

HOUSE BILL REPORT

HB 2813

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to public contracts.

Brief Description: Revising provisions relating to public works contracts with the state.

Sponsors: Representatives Romero, Veloria, Caver, Wolfe and Bray; by request of Department of General Administration.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 4, 1994, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer and Veloria.

Staff: Chris Cordes (786-7117).

Background: If a public entity determines that a public works project will be executed by a method other than by contract or by using the small works roster process and the contract amount will exceed \$15,000, or \$25,000 in the case of colleges, universities, and community and technical colleges, the entity must publish notice of the work at least 15 days before beginning work.

A small works rosters process may be used by the Department of General Administration, the Department of Fisheries, the Department of Wildlife and the State Parks and Recreation Commission for projects of less than \$50,000, or less than \$100,000 if the project is managed for community and technical colleges. These projects are exempt from the general requirements for advertisement and competitive bidding. When using the small works roster, the agency must solicit at least five quotations from contractors randomly chosen from the small works roster. If the agency is unable to solicit quotations from five qualified contractors on the roster, the project must be advertised and competitively

bid. The agency must invite at least one proposal from a certified minority contractor.

Summary of Substitute Bill: The dollar threshold is increased from \$15,000 to \$25,000 for a public works contract for which notice must be published if the work is executed by a method other than by contract or by using the small works roster process.

Beginning July 1, 1994, several changes are made in the small works roster process. The small works roster exemption from the public works competitive bidding requirements for the Department of General Administration, the Department of Fish and Wildlife and the State Parks and Recreation Commission is changed to apply to projects under \$100,000 instead of projects under \$50,000. The Department of Natural Resources is added as an agency that may use the small works roster. The requirement that the agency must invite a proposal from a minority-owned contractor is changed to add a requirement that an invitation must also be given to at least one certified women-owned contractor.

When using the small works roster process for a project, if the agency does not receive at least two responsive bids, the project must be advertised and competitively bid. If work is to be executed by competitive bid, the awarding agency must invite at least one proposal each from a certified minority and a certified women-owned contractor.

Substitute Bill Compared to Original Bill: The substitute makes the following changes to the original bill: (1) the provision is deleted that would have changed the requirements regarding the public entity's authority to hold retainage in lieu of a performance bond on certain contracts; (2) the requirement is deleted that the awarding agency must invite at least one proposal each from a certified minority and women-owned contractor on projects exceeding \$25,000 that will not be executed by contract or small works roster. Instead, this requirement is added for projects that were unable to be executed by a small works roster process and were executed by competitive bid; (3) the Department of Natural Resources is added as an agency that may use the small works roster process; and (4) language is restored that requires the solicitation of quotations from contractors from the small works roster to be performed in a manner that equitably distributes the opportunity for these contracts.

Fiscal Note: Requested January 31, 1994.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed, except for

section 2, relating to small works roster requirements, which takes effect July 1, 1994.

Testimony For: The purpose of the bill is to make public works contracting more efficient and cost effective for the smaller projects. It will provide more flexibility so that small business contractors have more opportunities to bid on public works. Similar flexibility with regard to performance bonds was provided for higher education institutions last session. The threshold for considering a public works contract to be "small" needs to bear a relationship to industry needs. Small businesses often do not have the track record that bonding companies require to issue a performance bond. Smaller projects can be guaranteed by methods other than by performance bonds. Experience with projects awarded by the Department of General Administration shows little risk to the public.

Testimony Against: It is a serious risk to public funds if small contractors are awarded contracts even though they are unable to secure a performance bond. Because these projects have bonds, the cost of contracting is kept low. The surety companies investigate claims and pay unpaid bills to keep the project going toward completion. It is unlikely that these functions would be performed without bonding. The legislature may want to consider other alternatives to the problems that hinder small businesses from participating in public works bidding. Provisions of the bill dealing with the small works roster may have merit, but the language needs to be clarified.

Witnesses: (In favor) Representative Romero, prime sponsor; Jim Medina, Office of Minority and Women's Business Enterprises; John Franklin and Fred King, Department of General Administration. (Opposed to original bill) Bill Anderson, Washington State Building and Construction Trades Council; Larry Stevens, United Subcontractors Association; Dick Ducharme, Utility Contractors Association; Doug Bohlke, Bill Weckworth, and Don Sirkin, Contractors Bonding and Insurance Company; and Duke Schaub, Associated General Contractors of Washington. (Concerns with original bill) Craig Olsen, Association of Washington Cities; and Jim Ajax, City of Pasco.