

RCW 39.04.380 Preference for resident contractors. (Effective until July 1, 2024.) (1) The department of enterprise services must conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident contractors. The list must include details on the type of preference, the amount of the preference, and how the preference is applied. The list must be updated periodically as needed. The initial survey must be completed by November 1, 2011, and by December 1, 2011, the department must submit a report to the appropriate committees of the legislature on the results of the survey. The report must include the list and recommendations necessary to implement the intent of this section and section 2, chapter 345, Laws of 2011.

(2) The department of enterprise services must distribute the report, along with the requirements of this section and section 2, chapter 345, Laws of 2011, to all state and local agencies with the authority to procure public works. The department may adopt rules and procedures to implement the reciprocity requirements in subsection (3) of this section. However, subsection (3) of this section does not take effect until the department of enterprise services has adopted the rules and procedures for reciprocity under this subsection or announced that it will not be issuing rules or procedures pursuant to this section.

(3) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This subsection does not apply until the department of enterprise services has adopted the rules and procedures for reciprocity under subsection (2) of this section, or has determined and announced that rules are not necessary for implementation.

(4) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280, or any other procurement exempt from competitive bidding. [2015 c 225 § 39; 2011 c 345 § 1.]

Conflict with federal requirements—2011 c 345: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." [2011 c 345 § 2.]

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(2) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(3) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(4) This section does not apply to public works procured pursuant to RCW 39.04.280, RCW 39.04.151 through 39.04.154, or any other procurement exempt from competitive bidding. [2023 c 395 § 28; 2015 c 225 § 39; 2011 c 345 § 1.]

Effective date—2023 c 395 §§ 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.

Conflict with federal requirements—2011 c 345: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." [2011 c 345 § 2.]