
HOUSE BILL 1173

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Kenney, Orcutt, Hasegawa, Finn, Smith, Santos, and Maxwell

Read first time 01/13/11. Referred to Committee on Community Development & Housing.

1 AN ACT Relating to small works roster contracting procedures;
2 amending RCW 39.04.010 and 39.04.155; and creating a new section.

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

4 **Sec. 1.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

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

16 (3) "Microbusiness" means any business entity, including a sole
17 proprietorship, corporation, partnership, or other legal entity, that:
18 (a) Is owned and operated independent from all other businesses; and

1 (b) has a gross revenue of less than one million dollars annually as
2 reported on its federal tax return or on its return filed with the
3 department of revenue.

4 (4) "Municipality" means every city, county, town, port district,
5 district, or other public agency authorized by law to require the
6 execution of public work, except drainage districts, diking districts,
7 diking and drainage improvement districts, drainage improvement
8 districts, diking improvement districts, consolidated diking and
9 drainage improvement districts, consolidated drainage improvement
10 districts, consolidated diking improvement districts, irrigation
11 districts, or other districts authorized by law for the reclamation or
12 development of waste or undeveloped lands.

13 ~~((+4))~~ (5) "Public work" means all work, construction, alteration,
14 repair, or improvement other than ordinary maintenance, executed at the
15 cost of the state or of any municipality, or which is by law a lien or
16 charge on any property therein. All public works, including
17 maintenance when performed by contract shall comply with chapter 39.12
18 RCW. "Public work" does not include work, construction, alteration,
19 repair, or improvement performed under contracts entered into under RCW
20 36.102.060(4) or under development agreements entered into under RCW
21 36.102.060(7) or leases entered into under RCW 36.102.060(8).

22 ~~((+5))~~ (6) "Responsible bidder" means a contractor who meets the
23 criteria in RCW 39.04.350.

24 ~~((+6))~~ (7) "Small business" means any business entity, including
25 a sole proprietorship, corporation, partnership, or other legal entity,
26 that: (a) Is owned and operated independent from all other businesses;
27 and (b) has a gross revenue of less than seven million dollars annually
28 as reported on its federal tax return or its return filed with the
29 department of revenue.

30 (8) "State" means the state of Washington and all departments,
31 supervisors, commissioners, and agencies of the state.

32 **Sec. 2.** RCW 39.04.155 and 2009 c 74 s 1 are each amended to read
33 as follows:

34 (1)(a) This section provides uniform small works roster provisions
35 to award contracts for construction, building, renovation, remodeling,
36 alteration, repair, or improvement of real property that may be used by
37 state agencies and by any local government that is expressly authorized

1 to use these provisions. These provisions may be used in lieu of other
2 procedures to award contracts for such work with an estimated cost of
3 three hundred thousand dollars or less.

4 (b) The small works roster process includes the limited public
5 works process authorized under subsection (3) of this section and any
6 local government authorized to award contracts using the small works
7 roster process under this section may award contracts using the limited
8 public works process under subsection (3) of this section.

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

23 (ii) At least once a year, the state agency or local government
24 shall publish in a newspaper of general circulation within the
25 jurisdiction a notice of the existence of the small works roster or
26 rosters and solicit the names of contractors for such roster or
27 rosters. In addition, responsible contractors shall be added to an
28 appropriate roster or rosters at any time they submit a written request
29 and necessary records.

30 (iii) Master contracts may be required to be signed that become
31 effective when a specific award is made using a small works roster.

32 (b) A state agency establishing a small works roster or rosters
33 shall adopt rules implementing this subsection. A local government
34 establishing a small works roster or rosters shall adopt an ordinance
35 or resolution implementing this subsection. Procedures included in
36 rules adopted by the department of general administration in
37 implementing this subsection must be included in any rules providing
38 for a small works roster or rosters that is adopted by another state

1 agency, if the authority for that state agency to engage in these
2 activities has been delegated to it by the department of general
3 administration under chapter 43.19 RCW. An interlocal contract or
4 agreement between two or more state agencies or local governments
5 establishing a small works roster or rosters to be used by the parties
6 to the agreement or contract must clearly identify the lead entity that
7 is responsible for implementing the provisions of this subsection.

8 (c)(i) Procedures shall be established for securing telephone,
9 written, or electronic quotations from contractors on the appropriate
10 small works roster to assure that a competitive price is established
11 and to award contracts to the lowest responsible bidder, as defined in
12 RCW 39.04.010. Invitations for quotations shall include an estimate of
13 the scope and nature of the work to be performed as well as materials
14 and equipment to be furnished. However, detailed plans and
15 specifications need not be included in the invitation. This subsection
16 does not eliminate other requirements for architectural or engineering
17 approvals as to quality and compliance with building codes.

