

State of Washington

**Capital Projects Advisory Review Board
(CPARB)**

Suggested Guidelines
for
Bidder Responsibility

Approved by CPARB

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Suggested Guidelines for Bidder Responsibility

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Introduction

In 2007, the legislature approved a new law regarding responsible bidder criteria for public works projects, codified in RCW [39.04.010](#), [39.04.350](#), and [39.06.020](#).¹ The purpose of the law is to provide tools for public owners in the award of public works contracts that will help ensure that responsible contractors and subcontractors perform the work.

The legislation addresses three major areas of bidder responsibility:

1. Bidder responsibility criteria (mandatory)
2. Supplemental bidder responsibility criteria (optional)
3. Subcontractor responsibility criteria (mandatory)

These Suggested Guidelines are in response to the charge in RCW [39.04.350](#) (4) for CPARB to develop Suggested Guidelines to assist public agencies in developing and implementing the bidder responsibility statute.²

Note: These Suggested Guidelines are not legal advice. Public agencies with questions or issues related to the implementation of the bidder responsibility requirements should contact appropriate individuals, including but not limited to the agency's legal counsel, other management and technical personnel, or applicable governmental associations (i.e., Association of Washington Cities, Washington State Association of Counties, Washington Ports, etc.).

Training: As needed and resource permitting, CPARB, in conjunction with various industry stakeholders, may sponsor training for public agencies on the use of bidder responsibility criteria. Contact CPARB personnel as noted on CPARB's website (www.des.wa.gov/about/committees/CPARB) for more information.

¹ SHB 2010, also from 2007.

² RCW [39.04.350](#) (4) requires that "The Capital Projects Advisory Review Board created in RCW [39.10.220](#) shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site."

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Mandatory Requirements

Bidder Responsibility Criteria (mandatory)

Purpose and Goals: The 2007 Legislature defined the term “responsible bidder” for public works contracts by amending definitions in RCW [39.04.010](#) and creating a new section RCW [39.04.350](#). To be considered a responsible bidder, the bidder must have a certificate of registration as a contractor at the time of bid submittal; a current state unified business identifier number; and if applicable, industrial insurance coverage for the bidder’s employees working in Washington, an Employment Security Department number, and a state excise tax registration number. In addition, the bidder must not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3). Most of these requirements existed prior to the enactment of RCW [39.04.350](#). Since the adoption of the bidder responsibility legislation in 2007, the Legislature has added mandatory bidder responsibility criteria pertaining to apprenticeship utilization, public works training, and wage payment violations. The law requires that public owners verify these items prior to award of a public works contract, and requires contractors and subcontractors to verify these items prior to execution of a subcontract.

The Law: The relevant portion of [RCW 39.04.350 \(1 and 2\)](#) states the following:

- (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
 - (a) At the time of bid submittal, have a certificate of registration in compliance with RCW [18.27](#);
 - (b) Have a current state unified business identifier number;
 - (c) If applicable, have industrial insurance coverage for the bidder’s employees working in Washington as required in RCW [51](#); an employment security department number as required in RCW [50](#); and a state excise tax registration number as required in RCW [82](#);
 - (d) Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#) (3).
 - (e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW [39.04.320](#), not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW [49.04](#) for the one-year period immediately preceding the date of the bid solicitation; and
 - (f) Have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these

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requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The Department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its web site. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have 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 RCW [49.46](#), 49.48, or [49.52](#).

- (2) Before award of a public works 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 (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

Suggested Language for Bidding Documents: The following is suggested language for bidding documents addressing the requirements for mandatory bidder responsibility criteria:

Bidder Responsibility Criteria

- A. It is the intent of Owner to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required by the Owner to submit documentation demonstrating compliance with the criteria. The bidder must:
1. At the time of bid submittal, have a current certificate of registration as a contractor in compliance with RCW [18.27](#);
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable:
 - a. Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in RCW [51](#);

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- b. Have a Washington Employment Security Department number, as required in RCW [50](#);
 - c. Have a Washington Department of Revenue state excise tax registration number, as required in RCW [82](#);
4. Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#)(3).
5. If bidding on public works projects subject to the apprenticeship utilization requirements of RCW [39.04.320](#), not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW [49.04](#) for the one-year period immediately preceding the first date of advertising for the project.
6. **Public Works and Prevailing Wage Training/Exemption.** Bidders shall have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption.
<http://lni.wa.gov/TradesLicensing/PrevWage/Contractors/Training.asp>
7. Within the three-year period immediately preceding the date of the bid solicitation, not have 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 RCW [49.46](#), [49.48](#), or [49.52](#). A bidder shall submit a signed Contractor Certification form with the bid form regarding this wage theft prevention responsible bidder criteria.

Documentation: It is advisable for audit purposes that Owners maintain documentation in their contract files demonstrating that the bidder met all of the bidder responsibility criteria. With respect to maintaining documentation of a bidder's UBI number, such an action is required by the three statutes referenced in RCW [39.06.010](#) (2).

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Subcontractor Responsibility Criteria (mandatory)

Purpose and Goals: RCW [39.06.020](#) requires that public works contractors and subcontractors verify that any subcontractors they directly hire meet the responsibility criteria for the project at the time of subcontract execution. In addition to verifying the bidder responsibility criteria (mandatory) discussed at the beginning of these Suggested Guidelines, the contractor or subcontractor must also verify that a subcontractor has an electrical contractor license or elevator contractor license, if required.

The Law: [RCW 39.06.020](#) states the following:

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW [39.04.350](#) (1) and possesses an electrical contractor license, if required by RCW [19.28](#), or an elevator contractor license, if required by RCW [70.87](#). This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

Suggested Language for Contracts: The following is suggested contract language for Owners to include in their public works contracts regarding subcontractor responsibility criteria:

Subcontractor Responsibility:

- A. The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.
- B. At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:
 1. Have a current certificate of registration in compliance with RCW 18.27, which must have been in effect at the time of subcontract bid submittal;

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2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
 - a. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in RCW 51;
 - b. A Washington Employment Security Department number, as required in RCW 50;
 - c. A Washington Department of Revenue state excise tax registration number, as required in RCW 82;
 - d. An electrical contractor license, if required by RCW 19.28;
 - e. An elevator contractor license, if required by RCW 70.87.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
5. For public works projects subject to the apprenticeship utilization requirements of RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW 49.04 for the one-year period immediately preceding the first date of advertising for the project.
6. **Public Works and Prevailing Wage Training/Exemption.** Bidders shall have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee, must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption.
<http://lni.wa.gov/TradesLicensing/PrevWage/Contractors/Training.asp>
7. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and

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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 RCW 49.46, 49.48, or 49.52.

