

SHB 1328 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 04/05/2007

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 39.04.155 and 2001 c 284 s 1 are each amended to read  
4 as follows:

5 (1) This section provides uniform small works roster provisions to  
6 award contracts for construction, building, renovation, remodeling,  
7 alteration, repair, or improvement of real property that may be used by  
8 state agencies and by any local government that is expressly authorized  
9 to use these provisions. These provisions may be used in lieu of other  
10 procedures to award contracts for such work with an estimated cost of  
11 two hundred thousand dollars or less. The small works roster process  
12 includes the limited public works process authorized under subsection  
13 (3) of this section and any local government authorized to award  
14 contracts using the small works roster process under this section may  
15 award contracts using the limited public works process under subsection  
16 (3) of this section.

17 (2)(a) A state agency or authorized local government may create a  
18 single general small works roster, or may create a small works roster  
19 for different specialties or categories of anticipated work. Where  
20 applicable, small works rosters may make distinctions between  
21 contractors based upon different geographic areas served by the  
22 contractor. The small works roster or rosters shall consist of all  
23 responsible contractors who have requested to be on the list, and where  
24 required by law are properly licensed or registered to perform such  
25 work in this state. A state agency or local government establishing a  
26 small works roster or rosters may require eligible contractors desiring  
27 to be placed on a roster or rosters to keep current records of any  
28 applicable licenses, certifications, registrations, bonding, insurance,  
29 or other appropriate matters on file with the state agency or local  
30 government as a condition of being placed on a roster or rosters. At

1 least once a year, the state agency or local government shall publish  
2 in a newspaper of general circulation within the jurisdiction a notice  
3 of the existence of the roster or rosters and solicit the names of  
4 contractors for such roster or rosters. In addition, responsible  
5 contractors shall be added to an appropriate roster or rosters at any  
6 time they submit a written request and necessary records. Master  
7 contracts may be required to be signed that become effective when a  
8 specific award is made using a small works roster.

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

23 (c) Procedures shall be established for securing telephone,  
24 written, or electronic quotations from contractors on the appropriate  
25 small works roster to assure that a competitive price is established  
26 and to award contracts to the lowest responsible bidder, as defined in  
27 RCW 43.19.1911. Invitations for quotations shall include an estimate  
28 of the scope and nature of the work to be performed as well as  
29 materials and equipment to be furnished. However, detailed plans and  
30 specifications need not be included in the invitation. This subsection  
31 does not eliminate other requirements for architectural or engineering  
32 approvals as to quality and compliance with building codes. Quotations  
33 may be invited from all appropriate contractors on the appropriate  
34 small works roster. As an alternative, quotations may be invited from  
35 at least five contractors on the appropriate small works roster who  
36 have indicated the capability of performing the kind of work being  
37 contracted, in a manner that will equitably distribute the opportunity  
38 among the contractors on the appropriate roster. However, if the

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

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

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

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

32 For limited public works projects, a state agency or authorized  
33 local government shall solicit electronic or written quotations from a  
34 minimum of three contractors from the appropriate small works roster  
35 and shall award the contract to the lowest responsible bidder as  
36 defined under RCW 43.19.1911. After an award is made, the quotations  
37 shall be open to public inspection and available by electronic request.  
38 A state agency or authorized local government shall attempt to

1 distribute opportunities for limited public works projects equitably  
2 among contractors willing to perform in the geographic area of the  
3 work. A state agency or authorized local government shall maintain a  
4 list of the contractors contacted and the contracts awarded during the  
5 previous twenty-four months under the limited public works process,  
6 including the name of the contractor, the contractor's registration  
7 number, the amount of the contract, a brief description of the type of  
8 work performed, and the date the contract was awarded. For limited  
9 public works projects, a state agency or authorized local government  
10 may waive the payment and performance bond requirements of chapter  
11 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby  
12 assuming the liability for the contractor's nonpayment of laborers,  
13 mechanics, subcontractors, (~~materialmen~~) materialpersons, suppliers,  
14 and taxes imposed under Title 82 RCW that may be due from the  
15 contractor for the limited public works project, however the state  
16 agency or authorized local government shall have the right of recovery  
17 against the contractor for any payments made on the contractor's  
18 behalf.

