

FINAL BILL REPORT

2SSB 5268

C 395 L 23

Synopsis as Enacted

Brief Description: Addressing equity and efficiencies in public works procurement including modifying small works roster requirements.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hasegawa, Warnick, Hunt, Keiser, Kuderer, Nguyen, Nobles, Saldaña, Valdez, Wagoner and Wilson, C.).

Senate Committee on State Government & Elections

Senate Committee on Ways & Means

House Committee on Innovation, Community & Economic Development, & Veterans

House Committee on Appropriations

Background: Inclusion Plans. Inclusion plans are required for Department of Enterprise Services (DES) public works contracts valued at \$1 million or more. For these contracts, the prime contractor identifies subcontracting opportunities and sets voluntary goals to include small and diverse businesses.

Small Works Roster Requirements. Small works rosters consist of responsible contractors who have requested to be on the list and, where required by law, are properly licensed and registered to do work in Washington. Contractors on small works rosters can bid for eligible projects below \$350,000. Agencies may require prospective contractors to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the appropriate state agency or local government as a condition of being placed on a roster. Agencies should require contractors to update their information each year. A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. A roster can make distinctions between contractors based upon different geographic areas served by the contractor.

Eligibility. The following local government agencies are specifically authorized to use the small works roster process, including:

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- cities and towns;
- counties;
- fire protection districts;
- housing authorities;
- irrigation districts;
- metropolitan park districts;
- port districts;
- public hospital districts;
- public utility districts;
- school districts, and;
- water-sewer districts.

Agencies without specific public works statutes are also permitted to use a similar roster process.

Procedure. Agencies must publicly advertise the roster at least once per year in a newspaper of general circulation within the district, soliciting the names of eligible contractors. At least once per year, agencies must post a list of all small works roster contracts awarded regardless of dollar value, including the date, name of the contractor, the amount of the contract, a brief description of the type of work performed, and the location where the bid quotations for these contracts are available for public inspection.

Procedures must be established for securing quotations from contractors to assure that a competitive price is established and to award contracts to the lowest responsible bidder. Invitations for quotations must include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished, but detailed plans and specifications are not required to be included.

Awards. For projects awarded under the small works roster process, a state agency or authorized local government may waive the statutory retainage requirements, thereby assuming the liability for contractors nonpayment of laborers, mechanics, subcontractors, material persons and suppliers, and taxes, increases, and penalties that may be due from the contractor for the project.

Summary: Small Works Rosters. A state agency or authorized local government establishing a small works roster must require contractors who desire to be placed on the roster to indicate if they meet the definition of a women and minority-owned business, veteran-owned business, or small business. As a condition of being placed on the roster and award of contract, contractors must keep current records of any applicable licenses, certifications, registrations, bonding insurance, or other appropriate matters on file with the appropriate agency. At least once per year, the state agency or local government must publish a solicitation of contractors for the roster in a newspaper of general circulation, providing the Office of Minority and Women's Business Enterprises (OMWBE) directory of certified firms a notice of the existence of the roster.

Statewide Small Works Roster. The Department of Commerce (Commerce), through the Municipal Research and Services Center (MRSC), must develop a statewide small works roster by June 30, 2024. MRSC must develop criteria for the statewide roster with collaboration from affected state and local agencies. The roster must have features to filter the roster by different specialties, categories of anticipated work, or geographic areas served by contractors. The roster must also indicate whether the contractor is designated as a small business. Commerce must provide funding to the program as appropriated to maintain and publicize a small works roster, and work with MRSC to notify state and local governments authorized to use small works rosters. State agencies and authorized local governments using small works rosters must establish procedures for implementation.

DES must develop and make available on its website templates for bid invitations, bidding, and contracting that may be used by state agencies, authorized local governments, and contractors.

A state agency or authorized local government contracting through a small works roster must invite bids notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographic area.

For small public works projects with an estimated cost less than \$150,000 state agencies and local governments may, and are encouraged to, direct contract with small businesses without a competitive process before direct contracting with other contractors on the appropriate small works roster. When using direct contracting, a state agency or authorized local government must notify small, minority, women, or veteran owned businesses on the applicable roster.

If there are six or more contractors meeting the definition of small businesses on the applicable roster, the state agency or authorized local government must direct contract with one of those small businesses that have interest in performing work in the applicable geographic area. A state agency or authorized local government must rotate through the contractors on the appropriate small works roster. When qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals, a state agency or authorized local government must use different contractors on different projects.

If there are five or fewer contractors meeting the definition of small business on the applicable roster, the state agency or authorized local government may direct contract with any contractor on the applicable roster.

For small public works contracts under \$5,000, there is no requirement for retainage or performance bonds. After the award is made, the bid quotations must be recorded and publicly available. State agencies and authorized local governments must annually publish a list of small works contracts awarded and the contractors contacted for direct negotiation.

Administrative Procedures. A public works small business certification program is added to the Administrative Procedures Act. OMWBE must adopt rules governing a public works small business certification plan.

Other Provisions. References to disadvantaged business enterprises are replaced with references to small and women, minority, or veteran-owned small business entities. DES is no longer required to 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.

Votes on Final Passage:

Senate	48	0	
House	96	0	(House amended)
Senate	43	0	(Senate concurred)

Effective: July 1, 2024
July 1, 2023 (Section 31 and 35)