Optional Tools

Supplemental Bidder Responsibility Criteria (optional)

Purpose and Goals: In developing these Suggested Guidelines for Supplemental Bidder Responsibility Criteria, CPARB notes the following purposes and goals:

- RCW 39.04.350 (3) specifically authorizes public owners to develop Supplemental Bidder Responsibility Criteria applicable to particular projects. Public owners are *not required* to adopt Supplemental Bidder Responsibility Criteria. However, if a public owner chooses to adopt Supplemental Bidder Responsibility Criteria, the law provides statutory requirements that public owners and bidders must follow.
- These Suggested Guidelines are only suggestions to help provide a framework for public agencies. They are not requirements, except as the Suggested Guidelines specifically reference provisions of the law.
- Each public agency adopting Supplemental Bidder Responsibility Criteria is responsible for making its own decisions, consistent with the requirements of RCW 39.04.350 (3), as to what Supplemental Bidder Responsibility Criteria to include in bidding documents.
- To avoid challenges to a bidding process that includes Supplemental Bidder Responsibility Criteria, public agencies should make efforts to ensure that their use of supplemental criteria is deliberate, documented, and defensible, and that the criteria used are relevant to the project.
- In establishing Supplemental Bidder Responsibility Criteria, the competing interests of public agencies and contractors must be balanced. The public agency's interests to ensure that a responsible contractor builds the project must be weighed against the competing interest to ensure that the procurement encourages sufficient competition from the contracting community, without unduly restricting the pool of qualified bidders. Only when these two interests are balanced will the public obtain the work at the best price.
- It is not CPARB's intent that these Suggested Guidelines be used either by contractors or auditors to demonstrate that a public agency's establishment of Supplemental Bidder Responsibility Criteria is deficient for failure to follow these Suggested Guidelines.
- Adopting Supplemental Bidder Responsibility Criteria applicable to all projects is not recommended, unless a public agency utilizes some or all of the examples of

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generic Supplemental Bidder Responsibility Criteria found in Appendix A. Instead, Supplemental Bidder Responsibility Criteria should be carefully crafted for each project based on the specific constraints of each project.

The Law: [RCW 39.04.350 \(3\)](#) states the following:

- (3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.
- (a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.
- (b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.
- (c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.
- (d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

Definition: Supplemental Bidder Responsibility Criteria describe the relevant experience, training, and/or certification requirements or qualifications that must be met by the low bidder. Criteria may also include experience and other qualifications of the bidder's subcontractors, suppliers, or employees who will be performing specific work on the

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project.³ An Owner must make its determination of whether the bidder with the low responsive bid meets the Supplemental Bidder Responsibility Criteria and is a responsible bidder before award of the contract. Refer to Appendix A for examples of Supplemental Bidder Responsibility Criteria that an Owner may choose to utilize. Refer to Appendix B for examples of language from actual bidding documents of various Owners.

Adequate Competition: Supplemental Bidder Responsibility Criteria should not be written in such a way as to unduly restrict the pool of available qualified bidders. As part of the process of developing the criteria, Owners should have an understanding of how many potential bidders would meet or exceed the criteria. Such an understanding may be developed through discussions with other Owners, with consultants, or by contacting others involved in the construction industry. If a consultant to the Owner develops the draft criteria, it is important for the Owner to still have an understanding of how many potential bidders meet the criteria.

Changing Criteria During Bidding Period: To ensure that potential bidders are aware of the Supplemental Bidder Responsibility Criteria, an Owner may want to highlight the existence of the criteria in the public advertisement. During the bidding period, a potential bidder who believes that the Supplemental Bidder Responsibility Criteria will exclude them from bidding may request the Owner to consider modifying the criteria. The Owner shall evaluate any such requests, and if a decision is made by the Owner to modify the criteria, such modification shall be communicated to all bidders and plan holders via the issuance of an addendum to the bidding documents.⁴ Likewise, in the event the Owner determines not to modify the criteria, the Owner is encouraged to notify the requesting bidder of its decision. In the interest of maintaining transparency in the bidding process, it is considered a good practice to describe (in the bidding documents) the process and right of potential bidders to request that the Supplemental Bidder Responsibility Criteria be modified.

The following is suggested contract language for Owners to include in public works bidding documents, which advises bidders of their right to question, and request changes to the Supplemental Bidder Responsibility Criteria during the bidding period:

Request to Change Criteria during Bidding: Bidders with concerns about the relevancy or restrictiveness of the Supplemental Bidder Responsibility Criteria required in these bidding documents may make or submit requests to the Owner to modify the criteria. Such requests shall be in writing, describe the nature of the concerns, and propose specific modifications to the criteria that will make the criteria more relevant and/or less restrictive of competition. Bidders should submit such requests to the Owner no later than [redacted] business days prior to the bid submittal deadline and address the request to [redacted].

³ Supplemental Bidder Responsibility Criteria are included in bidding documents and are different from pre-qualification. In pre-qualification, bids are only accepted from bidders whose qualifications have been evaluated ahead of time as meeting certain criteria. With Supplemental Bidder Responsibility Criteria, the evaluation of whether a bidder meets the criteria is determined after bid submittal.

⁴ RCW 39.04.350 (3) (b)

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Owners are encouraged to identify in the bidding documents (see blank in paragraph above) the name of a person in a higher level position in the Owner's organization, and not simply list the specification writer or project manager.

Collecting Documentation: After bid opening⁵ and within the time period specified in the bidding documents, the low bidder must submit to the Owner the documentation required by the bidding documents for evaluation by the Owner on whether the bidder meets the Supplemental Bidder Responsibility Criteria and is a responsible bidder.⁶

In the interests of meeting a project's schedule, an Owner may request that the next lowest bidder(s) also submit the documentation.

Bidder Fails to Submit Documentation: If a bidder does not submit the documentation required by the bidding documents to demonstrate compliance with the Supplemental Bidder Responsibility Criteria within the time period specified in the bidding documents, the Owner may:

- Find the bidder not responsible, or
- Find the bidder responsible based upon any available information that demonstrates that the bidder meets the Supplemental Bidder Responsibility Criteria. The Owner should be prepared to justify this decision to other bidders upon request.

Evaluating Bidder Responsibility: The Owner evaluates the documentation submitted by the low bidder to determine if the bidder meets the Supplemental Bidder Responsibility Criteria. Determination of bidder responsibility by the Owner must be made prior to award of the contract. If, in the interest of meeting the project's schedule, the Owner has requested other bidders to submit documentation, they should be evaluated in the same manner as the low bidder. Evaluation of bidder responsibility is not to determine whether one bidder has better qualifications than another. The test is whether the low bidder meets the Supplemental Bidder Responsibility Criteria or not. If not, then the second low bidder's documentation is evaluated to determine if they are responsible. Evaluation of multiple bidders may occur concurrently.

