

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1328

Chapter 210, Laws of 2007

60th Legislature
2007 Regular Session

SMALL WORKS ROSTER CONTRACTING--PROCEDURES

EFFECTIVE DATE: 07/22/07

Passed by the House April 16, 2007
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 5, 2007
Yeas 43 Nays 3

BRAD OWEN

President of the Senate

Approved April 27, 2007, 2:19 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1328** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 30, 2007

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1328

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Santos, Anderson, Green, Hunt, Miloscia, McDermott, Hasegawa, Hudgins, Chandler, Darneille, Haigh, Hankins, Wallace, Kristiansen, Kagi, Pettigrew, Kenney and Conway)

READ FIRST TIME 01/30/07.

1 AN ACT Relating to small works roster contracting procedures; and
2 amending RCW 39.04.155, 60.28.051, 39.08.010, and 39.12.040.

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

4 **Sec. 1.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read
5 as follows:

6 (1) This section provides uniform small works roster provisions to
7 award contracts for construction, building, renovation, remodeling,
8 alteration, repair, or improvement of real property that may be used by
9 state agencies and by any local government that is expressly authorized
10 to use these provisions. These provisions may be used in lieu of other
11 procedures to award contracts for such work with an estimated cost of
12 two hundred thousand dollars or less. The small works roster process
13 includes the limited public works process authorized under subsection
14 (3) of this section and any local government authorized to award
15 contracts using the small works roster process under this section may
16 award contracts using the limited public works process under subsection
17 (3) of this section.

18 (2)(a) A state agency or authorized local government may create a
19 single general small works roster, or may create a small works roster

1 for different specialties or categories of anticipated work. Where
2 applicable, small works rosters may make distinctions between
3 contractors based upon different geographic areas served by the
4 contractor. The small works roster or rosters shall consist of all
5 responsible contractors who have requested to be on the list, and where
6 required by law are properly licensed or registered to perform such
7 work in this state. A state agency or local government establishing a
8 small works roster or rosters may require eligible contractors desiring
9 to be placed on a roster or rosters to keep current records of any
10 applicable licenses, certifications, registrations, bonding, insurance,
11 or other appropriate matters on file with the state agency or local
12 government as a condition of being placed on a roster or rosters. At
13 least once a year, the state agency or local government shall publish
14 in a newspaper of general circulation within the jurisdiction a notice
15 of the existence of the roster or rosters and solicit the names of
16 contractors for such roster or rosters. In addition, responsible
17 contractors shall be added to an appropriate roster or rosters at any
18 time they submit a written request and necessary records. Master
19 contracts may be required to be signed that become effective when a
20 specific award is made using a small works roster.

21 (b) A state agency establishing a small works roster or rosters
22 shall adopt rules implementing this subsection. A local government
23 establishing a small works roster or rosters shall adopt an ordinance
24 or resolution implementing this subsection. Procedures included in
25 rules adopted by the department of general administration in
26 implementing this subsection must be included in any rules providing
27 for a small works roster or rosters that is adopted by another state
28 agency, if the authority for that state agency to engage in these
29 activities has been delegated to it by the department of general
30 administration under chapter 43.19 RCW. An interlocal contract or
31 agreement between two or more state agencies or local governments
32 establishing a small works roster or rosters to be used by the parties
33 to the agreement or contract must clearly identify the lead entity that
34 is responsible for implementing the provisions of this subsection.

35 (c) Procedures shall be established for securing telephone,
36 written, or electronic quotations from contractors on the appropriate
37 small works roster to assure that a competitive price is established
38 and to award contracts to the lowest responsible bidder, as defined in

1 RCW 43.19.1911. Invitations for quotations shall include an estimate
2 of the scope and nature of the work to be performed as well as
3 materials and equipment to be furnished. However, detailed plans and
4 specifications need not be included in the invitation. This subsection
5 does not eliminate other requirements for architectural or engineering
6 approvals as to quality and compliance with building codes. Quotations
7 may be invited from all appropriate contractors on the appropriate
8 small works roster. As an alternative, quotations may be invited from
9 at least five contractors on the appropriate small works roster who
10 have indicated the capability of performing the kind of work being
11 contracted, in a manner that will equitably distribute the opportunity
12 among the contractors on the appropriate roster. However, if the
13 estimated cost of the work is from one hundred thousand dollars to two
14 hundred thousand dollars, a state agency or local government, other
15 than a port district, that chooses to solicit bids from less than all
16 the appropriate contractors on the appropriate small works roster must
17 also notify the remaining contractors on the appropriate small works
18 roster that quotations on the work are being sought. The government
19 has the sole option of determining whether this notice to the remaining
20 contractors is made by: (i) Publishing notice in a legal newspaper in
21 general circulation in the area where the work is to be done; (ii)
22 mailing a notice to these contractors; or (iii) sending a notice to
23 these contractors by facsimile or other electronic means. For purposes
24 of this subsection (2)(c), "equitably distribute" means that a state
25 agency or local government soliciting bids may not favor certain
26 contractors on the appropriate small works roster over other
27 contractors on the appropriate small works roster who perform similar
28 services.