18 (ii) Quotations may be invited from all appropriate contractors on
19 the appropriate small works roster. As an alternative, quotations may
20 be invited from at least five contractors on the appropriate small
21 works roster who have indicated the capability of performing the kind
22 of work being contracted, in a manner that will ~~((equitably))~~
23 distribute equitably the opportunity among the contractors on the
24 appropriate roster. However, if the estimated cost of the work is from
25 one hundred fifty thousand dollars to three hundred thousand dollars,
26 a state agency or local government that chooses to solicit bids from
27 less than all the appropriate contractors on the appropriate small
28 works roster must also notify the remaining contractors on the
29 appropriate small works roster that quotations on the work are being
30 sought. The government has the sole option of determining whether this
31 notice to the remaining contractors is made by: ~~((+i+))~~ (A) Publishing
32 notice in a legal newspaper in general circulation in the area where
33 the work is to be done; ~~((+ii+))~~ (B) mailing a notice to these
34 contractors; or ~~((+iii+))~~ (C) sending a notice to these contractors by
35 facsimile or other electronic means. ~~((For purposes of this subsection~~
36 ~~(2)(c), "equitably distribute" means that a state agency or local~~
37 ~~government soliciting bids may not favor certain contractors on the~~

1 ~~appropriate small works roster over other contractors on the~~
2 ~~appropriate small works roster who perform similar services.))~~

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

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

8 (3)(a) In lieu of awarding contracts under subsection (2) of this
9 section, a state agency or authorized local government may award a
10 contract for work, construction, alteration, repair, or improvement
11 projects estimated to cost less than (~~thirty-five~~) fifty thousand
12 dollars using the limited public works process provided under this
13 subsection. Public works projects awarded under this subsection are
14 exempt from the other requirements of the small works roster process
15 provided under subsection (2) of this section and are exempt from the
16 requirement that contracts be awarded after advertisement as provided
17 under RCW 39.04.010.

18 (b) For limited public works projects, a state agency or authorized
19 local government:

20 (i) Shall solicit electronic or written quotations from a minimum
21 of three contractors from the appropriate small works roster and shall
22 award the contract to the lowest responsible bidder as defined under
23 RCW 39.04.010. After an award is made, the quotations shall be open to
24 public inspection and available by electronic request(~~(. A state~~
25 ~~agency or authorized local government));~~

26 (ii) Shall attempt to distribute equitably opportunities for
27 limited public works projects (~~equitably~~) among contractors willing
28 to perform in the geographic area of the work. A state agency or
29 authorized local government shall maintain a list of the contractors
30 contacted and the contracts awarded during the previous twenty-four
31 months under the limited public works process, including the name of
32 the contractor, the contractor's registration number, the amount of the
33 contract, a brief description of the type of work performed, and the
34 date the contract was awarded(~~(. For limited public works projects, a~~
35 ~~state agency or authorized local government)); and~~

36 (iii) May waive the payment and performance bond requirements of
37 chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW,
38 thereby assuming the liability for the contractor's nonpayment of

1 laborers, mechanics, subcontractors, materialpersons, suppliers, and
2 taxes imposed under Title 82 RCW that may be due from the contractor
3 for the limited public works project((τ)). However the state agency or
4 authorized local government shall have the right of recovery against
5 the contractor for any payments made on the contractor's behalf.

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

10 (5)(a) A state agency or authorized local government may use the
11 limited public works process of subsection (3) of this section only to
12 solicit quotations for and award small works roster contracts to small
13 businesses that are registered contractors (~~(with gross revenues under~~
14 ~~one million dollars annually as reported on their federal tax return)~~),
15 except that contracts estimated to cost less than thirty-five thousand
16 dollars may be awarded only to microbusinesses that are registered
17 contractors.

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

23 (6) (~~As used in~~) The definitions in this subsection apply
24 throughout this section((τ)).

25 (a) "State agency" means the department of general administration,
26 the state parks and recreation commission, the department of natural
27 resources, the department of fish and wildlife, the department of
28 transportation, any institution of higher education as defined under
29 RCW 28B.10.016, and any other state agency delegated authority by the
30 department of general administration to engage in construction,
31 building, renovation, remodeling, alteration, improvement, or repair
32 activities.

33 (b) "Distribute equitably" means that a state agency or local
34 government soliciting bids may not favor certain contractors on the
35 appropriate small works roster over other contractors on the
36 appropriate small works roster who perform similar services.

1 NEW SECTION. **Sec. 3.** This act applies only to contracts awarded
2 pursuant to invitations for bids issued on or after October 1, 2011.

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