Reference Checks: The Owner may conduct reference checks for the bidder whose bid is under consideration for award. In the event that information obtained from the reference checks:

- Reveals that the bidder does not meet the Supplemental Bidder Responsibility Criteria; or

⁵ While an Owner "may" request such documentation to be submitted with the bid, this is not recommended as it can lead to a non-responsive bid if the bidder fails to submit the documentation. In addition, requiring such documentation with the bid takes away from the focus of the bidder on submitting a competitive bid, and requires all bidders to submit the documentation.

⁶ A bidder must meet not only any Supplemental Bidder Responsibility Criteria in order to be determined to be responsible, but must also meet the mandatory bidder responsibility criteria.

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- Indicates concerns about the bidder's performance on projects identified as meeting the Supplemental Bidder Responsibility Criteria, which may include, but not be limited to the quality of construction, the bidder's management of subcontractors, timeliness of required submittals, and safety record on the project; or
- Indicates other concerns about the bidder's ability to successfully perform the work,

the Owner may determine that the bidder is not a responsible bidder. Prior to making such a determination that a bidder is not responsible based on information received through reference checks, the Owner is encouraged to discuss with the bidder the information obtained from the references, and provide the bidder with the opportunity to offer explanations that may help inform whether the Owner declares the bidder not responsible.

In conducting reference checks, the Owner may include itself as a reference if the bidder has performed work for the Owner, even if the bidder did not identify the Owner as a reference.

If the Owner determines the bidder is not a responsible bidder, subject to following the requirements of the appeal process (see below)⁷, the Owner may award the contract to the next lowest bidder who meets the Supplemental Bidder Responsibility Criteria and whose reference checks validate the ability of the bidder to successfully perform the work. The Owner is encouraged to use the same process in checking references for any bidders other than the low bidder.

Optional Remedy Period: If the Owner determines that the bidder does not meet one or more of the Supplemental Bidder Responsibility Criteria based on its evaluation of the documentation submitted by the bidder and reference checks conducted, the Owner may provide the bidder with the opportunity to submit different or additional information in an effort to be deemed responsible. For example, this may involve the bidder proposing a different subcontractor if the originally proposed subcontractor did not meet the criteria,⁸ or proposing a different superintendent who meets the Supplemental Bidder Responsibility Criteria.

Appeal Process: If an Owner determines that a bidder does not meet the Supplemental Bidder Responsibility Criteria, it shall provide in writing to the bidder the reasons for determining that the bidder is not a responsible bidder. The bidder may appeal such a determination within the appeal period specified in the bidding documents and submit additional supporting documentation with its appeal. The Owner must consider such an

⁷ Subject to complying with the requirements of RCW 39.04.350 (3)(d) regarding the appeal process for bidders determined to not be responsible bidders.

⁸ If the subcontractor to be substituted was listed on a subcontractors list required by RCW 39.30.060, the requirements of that law would apply with respect to any cause of action that the substituted subcontractor may wish to pursue against the bidder.

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appeal and additional information. After review, if the Owner determines that the bidder is still not a responsible bidder, the Owner shall issue in writing its final determination. The Owner shall not execute a contract to another bidder until two (2) business days after the bidder receives the Owner's final determination that the bidder is not a responsible bidder.⁹

Impact on Project Schedule: Owners should be aware that development and evaluation of Supplemental Bidder Responsibility Criteria may add additional time to the project schedule. This may occur due to a variety of reasons, including but not limited to the time required to address the following:

- Develop the criteria;
- Evaluate the bidder's documentation;
- Consider an appeal from a bidder determined not to be responsible;
- Deal with a protest from another bidder that the low bidder under consideration does not comply with the Supplemental Bidder Responsibility Criteria.
- Check references supplied by the bidder to validate information provided.

Elements of Supplemental Bidder Responsibility Criteria: The following are suggested elements for Owners to consider in developing and implementing Supplemental Bidder Responsibility Criteria. These elements may help to reduce the risk for protests and legal challenges:

- A. **Relevancy of Criteria:** RCW 39.04.350 (3) requires that Supplemental Bidder Responsibility Criteria be "relevant" to the project.

There should be a clear relationship between the Owner's concerns about obtaining a qualified contractor and the specific Supplemental Bidder Responsibility Criteria. The Owner should be deliberate and logical in developing Supplemental Bidder Responsibility Criteria, and be able to demonstrate, upon request, the rationale of why a particular criterion is appropriate and what methodology was used in establishing the requirements. For example, why is it important and necessary that the bidder have completed 5 projects installing a 48" water main instead of only 4 projects with a 36" water main?

- B. **Risk Management:**

- Based on the particular project, what areas pose significant risks to timely completion of the project? What experience or other factors can help in managing or mitigating those risks?
- Can the risks of the project be managed without using Supplemental Bidder Responsibility Criteria, and relying instead on ensuring that the contractor awarded the project meets the performance standards of the specifications?

- C. **Clarity of Criteria:** The Supplemental Bidder Responsibility Criteria should be

⁹ RCW 39.04.350 (3) (d)

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clear and specific (e.g. “5 projects, each over \$500,000, each completed in the last 3 years, installing for each project at least 2,000 feet of 48” ductile iron water main pipe.”) It is recommended that Owners not use general language such as: “ability and capability to install water main pipe,” since such a criterion is not clear about the expectations of what requirements must be met.

Information Required in Bidding Documents: According to RCW 39.04.350 (3), Owners using Supplemental Bidder Responsibility Criteria must include the following information in their bidding documents:

- A. **Criteria:** Supplemental Bidder Responsibility Criteria. The criteria should be developed separately for each project, dependent upon the particular needs and features of the project.
- B. **Evaluation:** The basis for evaluating whether a bidder meets the criteria. The bidding documents should describe the specific documentation that must be submitted by the low bidder and that the Owner will use to evaluate whether the bidder meets the Supplemental Bidder Responsibility Criteria. There should be a one-to-one relationship between the criteria and the documentation that must be submitted by the low bidder to demonstrate that they meet the criteria specified. The role of reference checks in determining bidder responsibility should also be described.
- C. **Deadline for Submitting Documentation:** The period of time after the bid submittal deadline that the low bidder has to submit documentation demonstrating compliance with the Supplemental Bidder Responsibility Criteria.
- D. **Appeal Deadline:** The deadline for a bidder to appeal a determination that they are not a responsible bidder.

Suggested Language for Bidding Documents: The following is suggested language and a structure that a public agency may decide to use in its bidding documents regarding Supplemental Bidder Responsibility Criteria. The actual criteria would still need to be developed on a project-by-project basis. There is no one structure that works in all situations, however, and thus the wording related to the actual criteria and documentation to be submitted for each project must be adapted to meet the specific needs of a project.