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

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

34 (3) In lieu of awarding contracts under subsection (2) of this
35 section, a state agency or authorized local government may award a
36 contract for work, construction, alteration, repair, or improvement
37 (~~(project [projects])~~) projects estimated to cost less than thirty-five
38 thousand dollars using the limited public works process provided under

1 this subsection. Public works projects awarded under this subsection
2 are exempt from the other requirements of the small works roster
3 process provided under subsection (2) of this section and are exempt
4 from the requirement that contracts be awarded after advertisement as
5 provided under RCW 39.04.010.

6 For limited public works projects, a state agency or authorized
7 local government shall solicit electronic or written quotations from a
8 minimum of three contractors from the appropriate small works roster
9 and shall award the contract to the lowest responsible bidder as
10 defined under RCW 43.19.1911. After an award is made, the quotations
11 shall be open to public inspection and available by electronic request.
12 A state agency or authorized local government shall attempt to
13 distribute opportunities for limited public works projects equitably
14 among contractors willing to perform in the geographic area of the
15 work. A state agency or authorized local government shall maintain a
16 list of the contractors contacted and the contracts awarded during the
17 previous twenty-four months under the limited public works process,
18 including the name of the contractor, the contractor's registration
19 number, the amount of the contract, a brief description of the type of
20 work performed, and the date the contract was awarded. For limited
21 public works projects, a state agency or authorized local government
22 may waive the payment and performance bond requirements of chapter
23 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby
24 assuming the liability for the contractor's nonpayment of laborers,
25 mechanics, subcontractors, (~~materialmen~~) materialpersons, suppliers,
26 and taxes imposed under Title 82 RCW that may be due from the
27 contractor for the limited public works project, however the state
28 agency or authorized local government shall have the right of recovery
29 against the contractor for any payments made on the contractor's
30 behalf.

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

35 (5)(a) A state agency or authorized local government may use the
36 limited public works process of subsection (3) of this section to
37 solicit and award small works roster contracts to small businesses that

1 are registered contractors with gross revenues under one million
2 dollars annually as reported on their federal tax return.

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

8 (6) As used in this section, "state agency" means the department of
9 general administration, the state parks and recreation commission, the
10 department of natural resources, the department of fish and wildlife,
11 the department of transportation, any institution of higher education
12 as defined under RCW 28B.10.016, and any other state agency delegated
13 authority by the department of general administration to engage in
14 construction, building, renovation, remodeling, alteration,
15 improvement, or repair activities.

16 **Sec. 2.** RCW 60.28.051 and 1992 c 223 s 4 are each amended to read
17 as follows:

18 Upon completion of a contract, the state, county, or other
19 municipal officer charged with the duty of disbursing or authorizing
20 disbursement or payment of such contracts shall forthwith notify the
21 department of revenue of the completion of contracts over (~~twenty~~)
22 thirty-five thousand dollars. Such officer shall not make any payment
23 from the retained percentage fund or release any retained percentage
24 escrow account to any person, until he or she has received from the
25 department of revenue a certificate that all taxes, increases, and
26 penalties due from the contractor, and all taxes due and to become due
27 with respect to such contract have been paid in full or that they are,
28 in the department's opinion, readily collectible without recourse to
29 the state's lien on the retained percentage.

30 **Sec. 3.** RCW 39.08.010 and 1989 c 145 s 1 are each amended to read
31 as follows:

32 Whenever any board, council, commission, trustees, or body acting
33 for the state or any county or municipality or any public body shall
34 contract with any person or corporation to do any work for the state,
35 county, or municipality, or other public body, city, town, or district,
36 such board, council, commission, trustees, or body shall require the

