
- Local Public Enforcement
- Public Shaming

LEGISLATIVE CHANGE

Senate Substitute Bill 5301

HISTORY

- In 2015, AGO proposed legislation, but did not pass
- In 2017, AGO again proposed legislation
 - Sponsored by Senator Miloscia
 - Passed Senate 46-3
 - Passed House, 63-33
 - Signed by Governor (May 8)
 - Effective: July 23, 2017

HIGHLIGHTS

- Effective Date: July 23, 2017
- Purpose
- Operational Impacts:
 - Amends 'responsible bidder' criteria for –
 - Goods and Services Contracts
RCW 39.26.160
 - Public Works Contracts
RCW 39.04.350

PURPOSE

“Sec. 1. The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years.”

GOODS & SERVICES CONTRACTS

- Revised responsible bidder criteria [*see* RCW 39.26.160(2)]
- Agencies now also must consider:

“Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW;”

CONTRACTOR CERTIFICATION

- Safe Harbor Contractor Certification [amending RCW 39.26.160(4)]

“The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions. Before award of a contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (2)(f) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.”

CONTRACTOR CERTIFICATION – WAGE THEFT PREVENTION

Goods & Services Contracts

TEAM TEMPLATE

**CONTRACTOR CERTIFICATION
WAGE THEFT PREVENTION – RESPONSIBLE BIDDER CRITERIA
WASHINGTON STATE GOODS & SERVICES CONTRACTS**

Prior to awarding a contract, the Washington State Department of Enterprise Services is required to determine that a bidder is a 'responsible bidder.' See RCW 39.26.160(2) & (4). Pursuant to legislative enactment in 2017, the responsible bidder criteria include a contractor certification that the contractor has not willfully violated Washington's wage laws. See Chap. 258, 2017 Laws (enacting SSB 5301).

Procurement No.: _____

Procurement Solicitation Dated: _____, 2017

I hereby certify, on behalf of the firm identified below, as follows (check one):

- NO WAGE VIOLATIONS.** This firm has NOT been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), any provision of RCW chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced procurement solicitation date.

OR

- VIOLATIONS OF WAGE LAWS.** This firm has been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in [RCW 49.48.082](#), a provision of RCW chapters [49.46](#), [49.48](#), or [49.52](#) within three (3) years prior to the date of the above-referenced procurement solicitation date.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

FIRM NAME: _____
Name of Contractor/Bidder – Print full legal entity name of firm

By: _____
Signature of authorized person

Print Name of person making certifications for firm

Title: _____
Title of person signing certificate

Place: _____
Print city and state where signed

Date: _____

Return Contractor Certification to Procurement Coordinator at:
_____@des.wa.gov

OPERATIONAL ISSUES

- Procurement Solicitation Date
- When to collect the Contractor Certificate
- If bidder marks 'violated wage laws'
- Etc.

WHAT IS THE PROCUREMENT SOLICITATION DATE?

- This is the date the solicitation is posted or published on WEBS or the date the procurement is distributed to solicit bids.
- The purpose of the date is to mark a point in time, for contractors/bidders to make certifications for the prior three (3) year period.

WHEN TO COLLECT THE CERTIFICATION?

- When bids are due.
- Agencies are required to obtain the Contractor Certification “before award of a contract.” *See* RCW 39.26.160(4).

WHY DOES THE TEMPLATE HAVE TWO OPTIONS?

- To provide vendors with opportunity to make accurate certification regarding their compliance with the responsible bidder criteria pertaining to 'wage theft.

WHAT HAPPENS IF THE VENDOR MARKS 'VIOLATIONS OF WAGE LAWS'?

- The agency will need to review the vendor.
- Could be a mistake.
- If not, look at Legislative policy.

DOES THIS REQUIREMENT APPLY TO OUT-OF-STATE VENDORS

- Yes
- But, issue is whether they have violated **Washington** wage laws.

DOES THE WAGE THEFT CERTIFICATION APPLY TO OTHER TYPES OF CONTRACTS?

- Yes.
- Also applies to public works contracts [RCW39.04.350].

CAN THE WAGE CERTIFICATION BE COMBINED WITH OTHER CONTRACT CERTIFICATIONS?

- Yes
- Must comply with statutory requirements.

WHAT MAKES A CERTIFICATION A SWORN STATEMENT?

The required elements of a Sworn Certification under RCW 9A.72.085 are:

- Recites that it is certified or declared by the person ***to be true under penalty of perjury***
- States the ***date*** and ***place*** of its execution (where it was signed)
- Is signed by the person making the sworn statement
- A bidder certification can be signed by hand signature or by electronic signature

SAMPLE SIGNATURE BLOCK

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct":

.....

(Date and Place)

.....

(Signature)

WHERE CAN I LEARN MORE ABOUT WAGE THEFT?



Washington State Department of
Labor & Industries

CONTRACTS: LOOKING FORWARD

COMPLIANCE WITH LAW

- COMPLIANCE WITH LAW. Contractor shall comply with all applicable law.

REPRESENTATIONS & WARRANTIES

- **CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- **WAGE VIOLATIONS.** Contractor represents and warrants that neither it nor its principals or affiliates presently are determined, by a final order of the Washington Department of Labor and Industries or a Court, to be in willful violation of state wage laws.

REP & WARRANTY, PART 2

- **SUSPENSION & TERMINATION; REMEDIES.**
 - **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Contract. All of Contractor's obligations to Enterprise Services survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.
 - **DEFAULT.** Each of the following events shall constitute default of this Contract by Contractor:
 - Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - **Contractor breaches any representation or warranty provided herein;** or
 - Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

TAKEAWAY MESSAGES

REMEMBER

- The Legislature directs how the state allocates governmental resources
- Effective July 23, 2017, the responsible bidder criteria is changed
- Obtain a Contractor Certification using the Template and Backgrounder
- Tailor contracts, as appropriate, to address ongoing compliance with wage payment requirements

ADDITIONAL RESOURCES

SEE RESOURCES TAB

- Template: *Contractor Certification Wage Theft Prevention – Responsible Bidder Criteria*
(Rev. 7-12-2017)
- Backgrounder: *Contractor Certification Wage Theft Prevention – Responsible Bidder Criteria*
(Dated 7-20-2017)
- Responsible Bidder Criteria
RCW 39.26.160(2)
- [Substitute Senate Bill 5301](#)
Chap 258, Laws of 2017
- Washington Dep't of Labor & Industries –
[Workplace Rights](#)

THANK YOU