Supplemental Bidder Responsibility Criteria

- B. **Criteria:** In addition to the bidder responsibility criteria above,¹⁰ the bidder must also meet the following relevant supplemental bidder responsibility criteria applicable to the project:

¹⁰ This section is intended to follow the language describing the mandatory bidder responsibility criteria, explained earlier in these Suggested Guidelines. If no Supplemental Bidder Responsibility Criteria are used, the mandatory bidder responsibility criteria should still be described in the bidding documents.

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- 1.
- 2.
- 3.

C. Documentation: As evidence that the bidder meets the bidder responsibility criteria in paragraph B above, the apparent low bidder must submit the following documentation to the Owner within 48 hours¹¹ of the bid submittal deadline. The Owner reserves the right to request such documentation from other bidders also.

- 1.
- 2.
- 3.

D. Appeals: If the Owner determines the bidder does not meet the bidder responsibility criteria in paragraph B above and is therefore not a responsible bidder, the Owner shall notify the bidder in writing with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours¹² of receipt of the Owner's determination by presenting additional information to the Owner. The Owner will consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two business days¹³ after the bidder determined to be not responsible has received the final determination.

Developing Criteria (Item B above): The following may help Owners in thinking through some of the issues involved in developing Supplemental Bidder Responsibility Criteria:

- Whom do the criteria apply to: contractor, subcontractor, field superintendent, project manager, etc.? Be specific. Think through the difference between a requirement for a company versus a person, and what is most important. For example, is it important that the company have certain experience even if it does not currently have employees with the specific knowledge and experience desired? Likewise, if a company has not done this type of work before, but they have hired personnel with the necessary experience, is this acceptable?

¹¹ The time deadline indicated here for the bidder to submit documentation indicating compliance with the criteria may be adjusted by the Owner, adopting either a standard for all projects or changing it on a project-by-project basis.

¹² The time deadline for a bidder to appeal a determination that they are not responsible, as indicated here, may be modified by the Owner, adopting either a standard for all projects or changing it on a project-by-project basis.

¹³ This two-day period of time may not be reduced. It is required in RCW 39.04.350 (3) (d).

Suggested Guidelines for Bidder Responsibility

- Describe the specific experience the bidder must have: how many years, doing what type of work, what certifications must they or workers have, how recent must the experience be, etc.
- Language must be clear and specific. Do not use undefined terms such as “recent experience” or “similar work.”
- An Owner may develop Supplemental Bidder Responsibility Criteria that are relevant to and applied to all projects.
- Owners are encouraged to discuss proposed Supplemental Bidder Responsibility Criteria with other Owners, with consultants, and with others involved in the construction industry in order to help gauge the reasonableness of the criteria and how many bidders would meet the criteria.
- The most challenging, but also, in many instances, the most pertinent of Supplemental Bidder Responsibility Criteria relates to assessing the Bidder's qualifications by questioning the Bidder's "Completion of Similar Projects." The key to writing, fair and relevant Supplemental Bidder Responsibility Criteria involving completion of similar projects is “balance.” The interests of the public agency of having a qualified contractor build the project should be weighed against ensuring sufficient competition to protect the taxpaying public. The public agency's interest is to ensure that the contractor selected to build the project has adequate experience such that the project is performed safely, and completed in a timely manner and within budget. That expectation must be balanced against the taxpaying public's interest in ensuring that the responsibility criteria are such that they foster competition. This challenge is difficult to describe in guidelines.

Developing List of Documentation to be Submitted (Item C above):

- It is recommended that there be a one-to-one correspondence between the Supplemental Bidder Responsibility Criteria and the documentation requested. Thus, if the specification requires “5 projects each over \$500,000, each completed in the last 3 years, installing for each project at least 2,000 feet of 48” ductile iron water main pipe,” the Owner should ask the bidder to list information about each of these facets of the projects. In addition, the Owner would not want to ask the bidder to document things not included in the Supplemental Bidder Responsibility Criteria.
 - For example, the documentation portion should request the bidder to list the 5 projects, the contract amount, the date of completion of each project, the diameter of the water main for each project, and the length of the water main pipe for each project. The Owner may also request more specific project information, such as the name of the owner or contractor, a contact person and telephone number so that the Owner can verify the information. As an example, the Owner should not, however, require the bidder to document whether the water main

Suggested Guidelines for Bidder Responsibility

installation involved an excavation of a certain depth, unless the specification stated this as part of the Supplemental Bidder Responsibility Criteria.

- The documentation to be submitted should be clear and specific.
- The Owner may choose to develop and provide a form to the bidder for collecting the documentation necessary to demonstrate compliance with the Supplemental Bidder Responsibility Criteria. Such a form may help ensure that the bidder submits clear information addressing each of the issues in the Supplemental Bidder Responsibility Criteria.
- If the Supplemental Bidder Responsibility Criteria language requires specific qualifications or experience for certain personnel who will be involved with the project, it may be appropriate for the Owner to request a copy of resumes or certifications, as applicable, to document the specific requirements.

Example of Structure for Criteria and Documentation: The following provides an example of one potential structure for Supplemental Bidder Responsibility Criteria. The example includes details of both criteria and documentation that a public agency may choose use or adapt for a specific project:

- A. **Criterion:** The Bidder shall have successfully completed projects of a similar size and scope as required by the contract documents for this project. In evaluating whether the projects were “successfully completed,” the Owner may check owner references for the previous projects and may evaluate the owner’s assessment of the Bidder performance, including but not limited to the following areas:
- Quality of project and quality control;
 - Management of safety and safety record;
 - Timeliness of performance;
 - Use of skilled personnel;
 - Management of subcontractors;
 - Availability of and use of appropriate equipment;
 - Compliance with contract documents;
 - Management of schedule, submittals process, change orders, and close-out.
- B. **Documentation:** The Bidder shall submit a list of projects of similar size and scope to this project. For the purposes of meeting this criterion, the Owner has determined that “similar size and scope to this project” means projects that have the following characteristics: _____ [Note to Owner: Include a detailed description of the important features of this project that must be met by the Bidder.] The information about each project shall include the following:

Suggested Guidelines for Bidder Responsibility

- Owner's name and contact information for the owner's representative;
- Awarded contract amount;
- Final contract amount;
- A description of the scope of the project and how the project is similar to this project;
- The Bidder's assessment of its performance of each project, including but not limited to the following:
 - Quality of project and quality control;
 - Management of safety and safety record;
 - Timeliness of performance;
 - Use of skilled personnel;
 - Management of subcontractors;
 - Availability of and use of appropriate equipment;
 - Compliance with contract documents;
 - Management of schedule, submittals process, change orders, and close-out.

Standards for Declaring a Bidder Responsible: There are two basic options available to public agencies in making a determination whether a bidder is responsible and meets the Supplemental Bidder Responsibility Criteria.

