

# HOUSE BILL REPORT

## HB 3095

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### As Reported by House Committee On:

State Government

**Title:** An act relating to payment and performance bond requirements on state limited public works projects.

**Brief Description:** Modifying payment and performance bond requirements on state limited public works projects.

**Sponsors:** Representatives Ormsby, Veloria, Eickmeyer, McCoy, Priest, Simpson, G., Chase, Morrell and O'Brien.

### Brief History:

#### Committee Activity:

State Government: 2/5/04, 2/6/04 [DP].

#### Brief Summary of Bill

- Allows state agencies to select the limited small public works process for all public works estimated at less than \$200,000.
- Restricts limited small public works threshold of \$35,000 to only local government small public works.

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### HOUSE COMMITTEE ON STATE GOVERNMENT

**Majority Report:** Do pass. Signed by 5 members: Representatives Haigh, Chair; Miloscia, Vice Chair; Hunt, McDermott and Wallace.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Armstrong, Ranking Minority Member; Shabro, Assistant Ranking Minority Member; Nixon and Tom.

**Staff:** Matt Kuehn (786-7291).

### Background:

#### State Agency Small Works Roster

The Department of General Administration, the Department of Fish and Wildlife, the

Department of Natural Resources, and the State Parks and Recreation Commission, along with any expressly authorized local government, may establish a small works roster to award contracts for construction, repair, or alteration projects with estimated costs of less than \$200,000.

At least once a year the agency must advertise in a newspaper of general circulation for contractors who desire to be included on the roster. The agency must include all qualified contractors requesting to be included. A small works roster may include distinctions between contractors based upon geographic areas served and the nature of the work that the contractor is qualified to perform.

#### Small Public Works Projects

An agency using the small works roster process must solicit quotes from at least five contractors on a small works roster for the category of work involved. Contractors are randomly selected in a manner that equitably distributes the opportunity for these contracts among contractors on the roster. The contract is awarded to the lowest responsible bidder. The agency must advertise and competitively bid the project if at least two responsive quotations are not received.

#### Limited Small Public Works Projects

For projects for work, construction, alteration, repair, or improvement projects estimated to cost less than \$35,000, state or local agencies may use the limited public works project process.

These projects are exempt from the requirements of regular small public works projects, which discuss the procedures for establishing competitive bids, the selection of bidders, and the scope of invitations that must be solicited. There is no requirement to publish legal notification to the other members of the roster, as there is with bids between \$100,000 and \$200,000.

The limited small public works roster process must solicit quotes from at least three contractors on a small works roster for the category of work involved. Additionally, the state or local government may waive payment and performance bond requirements or retainage requirements. A contractor with a waiver of the performance bond does not have to provide a bond in the full contract price of the work to be performed. Waiver of the retainage requirement avoids having 5 percent of the fee held back to ensure payment of the contractor's employees, subcontractors and excise taxes.

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#### **Summary of Bill:**

State agencies are removed from the small works roster section and are provided their own section under 39.04 RCW.

The remaining, substantive references to small works rosters in the context of local governments are unchanged.

The new state agency section allows for the same general procedure as the previous statute, but the limited small works project exemption's threshold is raised from \$35,000 to \$200,000. Consequently, for any project under \$200,000 a state agency may choose from either the regular small works process or the limited small works process.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** State contracts are inaccessible to many small contractors because of onerous performance bond requirements. The Department of General Administration has not been able to find a time for many years where the performance bond ended up being necessary. The retainage is sufficient to ensure the completion of contracted work.

**Testimony Against:** None.

**Persons Testifying:** Representative Ormsby, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.