
HOUSE BILL 2010

State of Washington 60th Legislature 2007 Regular Session

By Representatives Haigh, Hunt, Ericks, Conway, Haler, Green, Hasegawa, Appleton, Campbell, Sells, Kenney, VanDeWege, Cody, Hurst, McDermott, Simpson and Ormsby

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1 AN ACT Relating to bidder responsibility; amending RCW 39.04.010
2 and 39.04.155; adding a new section to chapter 39.04 RCW; and adding a
3 new section to chapter 39.06 RCW.

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

5 **Sec. 1.** RCW 39.04.010 and 2000 c 138 s 102 are each amended to
6 read as follows:

7 (~~The term state shall include the state of Washington and all~~
8 ~~departments, supervisors, commissioners and agencies thereof.~~

9 The term)) The definitions in this section apply throughout this
10 chapter unless the context clearly requires otherwise.

11 (1) "Award" means the formal decision by the state or municipality
12 notifying a responsible bidder with the lowest responsive bid of the
13 state or municipality's acceptance of the bid and intent to enter into
14 a contract with the bidder.

15 (2) "Contract" means a contract in writing for the execution of
16 public work for a fixed or determinable amount duly awarded after
17 advertisement and competitive bid. "Contract" also means a contract
18 awarded under the small works roster process in RCW 39.04.155.

1 (3) "Municipality" (~~((shall include))~~) means every city, county,
2 town, district, or other public agency (~~((thereof which is))~~) authorized
3 by law to require the execution of public work, except drainage
4 districts, diking districts, diking and drainage improvement districts,
5 drainage improvement districts, diking improvement districts,
6 consolidated diking and drainage improvement districts, consolidated
7 drainage improvement districts, consolidated diking improvement
8 districts, irrigation districts, or (~~((any such))~~) other districts (~~((as
9 shall from time to time be))~~) authorized by law for the reclamation or
10 development of waste or undeveloped lands.

11 (~~((The term))~~) (4) "Public work" (~~((shall include))~~) means all work,
12 construction, alteration, repair, or improvement other than ordinary
13 maintenance, executed at the cost of the state or of any municipality,
14 or which is by law a lien or charge on any property therein. All
15 public works, including maintenance when performed by contract shall
16 comply with (~~((the provisions of RCW 39.12.020))~~) chapter 39.12 RCW.
17 (~~((The term))~~) "Public work" does not include work, construction,
18 alteration, repair, or improvement performed under contracts entered
19 into under RCW 36.102.060(4) or under development agreements entered
20 into under RCW 36.102.060(7) or leases entered into under RCW
21 36.102.060(8).

22 (~~((The term contract shall mean a contract in writing for the
23 execution of public work for a fixed or determinable amount duly
24 awarded after advertisement and competitive bid. However, a contract
25 which is awarded from a small works roster need not be advertised.))~~)

26 (5) "Responsible bidder" means a contractor who meets the criteria
27 in section 2 of this act.

28 (6) "State" means the state of Washington and all departments,
29 supervisors, commissioners, and agencies of the state.

30 NEW SECTION. Sec. 2. A new section is added to chapter 39.04 RCW
31 to read as follows:

32 (1) Before award of a public works contract, a bidder must meet the
33 following responsibility criteria to be considered a responsible bidder
34 and qualified to be awarded a public works project. The bidder must
35 have:

36 (a) At the time of bid submittal, a certificate of registration in
37 compliance with chapter 18.27 RCW;

1 (b) A current state unified business identifier number;

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

6 (d) Not been disqualified from bidding on any public works contract
7 under RCW 39.06.010 or 39.12.065(3).

8 (2) In addition to the bidder responsibility criteria in subsection
9 (1) of this section, the state or municipality may adopt supplemental
10 criteria for determining bidder responsibility applicable to a
11 particular project.