1. **Meet All the Criteria:** Under this option, also known as the "pass/fail" option, a bidder must meet all of the Supplemental Bidder Responsibility Criteria established by the public agency. If a bidder does not meet each element of the criteria, they would be declared not responsible by the public agency, and the public agency would then evaluate the responsibility of the second low bidder.
2. **Substantially Meet the Criteria:** Under this option, also known as the "discretionary" option, a bidder must substantially meet the Supplemental Bidder Responsibility Criteria established by the public agency. If the bidder does not meet each element of the criteria, the public agency may, nevertheless, exercise its discretion and declare the bidder responsible if the agency is confident that the bidder is capable of successfully performing the project.

Checklist for Developing Supplemental Bidder Responsibility Criteria: It is recommended that Owners review and complete the Checklist for Developing Supplemental Bidder Responsibility for each project on which the criteria are applied. The Checklist is available in Appendix F of these Guidelines or may be accessed at www.mpurdy.com/resources.

Suggested Guidelines for Bidder Responsibility

Appendix A

OPTIONAL TOOLS

Examples of Supplemental Bidder Responsibility Criteria

The use of Supplemental Bidder Responsibility Criteria by Owners is optional. The criteria either may be tailored to a specific project or may apply more generally to all projects. In either event, the criteria must be relevant to the project.

In reviewing the examples of Supplemental Bidder Responsibility Criteria listed below, Owners should:

- Be aware that some of the criteria may not be applicable to all projects.
- Make appropriate changes in the criteria to fit the Owner's objectives, which may include modifying the number of years identified in some of the criteria.

The following are examples of Supplemental Bidder Responsibility Criteria that an Owner may decide to use on some or all of its projects. If Supplemental Bidder Responsibility Criteria are utilized, they must be incorporated into the bidding documents. The examples below also suggest the documentation that must be produced by the Bidder in order to demonstrate compliance with the criteria.

1. Delinquent State Taxes

- A. Criterion: The Bidder shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.
- B. Documentation: The Bidder shall provide a Tax Status Letter through the Department of Revenue to the public body by completing a [Request for Tax Status form](#).

2. Federal Debarment

- A. Criterion: The Bidder shall not currently be debarred or suspended by the Federal government.
- B. Documentation: The Bidder shall not be listed as a current debarred or suspended bidder on the U.S. General Services Administration's website for System for Award Management (SAM): <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>.

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3. MWBE Participation on Federally Funded Projects

- A. Criterion: The Bidder shall have complied with MWBE, DBE, or HUBZone utilization requirements or goals on federally funded public works projects with such requirements, completed by the Bidder within three years of the bid submittal date for this project, unless there are extenuating circumstances acceptable to the Owner.
- B. Documentation: For each federally funded public works project with requirements for utilization of Minority and Women's Business Enterprises (MWBE), Disadvantaged Business Enterprises (DBEs), or Historically Underutilized Businesses (HUBZone) that was completed by the Bidder within three years of the bid submittal date for this project, the Bidder shall submit the following:
- A list of such projects;
 - The owner and contact information for the owner's representative;
 - A description of the goal for the project;
 - The actual of utilization of such businesses by the Bidder;
 - If the Bidder failed to meet the contracts' utilization goal, an explanation of any extenuating circumstances that contributed to the Bidder not meeting the goals.

The Owner may contact previous owners to validate the information provided by the Bidder, and shall consider whether the goals were mandatory or voluntary, and the validity of any explanation of extenuating circumstances.

4. Apprenticeship¹⁴

- A. Criterion: The Bidder shall have complied with apprenticeship utilization goals on public works projects with such requirements, that were completed by the Bidder within three years of the bid submittal date for this project, unless there are extenuating circumstances acceptable to the Owner.
- B. Documentation: For each public works project with an apprenticeship utilization goal that was completed by the Bidder within three years of the bid submittal date for this project, the Bidder shall submit the following:
- A list of such projects;
 - The owner and contact information for the owner's representative;
 - The apprenticeship utilization percentage goal for the project;

¹⁴ This suggested criterion may be used by public agencies not subject to the requirements of RCW 39.04.320 that imposes mandatory apprenticeship utilization requirements and mandatory bidder responsibility criteria on certain projects. The agencies affected by RCW 39.04.320 include the following: State Department of Transportation (WSDOT), State Department of Enterprise Services (DES), all institutions of higher education, all school districts.

Suggested Guidelines for Bidder Responsibility

- The actual percentage of utilization by the Bidder;
- An explanation of any extenuating circumstances that contributed to the Bidder not meeting the goals.

The Owner may contact previous owners to validate the information provided by the Bidder, and shall consider whether the goals were mandatory or voluntary, and the validity of any explanation of extenuating circumstances.

5. Public Bidding Crime

- A. Criterion: The Bidder and its owners shall not have been convicted of a crime involving bidding on a public works contract within five years from the bid submittal deadline.
- B. Documentation: The Bidder shall sign a statement (on a form to be provided by the Owner) that the Bidder and owners have not been convicted of a crime involving bidding on a public works contract. The Owner may also use independent sources of information to demonstrate whether the Bidder is in compliance with this criterion.

6. Subcontractor Responsibility

- A. Criterion: The Bidder's standard subcontract form shall include the subcontractor responsibility language required by RCW 39.06.020, and the Bidder shall have an established procedure which it utilizes to validate the responsibility of each of its subcontractors. The Bidder's subcontract form shall also include a requirement that each of its subcontractors shall have and document a similar procedure to determine whether the sub-tier subcontractors with whom it contracts are also "responsible" subcontractors as defined by RCW 39.06.020.
- B. Documentation: The Bidder shall submit a copy of its standard subcontract form for review by the Owner, and a written description of its procedure for validating the responsibility of subcontractors with which it contracts.

7. Claims Against Retainage and Bonds

- A. Criterion: The Bidder shall not have a record of excessive claims filed against the retainage or payment bonds for public works projects during the previous three years, that demonstrate a lack of effective management by the Bidder of making timely and appropriate payments to its subcontractors, suppliers, and workers, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.
- B. Documentation: The Bidder shall submit a list of the public works projects completed within the previous three years and include for each project the following information:

Suggested Guidelines for Bidder Responsibility

- The owner and contact information for the owner;
- A list of claims filed against the retainage and/or payment bond for any of the projects listed;
- A written explanation of the circumstances surrounding each claim and the ultimate resolution of the claim.

The Owner may contact previous owners to validate the information provided by the Bidder.

8. Termination for Cause / Termination for Default

- A. Criterion: The Bidder shall not have had any public works contract terminated for cause or terminated for default by a government agency during the five-year period immediately preceding the bid submittal deadline for this project, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.
- B. Documentation: The Bidder shall sign a statement (on a form to be provided by the Owner) that the Bidder has not had any public works contract terminated for cause by a government agency during the five year period immediately preceding the bid submittal deadline for this project. The Owner may also use independent sources of information to demonstrate whether the Bidder is in compliance with this criterion.

