

# HOUSE BILL REPORT

## HB 1173

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**As Reported by House Committee On:**  
Community Development & Housing

**Title:** An act relating to small works roster contracting procedures.

**Brief Description:** Regarding small works roster contracting procedures.

**Sponsors:** Representatives Kenney, Orcutt, Hasegawa, Finn, Smith, Santos and Maxwell.

**Brief History:**

**Committee Activity:**

Community Development & Housing: 1/24/11, 2/3/11 [DPS].

**Brief Summary of Substitute Bill**

- Increases the size of businesses defined as "small businesses" for the purposes of the limited public works process.
- Revises an awarding agency's authority to adopt procedures to encourage small business participation in small works roster contracting by referencing "minibusinesses" and "microbusinesses."

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### HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT & HOUSING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kenney, Chair; Finn, Vice Chair; Smith, Ranking Minority Member; Ahern, Maxwell, Ryu, Santos and Walsh.

**Staff:** Chris Cordes (786-7103).

**Background:**

Public work includes all work, construction, alteration, and repair or improvement, other than ordinary maintenance, that is executed at a cost to the state or a municipality.

For public work projects estimated to cost \$300,000 or less, state agencies and local governments may use the small works roster (SWR) process to award contracts. Any

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responsible contractor may request to be on the SWR, which may be a single general list or may include lists for various specialties or categories of work.

Under the SWR process, no advertising of such contract opportunities is required. Instead, a state agency or local government will solicit bids from all contractors who have requested to be on the appropriate SWR or from at least five of the listed contractors. The state agency or local government, if it decides to award the contract, must award it to the lowest responsible bidder.

The SWR process also allows for a limited public works process for projects estimated to cost less than \$35,000. Under the limited public works process, a state agency or authorized local government may solicit electronic, phone, or written quotations from a minimum of three contractors from the SWR and must award the contract to the lowest responsible bidder. A state agency or authorized local government may use the limited public works process to solicit and award SWR contracts to small businesses that are registered contractors with annual gross revenues under \$1 million as reported on their federal tax return.

State agencies and local governments may adopt additional procedures to encourage small businesses to participate in SWR contracting. The targeted businesses are those with annual gross revenues under \$250,000.

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#### **Summary of Substitute Bill:**

For purposes of the limited public works process, the definition of a "small business" is revised to mean an in-state business that has: (1) 50 or fewer employees; or (2) less than \$7 million in annual gross revenues.

The authority for state agencies and local governments to adopt additional procedures to encourage certain small businesses to participate in small works rosters contracting is revised by referring to microbusinesses and/or minibusinesses (rather than to businesses with gross revenues under \$250,000).

A "microbusiness" is an in-state business that has annual gross revenues of less than \$1 million. A "minibusiness" is an in-state business that has annual gross revenues of \$1 million or more but less than \$3 million.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill deletes: (1) the increase in the cap for contracts awarded under the limited public works process (the cap remains at \$35,000); (2) statements that only businesses of a certain size are eligible for the awarding of contracts under the limited public works process; and (3) the application to contracts awarded after October 1, 2011.

Under the substitute bill: (1) the definition of "small business," for purposes of the limited public works process, is an in-state business that has 50 or fewer employees or less than \$7 million in annual gross revenues; and (2) the authority for additional procedures to encourage

certain small businesses to participate in small works rosters contracting is revised by referring to minibusinesses and/or microbusiness (instead of businesses with gross revenues under \$250,000).

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2011.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The state needs to take steps to help small businesses. This bill is intended to increase opportunities in public works contracting. There could be options for changing the bill that would result in plans that focus on microbusinesses. The intent of the bill can be supported, but it will cause problems if these small contracts can only be used for certain small businesses. Sometimes larger contractors are better able to accomplish small works projects.

(With concerns) This could help create opportunities for the construction industry to recover. However, if agencies lose too much flexibility, it could lead to higher priced bids and disincentives for the agency to use the small works rosters. It will be difficult to know which businesses are actually qualified unless the contractors are certified as "small." The bill should apply to in-state businesses and use the definition enacted by the Legislature in Substitute Senate Bill 5723. The Legislature should consider in-state preferences.

(Neutral) If the limited works process contract limit is increased, the same increase should be made for bond and retainage provisions exemptions.

(Opposed) This bill could hurt those larger contractors who have small divisions with specialties in small markets, like asbestos abatement. Many contracting businesses are family owned and the gross income does not reflect what the family actually earns. The government should be careful about picking and choosing winners. There could be unintended consequences, because these small works projects are already complicated and making two classes of eligible contractors creates additional burdens on awarding agencies and disincentives to use the program. It is not clear how using Department of Revenue tax filings will work. The "independent business" standard is too vague. The current law is balanced, and the bill's changes may restrict competition. The increase in the size of "small businesses" to \$7 million in revenues is too large an increase.

**Persons Testifying:** (In support) Representative Kenney, prime sponsor; and Clay Sprague, Department of Natural Resources.

(With concerns) John Lynch, Department of General Administration; and Bill Stauffacher, Building Industry Association of Washington.

(Neutral) Ashley Probart, Association of Washington Cities; and Gary Rowe, Washington Association of Counties.

(Opposed) Van Collins, Association of General Contractors; Bob Abbott, Washington and Northern Idaho District Council of Laborers; and Larry Stevens, United Subcontractors Association.

**Persons Signed In To Testify But Not Testifying:** None.