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

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

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

28 (d) If a bidder is determined to be not responsible, the state or
29 municipality must provide, in writing, the reasons for the
30 determination. The bidder may appeal the determination within the time
31 period specified in the bidding documents by presenting additional
32 information to the state or municipality. The state or municipality
33 must consider the additional information before issuing its final
34 determination. If the final determination affirms that the bidder is
35 not responsible, the state or municipality may not execute a contract
36 with any other bidder until two business days after the bidder
37 determined to be not responsible has received the final determination.

1 (3) The capital projects advisory review board created in RCW
2 39.10.800 shall develop suggested guidelines to assist the state and
3 municipalities in developing supplemental bidder responsibility
4 criteria. The guidelines must be posted on the board's web site.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.06 RCW
6 to read as follows:

7 Public works contractors must verify that their first tier
8 subcontractors meet the bidder responsibility criteria listed in
9 section 2(1) of this act at the time of award, and any subcontractor
10 that hires other subcontractors must verify that their subcontractors
11 meet the responsibility criteria listed in section 2(1) of this act at
12 the time of award. This verification requirement, as well as the
13 responsibility criteria, must be included in every public works
14 contract and subcontract of every tier.

15 **Sec. 4.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read
16 as follows:

17 (1) This section provides uniform small works roster provisions to
18 award contracts for construction, building, renovation, remodeling,
19 alteration, repair, or improvement of real property that may be used by
20 state agencies and by any local government that is expressly authorized
21 to use these provisions. These provisions may be used in lieu of other
22 procedures to award contracts for such work with an estimated cost of
23 two hundred thousand dollars or less. The small works roster process
24 includes the limited public works process authorized under subsection
25 (3) of this section and any local government authorized to award
26 contracts using the small works roster process under this section may
27 award contracts using the limited public works process under subsection
28 (3) of this section.

29 (2)(a) A state agency or authorized local government may create a
30 single general small works roster, or may create a small works roster
31 for different specialties or categories of anticipated work. Where
32 applicable, small works rosters may make distinctions between
33 contractors based upon different geographic areas served by the
34 contractor. The small works roster or rosters shall consist of all
35 responsible contractors who have requested to be on the list, and where
36 required by law are properly licensed or registered to perform such

1 work in this state. A state agency or local government establishing a
2 small works roster or rosters may require eligible contractors desiring
3 to be placed on a roster or rosters to keep current records of any
4 applicable licenses, certifications, registrations, bonding, insurance,
5 or other appropriate matters on file with the state agency or local
6 government as a condition of being placed on a roster or rosters. At
7 least once a year, the state agency or local government shall publish
8 in a newspaper of general circulation within the jurisdiction a notice
9 of the existence of the roster or rosters and solicit the names of
10 contractors for such roster or rosters. In addition, responsible
11 contractors shall be added to an appropriate roster or rosters at any
12 time they submit a written request and necessary records. Master
13 contracts may be required to be signed that become effective when a
14 specific award is made using a small works roster.

15 (b) A state agency establishing a small works roster or rosters
16 shall adopt rules implementing this subsection. A local government
17 establishing a small works roster or rosters shall adopt an ordinance
18 or resolution implementing this subsection. Procedures included in
19 rules adopted by the department of general administration in
20 implementing this subsection must be included in any rules providing
21 for a small works roster or rosters that is adopted by another state
22 agency, if the authority for that state agency to engage in these
23 activities has been delegated to it by the department of general
24 administration under chapter 43.19 RCW. An interlocal contract or
25 agreement between two or more state agencies or local governments
26 establishing a small works roster or rosters to be used by the parties
27 to the agreement or contract must clearly identify the lead entity that
28 is responsible for implementing the provisions of this subsection.

29 (c) Procedures shall be established for securing telephone,
30 written, or electronic quotations from contractors on the appropriate
31 small works roster to assure that a competitive price is established
32 and to award contracts to the lowest responsible bidder((7)) as defined
33 in RCW ((43.19.1911)) 39.04.010. Invitations for quotations shall
34 include an estimate of the scope and nature of the work to be performed
35 as well as materials and equipment to be furnished. However, detailed
36 plans and specifications need not be included in the invitation. This
37 subsection does not eliminate other requirements for architectural or
38 engineering approvals as to quality and compliance with building codes.