9. Lawsuits

- A. Criterion: The Bidder shall not have lawsuits with judgments entered against the Bidder within five years of the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.
- B. Documentation: The Bidder shall submit a list of lawsuits with judgments entered against the Bidder within five years of the bid submittal date, along with a written explanation of the circumstances surrounding each such lawsuit. The Owner shall evaluate these explanations to determine whether the lawsuits demonstrate a pattern of failing to meet of terms of construction related contracts. The Owner may also evaluate lawsuits within the time period specified that are not reported by the Bidder.

10. Prevailing Wages

- A. Criterion: The Bidder shall not have a record of prevailing wage complaints filed against it within five years of the bid submittal date that demonstrates a pattern of failing to pay workers prevailing wages, unless there are extenuating circumstances and such circumstances are deemed acceptable to the Owner.

Suggested Guidelines for Bidder Responsibility

- B. Documentation: The Bidder shall submit a list of prevailing wage complaints filed against it within five years of the bid submittal date along with an explanation of each complaint and how it was resolved. The Owner shall evaluate these explanations and the resolution of each complaint to determine whether the complaints demonstrate a pattern of failing to pay its workers prevailing wages as required. The Owner may also evaluate complaints filed within the time period specified that were not reported by the Bidder.

Suggested Guidelines for Bidder Responsibility

Appendix B

OPTIONAL TOOLS

Sample Supplemental Bidder Responsibility Criteria Language from Actual Projects

Explanation of Samples: The following are *samples only* of Supplemental Bidder Responsibility Criteria that different public agencies have used on specific projects of varying size and complexity. The samples are included solely as examples of what other agencies have used. Some of the samples show both an early draft of the Supplemental Bidder Responsibility Criteria, and how it was edited to be more relevant, specific, and less restrictive of competition.

Each of these samples was developed for the unique circumstances of a particular project. No representation is made that these samples are specifically applicable to any other agency's projects. Because each public works project is different, the project specific Supplemental Bidder Responsibility Criteria should be different for each project. Some of the samples provide a better structure than others and public agencies should not interpret the samples below as an endorsement of any of the samples.

Sample 1:

University of Washington: During the year 2000 or more recently, the Bidder shall have successfully completed at least one project with a construction cost of at least \$750,000, in a licensed acute care hospital that remained in operation during the construction period, and that included work adjacent to an occupied patient care area ("adjacent" means immediately adjacent to the work, or on the floor below or above the work). This project must have included the installation of complex diagnostic imaging or radiation therapy equipment (for example: MRI, Angiography Bi-Plane, Linear Accelerator, Gamma Knife, CT Scanner) by the owner's equipment vendor.

Sample 2:

University of Washington

| <u>Early Version of Criteria</u> | <u>Edited Version of Criteria</u> |
|---|--|
| Contractor must have worked at least one project involving medium voltage cable and terminations at the University of Washington within the last 5 years. | The Contractor must have performed work stringing and terminating medium voltage cables (at least 601 volts) on at least one project in which the electrical work a.) was substantially complete in the year 2003 or later, and b.) had a contract cost of at least \$250,000. |

Suggested Guidelines for Bidder Responsibility

| <u>Early Version of Documentation</u> | <u>Edited Version of Documentation</u> |
|--|---|
| Documentation that Contractor worked at least one project involving medium voltage cable and terminations at University of Washington within the last 5 years. | The Contractor shall submit the following information about the project being submitted in compliance with the supplemental bidder responsibility criteria: name of the project, location of the project, description of the scope of work performed by the Contractor, the voltage of the cables worked on, name and contract information of the owner and engineer/designer, date of substantial completion of the electrical work, total contract cost of the electrical portion of the project. |

Samples Not to Use:

| <u>Inappropriate Criteria</u> | <u>Criticism of Criteria</u> |
|--|---|
| The Bidder must have the ability, capacity and skill to perform the Contract or provide the services for work required | This statement is not really a criterion as there are no specific standards or details describing the required qualifications of the Bidder's ability, capacity, and skill. This "criteria" is too broad and arbitrary, and should not be used. |
| The Bidder must have the character, integrity, reputation, judgment, experience, and efficiency to perform the work in a desirable manner. | This statement is not really a criterion as there are no specific standards or details describing how the Bidder's character, reputation, judgment, experience and efficiency will be evaluated. This "criteria" is too broad and arbitrary, and should not be used. "Experience" may be used as part of Supplemental Bidder Responsibility Criteria, but must include details. See the Guidelines (page ___) section titled "Example of Structure for Criteria and Documentation." |
| The Bidder must be able to perform the contract within the time specified. | This statement is not really a criterion, but only a statement of expectations, and should not be used. A contractor awarded a public works project must meet all of the conditions of the contract documents including the time of performance. |

Suggested Guidelines for Bidder Responsibility

Samples Not to Use:

| <i>Inappropriate Criteria</i> | <i>Criticism of Criteria</i> |
|---|---|
| A Bidder may be deemed not responsible and its bid rejected if the Bidder, in the opinion of the Owner, is not qualified for the work of the bid. | This statement is not really a criterion. The purpose of Supplemental Bidder Responsibility Criteria is to define the Owner's specific expectations and standards for what a bidder must do to be qualified to perform the work. The basis of rejection is too broad and arbitrary, and this "criterion" should not be used. |
| A Bidder may be deemed not responsible and its bid rejected if an unsatisfactory performance record exists based on past or current Owner work or work done for others, as judged from the standpoint of the work, workmanship, progress, affirmative action, equal employment opportunity practices, or disadvantaged business enterprise, minority business enterprise, or women's business enterprise utilization. | This criterion is too broad and arbitrary and lacks a definition of the Owner's specific expectations and standards of the bidder's past performance. This criterion should not be used. |
| A Bidder may be deemed not responsible and its bid rejected if the Owner defines the Bidder as not responsible. | This criterion is too broad and arbitrary. It lacks any definition of the Owner's expectations and standards. Bidders will be unable to determine the basis of how the Owner will make its responsibility determination. Thus, it is impossible for a bidder to know, prior to submitting a bid, whether they are likely to be deemed responsible or not. |

Additional samples from other public agencies will be added to these Suggested Guidelines in the future.