1 person or persons with whom such contract is made to make, execute, and
2 deliver to such board, council, commission, trustees, or body a good
3 and sufficient bond, with a surety company as surety, conditioned that
4 such person or persons shall faithfully perform all the provisions of
5 such contract and pay all laborers, mechanics, and subcontractors and
6 materialmen, and all persons who supply such person or persons, or
7 subcontractors, with provisions and supplies for the carrying on of
8 such work, which bond in cases of cities and towns shall be filed with
9 the clerk or comptroller thereof, and any person or persons performing
10 such services or furnishing material to any subcontractor shall have
11 the same right under the provisions of such bond as if such work,
12 services, or material was furnished to the original contractor:
13 PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through
14 39.08.030 shall not apply to any money loaned or advanced to any such
15 contractor, subcontractor or other person in the performance of any
16 such work: PROVIDED FURTHER, That on contracts of (~~twenty-five~~)
17 thirty-five thousand dollars or less, at the option of the contractor
18 the respective public entity may, in lieu of the bond, retain fifty
19 percent of the contract amount for a period of thirty days after date
20 of final acceptance, or until receipt of all necessary releases from
21 the department of revenue and the department of labor and industries
22 and settlement of any liens filed under chapter 60.28 RCW, whichever is
23 later: PROVIDED FURTHER, That for contracts of one hundred thousand
24 dollars or less, the public entity may accept a full payment and
25 performance bond from an individual surety or sureties: AND PROVIDED
26 FURTHER, That the surety must agree to be bound by the laws of the
27 state of Washington and subjected to the jurisdiction of the state of
28 Washington.

29 **Sec. 4.** RCW 39.12.040 and 1991 c 15 s 1 are each amended to read
30 as follows:

31 (1) Except as provided in subsection (2) of this section, before
32 payment is made by or on behalf of the state, or any county,
33 municipality, or political subdivision created by its laws, of any sum
34 or sums due on account of a public works contract, it shall be the duty
35 of the officer or person charged with the custody and disbursement of
36 public funds to require the contractor and each and every subcontractor
37 from the contractor or a subcontractor to submit to such officer a

1 "Statement of Intent to Pay Prevailing Wages". For a contract in
2 excess of ten thousand dollars, the statement of intent to pay
3 prevailing wages shall include:

4 (a) The contractor's registration certificate number; and

5 (b) The prevailing rate of wage for each classification of workers
6 entitled to prevailing wages under RCW 39.12.020 and the estimated
7 number of workers in each classification.

8 Each statement of intent to pay prevailing wages must be approved
9 by the industrial statistician of the department of labor and
10 industries before it is submitted to said officer. Unless otherwise
11 authorized by the department of labor and industries, each voucher
12 claim submitted by a contractor for payment on a project estimate shall
13 state that the prevailing wages have been paid in accordance with the
14 prefiled statement or statements of intent to pay prevailing wages on
15 file with the public agency. Following the final acceptance of a
16 public works project, it shall be the duty of the officer charged with
17 the disbursement of public funds, to require the contractor and each
18 and every subcontractor from the contractor or a subcontractor to
19 submit to such officer an "Affidavit of Wages Paid" before the funds
20 retained according to the provisions of RCW 60.28.010 are released to
21 the contractor. Each affidavit of wages paid must be certified by the
22 industrial statistician of the department of labor and industries
23 before it is submitted to said officer.

24 (2) As an alternate to the procedures provided for in subsection
25 (1) of this section, for public works projects of two thousand five
26 hundred dollars or less and for projects where the limited public works
27 process under RCW 39.04.155(3) is followed:

28 (a) An awarding agency may authorize the contractor or
29 subcontractor to submit the statement of intent to pay prevailing wages
30 directly to the officer or person charged with the custody or
31 disbursement of public funds in the awarding agency without approval by
32 the industrial statistician of the department of labor and industries.
33 The awarding agency shall retain such statement of intent to pay
34 prevailing wages for a period of not less than three years.

35 (b) Upon final acceptance of the public works project, the awarding
36 agency shall require the contractor or subcontractor to submit an
37 affidavit of wages paid. Upon receipt of the affidavit of wages paid,
38 the awarding agency may pay the contractor or subcontractor in full,

1 including funds that would otherwise be retained according to the
2 provisions of RCW 60.28.010. Within thirty days of receipt of the
3 affidavit of wages paid, the awarding agency shall submit the affidavit
4 of wages paid to the industrial statistician of the department of labor
5 and industries for approval.

6 (c) A statement of intent to pay prevailing wages and an affidavit
7 of wages paid shall be on forms approved by the department of labor and
8 industries.

9 (d) In the event of a wage claim and a finding for the claimant by
10 the department of labor and industries where the awarding agency has
11 used the alternative process provided for in subsection (2) of this
12 section, the awarding agency shall pay the wages due directly to the
13 claimant. If the contractor or subcontractor did not pay the wages
14 stated in the affidavit of wages paid, the awarding agency may take
15 action at law to seek reimbursement from the contractor or
16 subcontractor of wages paid to the claimant, and may prohibit the
17 contractor or subcontractor from bidding on any public works contract
18 of the awarding agency for up to one year.

19 (e) Nothing in this section shall be interpreted to allow an
20 awarding agency to subdivide any public works project of more than two
21 thousand five hundred dollars for the purpose of circumventing the
22 procedures required by RCW 39.12.040(1).

Passed by the House April 16, 2007.

Passed by the Senate April 5, 2007.

Approved by the Governor April 27, 2007.

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