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

23 (5)(a) A state agency or authorized local government may use the  
24 limited public works process of subsection (3) of this section to  
25 solicit and award small works roster contracts to small businesses that  
26 are registered contractors with gross revenues under one million  
27 dollars annually as reported on their federal tax return.

28 (b) A state agency or authorized local government may adopt  
29 additional procedures to encourage small businesses that are registered  
30 contractors with gross revenues under two hundred fifty thousand  
31 dollars annually as reported on their federal tax returns to submit  
32 quotations or bids on small works roster contracts.

33 (6) As used in this section, "state agency" means the department of  
34 general administration, the state parks and recreation commission, the  
35 department of natural resources, the department of fish and wildlife,  
36 the department of transportation, any institution of higher education  
37 as defined under RCW 28B.10.016, and any other state agency delegated

1 authority by the department of general administration to engage in  
2 construction, building, renovation, remodeling, alteration,  
3 improvement, or repair activities.

4 **Sec. 2.** RCW 60.28.051 and 1992 c 223 s 4 are each amended to read  
5 as follows:

6 Upon completion of a contract, the state, county, or other  
7 municipal officer charged with the duty of disbursing or authorizing  
8 disbursement or payment of such contracts shall forthwith notify the  
9 department of revenue of the completion of contracts over (~~twenty~~)  
10 thirty-five thousand dollars. Such officer shall not make any payment  
11 from the retained percentage fund or release any retained percentage  
12 escrow account to any person, until he or she has received from the  
13 department of revenue a certificate that all taxes, increases, and  
14 penalties due from the contractor, and all taxes due and to become due  
15 with respect to such contract have been paid in full or that they are,  
16 in the department's opinion, readily collectible without recourse to  
17 the state's lien on the retained percentage.

18 **Sec. 3.** RCW 39.08.010 and 1989 c 145 s 1 are each amended to read  
19 as follows:

20 Whenever any board, council, commission, trustees, or body acting  
21 for the state or any county or municipality or any public body shall  
22 contract with any person or corporation to do any work for the state,  
23 county, or municipality, or other public body, city, town, or district,  
24 such board, council, commission, trustees, or body shall require the  
25 person or persons with whom such contract is made to make, execute, and  
26 deliver to such board, council, commission, trustees, or body a good  
27 and sufficient bond, with a surety company as surety, conditioned that  
28 such person or persons shall faithfully perform all the provisions of  
29 such contract and pay all laborers, mechanics, and subcontractors and  
30 materialmen, and all persons who supply such person or persons, or  
31 subcontractors, with provisions and supplies for the carrying on of  
32 such work, which bond in cases of cities and towns shall be filed with  
33 the clerk or comptroller thereof, and any person or persons performing  
34 such services or furnishing material to any subcontractor shall have  
35 the same right under the provisions of such bond as if such work,  
36 services, or material was furnished to the original contractor:

1 PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through  
2 39.08.030 shall not apply to any money loaned or advanced to any such  
3 contractor, subcontractor or other person in the performance of any  
4 such work: PROVIDED FURTHER, That on contracts of (~~twenty-five~~)  
5 thirty-five thousand dollars or less, at the option of the contractor  
6 the respective public entity may, in lieu of the bond, retain fifty  
7 percent of the contract amount for a period of thirty days after date  
8 of final acceptance, or until receipt of all necessary releases from  
9 the department of revenue and the department of labor and industries  
10 and settlement of any liens filed under chapter 60.28 RCW, whichever is  
11 later: PROVIDED FURTHER, That for contracts of one hundred thousand  
12 dollars or less, the public entity may accept a full payment and  
13 performance bond from an individual surety or sureties: AND PROVIDED  
14 FURTHER, That the surety must agree to be bound by the laws of the  
15 state of Washington and subjected to the jurisdiction of the state of  
16 Washington.