Suggested Guidelines for Bidder Responsibility

Appendix C

SUGGESTED BIDDER RESPONSIBILITY CRITERIA LANGUAGE FOR BIDDING DOCUMENTS

Mandatory Bidder Responsibility Criteria

- A. It is the intent of Owner to award a contract to the low responsible bidder. Before award, the bidder must meet the following bidder responsibility criteria to be considered a responsible bidder. The bidder may be required by the Owner to submit documentation demonstrating compliance with the criteria. The bidder must:
1. Have a current certificate of registration as a contractor in compliance with RCW 18.27, which must have been in effect at the time of bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable:
 - a. Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in RCW 51;
 - b. Have a Washington Employment Security Department number, as required in RCW 50;
 - c. Have a Washington Department of Revenue state excise tax registration number, as required in RCW 82;
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
 5. For public works projects subject to the apprenticeship utilization requirements of RCW 3.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under RCW 49.04 for the one-year period immediately preceding the first date of advertising for the project.
 6. **Public Works and Prevailing Wage Training/Exemption.** Bidders shall have received training on the requirements related to public works and prevailing wage under this chapter and chapter [39.12](#) RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries or by a training provider whose curriculum is approved by the department. The department, in consultation with the prevailing wage advisory committee,

Suggested Guidelines for Bidder Responsibility

must determine the length of the training. Bidders that have completed three or more public works projects and have had a valid business license in Washington for three or more years are exempt from this subsection. The Department of Labor and Industries must keep records of entities that have satisfied the training requirement or are exempt and make the records available on its website. Responsible parties may rely on the records made available by the department regarding satisfaction of the training requirement or exemption.
<http://lni.wa.gov/TradesLicensing/PrevWage/Contractors/Training.asp>

7. Within the three-year period immediately preceding the date of the bid solicitation, not have 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 RCW 49.46, 49.48, or 49.52.

Supplemental Bidder Responsibility Criteria

- B. Criteria: In addition to the bidder responsibility criteria above, the bidder must also meet the following relevant supplemental bidder responsibility criteria applicable to the project:

- 1.
- 2.
- 3.

- C. Documentation: As evidence that the bidder meets the bidder responsibility criteria in paragraph B above, the apparent low bidder submitting a responsive bid must submit the following documentation to the Owner within 48 hours¹⁵ of the bid submittal deadline. The Owner reserves the right to request such documentation from other bidders also.

- 1.
- 2.
- 3.

- D. Appeal: If the Owner determines the bidder does not meet the bidder responsibility

¹⁵ The time deadline indicated here for the bidder to submit documentation indicating compliance with the criteria may be adjusted by the Owner, adopting either a standard for all projects or changing it on a project-by-project basis.

Suggested Guidelines for Bidder Responsibility

criteria in paragraph B above and is therefore not a responsible bidder, the Owner shall notify the bidder in writing with the reasons for its determination. If the bidder disagrees with this determination, it may appeal the determination within 24 hours¹⁶ of receipt of the Owner's determination by presenting additional information to the Owner. The Owner will consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two business days¹⁷ after the bidder determined to be not responsible has received the final determination.

- E. Request to Change Criteria During Bidding: Bidders with concerns about the relevancy or restrictiveness of the Supplemental Bidder Responsibility Criteria required in these bidding documents may make or submit requests to the Owner to modify the criteria. Such requests should be in writing, describe the nature of the concerns, and propose specific modifications to the criteria that will make the criteria more relevant and/or less restrictive of competition. Bidders should submit such requests to the Owner in a timely manner prior to the bid submittal deadline and address the request to _____.

¹⁶ The time deadline for a bidder to appeal a determination that they are not responsible, as indicated here, may be modified by the Owner, adopting either a standard for all projects or changing it on a project-by-project basis.

¹⁷ This two day period of time may not be reduced. It is required in RCW 39.04.350 (3)(d).

Appendix D

FOR OWNERS

Mandatory Bidder Responsibility Checklist

The following checklist may be used by Owners in documenting that a Bidder meets the mandatory bidder responsibility criteria. It is suggested that Owners print a copy of documentation from the appropriate website to include with this checklist in the contract file.

| General Information | |
|---|--|
| Project Name: | Project Number: |
| Bidder's Business Name: | Bid Submittal Deadline: |
| Contractor Registration – https://fortress.wa.gov/lni/bbip/ | |
| License Number: | Status: Active: Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Effective Date (must be effective on or before Bid Submittal Deadline): | Expiration Date: |
| Current UBI Number – http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/ | |
| UBI Number: | Account Closed: Open <input type="checkbox"/> Closed <input type="checkbox"/> |
| Industrial Insurance Coverage – https://fortress.wa.gov/lni/crpsi/MainMenu.aspx | |
| Account Number: | Account Current: Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Employment Security Department Number – | |
| Employment Security Department Number: | |
| <ul style="list-style-type: none"> • Has Bidder provided account number on the Bid Form? Yes <input type="checkbox"/> No <input type="checkbox"/> • And/or have you asked the Bidder for documentation from Employment Security Department on account number? Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| State Excise Tax Registration Number – http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/ | |
| Tax Registration Number: | Account Closed: Open <input type="checkbox"/> Closed <input type="checkbox"/> |
| Not Disqualified from Bidding – http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/default.asp | |
| Is the Bidder listed on the "Contractors Not Allowed to Bid" list of the Department of Labor and Industries? Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| Minimum Wage Compliance | |
| Has the Bidder submitted a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury the Bidder is in compliance with the following? Within the three-year period immediately preceding the date of the bid solicitation, the Bidder shall not have 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 RCW 49.46, 49.48, or 49.52 | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Checked by: | |
| Name of Employee: | Date: |

Suggested Guidelines for Bidder Responsibility

Appendix E

FOR CONTRACTORS AND SUBCONTRACTORS

Subcontractor Responsibility Checklist

The following checklist may be used by Contractors and Subcontractors in documenting that a subcontractor of any tier meets the subcontractor responsibility criteria. It is suggested that Contractors and Subcontractors print a copy of documentation from the appropriate website to include with this checklist in their contract file.

| | |
|--|--|
| General Information | |
| Project Name: | Project Number: |
| Subcontractor's Business Name: | Subcontract Execution Date: |
| Contractor Registration – https://fortress.wa.gov/lni/bbip/ | |
| License Number: | Status: Active: Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Effective Date (must be effective on or before Subcontract Bid Submittal Deadline): | Expiration Date: |
| Current UBI Number – http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/ | |
| UBI Number: | Account Closed: Open <input type="checkbox"/> Closed <input type="checkbox"/> |
| Industrial Insurance Coverage – https://fortress.wa.gov/lni/crpsi/MainMenu.aspx | |
| Account Number: | Account Current: Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Employment Security Department Number – | |
| Employment Security Department Number: | |
| <ul style="list-style-type: none"> • Has Subcontractor provided account number on the Bid Form? Yes <input type="checkbox"/> No <input type="checkbox"/> • And/or have you asked the Subcontractor for documentation from Employment Security Department on account number? Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| State Excise Tax Registration Number – http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/ | |
| Tax Registration Number: | Account Closed: Open <input type="checkbox"/> Closed <input type="checkbox"/> |
| Not Disqualified from Bidding – http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/default.asp | |
| Is the Subcontractor listed on the "Contractors Not Allowed to Bid" list of the Department of Labor and Industries? Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| Minimum Wage Compliance | |
| Has the Subcontractor submitted a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury the Subcontractor is in compliance with the following? Within the three-year period immediately preceding the date of the bid solicitation, the Subcontractor shall not have 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 RCW 49.46, 49.48, or 49.52 | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Contractor Licenses – https://fortress.wa.gov/lni/bbip/ | |
| <u>Electrical:</u> If required by RCW 19.28, does the Subcontractor have an Electrical Contractor's License? Yes <input type="checkbox"/> No <input type="checkbox"/> | <u>Elevator:</u> If required by RCW 70.87, does the Subcontractor have an Elevator Contractor's License? Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Checked by: | |
| Name of Employee: | Date: |