1 Quotations may be invited from all appropriate contractors on the
2 appropriate small works roster. As an alternative, quotations may be
3 invited from at least five contractors on the appropriate small works
4 roster who have indicated the capability of performing the kind of work
5 being contracted, in a manner that will equitably distribute the
6 opportunity among the contractors on the appropriate roster. However,
7 if the estimated cost of the work is from one hundred thousand dollars
8 to two hundred thousand dollars, a state agency or local government,
9 other than a port district, that chooses to solicit bids from less than
10 all the appropriate contractors on the appropriate small works roster
11 must also notify the remaining contractors on the appropriate small
12 works roster that quotations on the work are being sought. The
13 government has the sole option of determining whether this notice to
14 the remaining contractors is made by: (i) Publishing notice in a legal
15 newspaper in general circulation in the area where the work is to be
16 done; (ii) mailing a notice to these contractors; or (iii) sending a
17 notice to these contractors by facsimile or other electronic means.
18 For purposes of this subsection (2)(c), "equitably distribute" means
19 that a state agency or local government soliciting bids may not favor
20 certain contractors on the appropriate small works roster over other
21 contractors on the appropriate small works roster who perform similar
22 services.

23 (d) A contract awarded from a small works roster under this section
24 need not be advertised.

25 (e) Immediately after an award is made, the bid quotations obtained
26 shall be recorded, open to public inspection, and available by
27 telephone inquiry.

28 (3) In lieu of awarding contracts under subsection (2) of this
29 section, a state agency or authorized local government may award a
30 contract for work, construction, alteration, repair, or improvement
31 (~~(project [projects])~~) projects estimated to cost less than thirty-five
32 thousand dollars using the limited public works process provided under
33 this subsection. Public works projects awarded under this subsection
34 are exempt from the other requirements of the small works roster
35 process provided under subsection (2) of this section and are exempt
36 from the requirement that contracts be awarded after advertisement as
37 provided under RCW 39.04.010.

1 For limited public works projects, a state agency or authorized
2 local government shall solicit electronic or written quotations from a
3 minimum of three contractors from the appropriate small works roster
4 and shall award the contract to the lowest responsible bidder as
5 defined under RCW (~~(43.19.1911)~~) 39.04.010. After an award is made,
6 the quotations shall be open to public inspection and available by
7 electronic request. A state agency or authorized local government
8 shall attempt to distribute opportunities for limited public works
9 projects equitably among contractors willing to perform in the
10 geographic area of the work. A state agency or authorized local
11 government shall maintain a list of the contractors contacted and the
12 contracts awarded during the previous twenty-four months under the
13 limited public works process, including the name of the contractor, the
14 contractor's registration number, the amount of the contract, a brief
15 description of the type of work performed, and the date the contract
16 was awarded. For limited public works projects, a state agency or
17 authorized local government may waive the payment and performance bond
18 requirements of chapter 39.08 RCW and the retainage requirements of
19 chapter 60.28 RCW, thereby assuming the liability for the contractor's
20 nonpayment of laborers, mechanics, subcontractors, materialmen,
21 suppliers, and taxes imposed under Title 82 RCW that may be due from
22 the contractor for the limited public works project, however the state
23 agency or authorized local government shall have the right of recovery
24 against the contractor for any payments made on the contractor's
25 behalf.

26 (4) The breaking of any project into units or accomplishing any
27 projects by phases is prohibited if it is done for the purpose of
28 avoiding the maximum dollar amount of a contract that may be let using
29 the small works roster process or limited public works process.

30 (5) As used in this section, "state agency" means the department of
31 general administration, the state parks and recreation commission, the
32 department of natural resources, the department of fish and wildlife,
33 the department of transportation, any institution of higher education
34 as defined under RCW 28B.10.016, and any other state agency delegated
35 authority by the department of general administration to engage in
36 construction, building, renovation, remodeling, alteration,

1 improvement, or repair activities.

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