17 **Sec. 4.** RCW 39.12.040 and 1991 c 15 s 1 are each amended to read  
18 as follows:

19 (1) Except as provided in subsection (2) of this section, before  
20 payment is made by or on behalf of the state, or any county,  
21 municipality, or political subdivision created by its laws, of any sum  
22 or sums due on account of a public works contract, it shall be the duty  
23 of the officer or person charged with the custody and disbursement of  
24 public funds to require the contractor and each and every subcontractor  
25 from the contractor or a subcontractor to submit to such officer a  
26 "Statement of Intent to Pay Prevailing Wages". For a contract in  
27 excess of ten thousand dollars, the statement of intent to pay  
28 prevailing wages shall include:

- 29 (a) The contractor's registration certificate number; and  
30 (b) The prevailing rate of wage for each classification of workers  
31 entitled to prevailing wages under RCW 39.12.020 and the estimated  
32 number of workers in each classification.

33 Each statement of intent to pay prevailing wages must be approved  
34 by the industrial statistician of the department of labor and  
35 industries before it is submitted to said officer. Unless otherwise  
36 authorized by the department of labor and industries, each voucher  
37 claim submitted by a contractor for payment on a project estimate shall

1 state that the prevailing wages have been paid in accordance with the  
2 prefiled statement or statements of intent to pay prevailing wages on  
3 file with the public agency. Following the final acceptance of a  
4 public works project, it shall be the duty of the officer charged with  
5 the disbursement of public funds, to require the contractor and each  
6 and every subcontractor from the contractor or a subcontractor to  
7 submit to such officer an "Affidavit of Wages Paid" before the funds  
8 retained according to the provisions of RCW 60.28.010 are released to  
9 the contractor. Each affidavit of wages paid must be certified by the  
10 industrial statistician of the department of labor and industries  
11 before it is submitted to said officer.

12 (2) As an alternate to the procedures provided for in subsection  
13 (1) of this section, for public works projects of two thousand five  
14 hundred dollars or less and for projects where the limited public works  
15 process under RCW 39.04.155(3) is followed:

16 (a) An awarding agency may authorize the contractor or  
17 subcontractor to submit the statement of intent to pay prevailing wages  
18 directly to the officer or person charged with the custody or  
19 disbursement of public funds in the awarding agency without approval by  
20 the industrial statistician of the department of labor and industries.  
21 The awarding agency shall retain such statement of intent to pay  
22 prevailing wages for a period of not less than three years.

23 (b) Upon final acceptance of the public works project, the awarding  
24 agency shall require the contractor or subcontractor to submit an  
25 affidavit of wages paid. Upon receipt of the affidavit of wages paid,  
26 the awarding agency may pay the contractor or subcontractor in full,  
27 including funds that would otherwise be retained according to the  
28 provisions of RCW 60.28.010. Within thirty days of receipt of the  
29 affidavit of wages paid, the awarding agency shall submit the affidavit  
30 of wages paid to the industrial statistician of the department of labor  
31 and industries for approval.

32 (c) A statement of intent to pay prevailing wages and an affidavit  
33 of wages paid shall be on forms approved by the department of labor and  
34 industries.

35 (d) In the event of a wage claim and a finding for the claimant by  
36 the department of labor and industries where the awarding agency has  
37 used the alternative process provided for in subsection (2) of this  
38 section, the awarding agency shall pay the wages due directly to the

1 claimant. If the contractor or subcontractor did not pay the wages  
2 stated in the affidavit of wages paid, the awarding agency may take  
3 action at law to seek reimbursement from the contractor or  
4 subcontractor of wages paid to the claimant, and may prohibit the  
5 contractor or subcontractor from bidding on any public works contract  
6 of the awarding agency for up to one year.

7 (e) Nothing in this section shall be interpreted to allow an  
8 awarding agency to subdivide any public works project of more than two  
9 thousand five hundred dollars for the purpose of circumventing the  
10 procedures required by RCW 39.12.040(1)."

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**ADOPTED 04/05/2007**

11 On page 1, line 1 of the title, after "procedures;" strike the  
12 remainder of the title and insert "and amending RCW 39.04.155,  
13 60.28.051, 39.08.010, and 39.12.040."

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