Suggested Guidelines for Bidder Responsibility

Appendix F

CHECKLIST FOR DEVELOPING SUPPLEMENTAL BIDDER RESPONSIBILITY CRITERIA

It is recommended that Owners review and complete the Checklist for Developing Supplemental Bidder Responsibility for each project on which the criteria are applied. The Checklist may also be accessed at www.mpurdy.com/resources.

Suggested Guidelines for Bidder Responsibility

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Checklist for Developing Supplemental Bidder Responsibility Criteria

| No. | Description |
|-----|---|
| 1 | <p><u>Appropriateness:</u> Why do you think Supplemental Bidder Responsibility Criteria are appropriate for this project? What are the risks to the project if you don't include Criteria?</p> |
| 2 | <p><u>Suggested Guidelines:</u> Have you reviewed the Suggested Guidelines for Bidder Responsibility published by the Capital Projects Advisory Review Board (CPARB) (http://www.ga.wa.gov/CPARB/index.html)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> |
| 3 | <p><u>Details of Criteria:</u> Based on the project, what types of criteria are important?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contractor's experience in similar type of work (must be defined) <input type="checkbox"/> Experience of contractor's key personnel <input type="checkbox"/> Contractor's and their key personnel's experience <input type="checkbox"/> Number of years of experience of the contractor <input type="checkbox"/> Dollar size of previous projects completed by the contractor <input type="checkbox"/> Specialty subcontractor qualifications <input type="checkbox"/> Criteria from CPARB's Suggested Guidelines for Bidder Responsibility <input type="checkbox"/> Other |
| 4 | <p><u>Reasons:</u> Describe your reasons for including the specific Criteria you have included in the bidding documents? Be specific. For example, if you have asked for 4 years of experience, describe why 4 years is the appropriate number of years and how you arrived at your conclusion.</p> |

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| 5 | <u>References:</u> Have you described how references will be used in validating the Documentation submitted and in evaluating whether the bidder is responsible? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6 | <u>Relevancy:</u> On a scale of 1 to 10, with 10 being the most relevant, rate the relevancy of the Supplemental Bidder Responsibility Criteria you have developed to the project. 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> Provide an explanation for why you have rated the Criteria as you have, and describe in detail how the Criteria are "Relevant" to the project. | |
| 7 | <u>Project Criteria:</u> Have you included project-specific Supplemental Bidder Responsibility Criteria in the bidding documents? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8 | <u>Generic Criteria:</u> Have you included any generic Supplemental Bidder Responsibility Criteria in the bidding documents? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 9 | <u>Documentation:</u> Have you included a list of the documentation that must be submitted by the bidder to demonstrate they meet the Criteria? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 10 | <u>Relevance of Documentation:</u> Is there a one-to-one correspondence between the Criteria and the Documentation to be submitted? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 11 | <u>Deadline for Submittal:</u> Do the bidding documents include the length of time after the bid submittal deadline the bidder has to submit the Documentation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 12 | <u>Deadline for Appeal:</u> Do the bidding documents include how long the bidder has to appeal after being notified they are not a responsible bidder? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

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| 13 | <u>Research:</u> What market research have you done to validate which bidders meet the Supplemental Bidder Responsibility Criteria? |
| 14 | <u>Bidding Pool:</u> How many bidders will meet the criteria? |
| 15 | <u>Potential Bidders:</u> What are the names of the bidders who will meet the Criteria? |
| 16 | <p><u>Bidding Pool Analysis:</u> On a scale of 1 to 10, with 10 being the most restrictive of the bidding pool, rate how restrictive you think the Supplemental Bidder Responsibility Criteria are?</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p> |
| 17 | <u>Non-Complying Bidders:</u> What are the names of the bidders who will probably not meet the Criteria? |
| 18 | <p><u>Protesters:</u> Do you think any bidders may protest the Criteria? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, what would be their likely basis of protest?</p> |
| 19 | <p><u>Bid Protest Risk:</u> On a scale of 1 to 10, with 10 being the highest risk, what do you think the risk is of a bid protest with the Supplemental Bidder Responsibility Criteria you have developed?</p> <p>1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/></p> <p>Do you think your Criteria are defensible if your agency was taken to court? Why?</p> |

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| 20 | Definitions: Have you defined all terms and concepts included in the criteria? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 21 | Undefined Terms: Are there undefined or ambiguous terms included in the Supplemental Bidder Responsibility Criteria that may be subject to a different interpretation by various parties? What are those terms? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 22 | Delays: Does your project schedule have sufficient time to deal with possible delays resulting from use of Supplemental Bidder Responsibility Criteria based on time to: <ul style="list-style-type: none"> <input type="checkbox"/> Develop the Criteria <input type="checkbox"/> Consider requests for changes in the Criteria during bidding <input type="checkbox"/> Evaluate bidder's documentation after bid submittal <input type="checkbox"/> Check references to validate information provided <input type="checkbox"/> Manage an appeal and possible lawsuit from a bidder determined to be not responsible <input type="checkbox"/> Deal with a protest from another bidder that the low bidder doesn't meet the Criteria | |
| 23 | Review of Criteria: Who in your agency has reviewed the draft Criteria? <ul style="list-style-type: none"> <input type="checkbox"/> Project Manager <input type="checkbox"/> Public Works Director <input type="checkbox"/> Construction Manager <input type="checkbox"/> Purchasing/Contracting/Procurement personnel <input type="checkbox"/> Attorney <input type="checkbox"/> Outside design consultant (architect or engineer) <input type="checkbox"/> Other public agencies <input type="checkbox"/> Contractors | |
| 24 | Mandatory Responsibility Criteria: Are any of the items you've included in the Supplemental Bidder Responsibility Criteria part of the Mandatory Bidder Responsibility Criteria from RCW 39.04.350? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 25 | Responsiveness Issues: Are any of the Supplemental Bidder Responsibility Criteria really issues of responsiveness instead of responsibility? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 26 | Clarity of Criteria: On a scale of 1 to 10, with 10 being the most clear, rate the clarity of the Supplemental Bidder Responsibility Criteria. 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> | |