

# HOUSE BILL REPORT

## HB 1830

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**As Passed House:**

March 6, 2009

**Title:** An act relating to business definitions for public contracting.

**Brief Description:** Establishing business definitions for public contracting.

**Sponsors:** Representative Santos.

**Brief History:**

**Committee Activity:**

Community & Economic Development & Trade: 2/12/09, 2/19/09 [DP].

**Floor Activity**

Passed House: 3/6/09, 83-13.

**Brief Summary of Bill**

- Permits state agencies and authorized local governments to use the limited public works process to solicit and award small works roster contracts to businesses having gross revenues under \$7 million.
- Defines micro-, mini- and small businesses.

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**HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT & TRADE**

**Majority Report:** Do pass. Signed by 6 members: Representatives Kenney, Chair; Maxwell, Vice Chair; Chase, Liias, Probst and Sullivan.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Smith, Ranking Minority Member; Orcutt and Parker.

**Staff:** Meg Van Schoorl (786-7105)

**Background:**

Small Business Definitions.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington laws, rules, and reports vary in their definitions of "small business." Generally, definitions cite one or more of the following business characteristics: number of employees, annual gross income, independence of operations, and lack of dominance in a particular field.

Examples include:

- "Any business entity, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and that has 50 or fewer employees" [*Regulatory Fairness Act RCW 19.85.020*].
- "For the purposes of this report, a small business: (1) employs 20 or fewer employees or is a non-employer, and (2) reports gross income of \$3 million or less" [*"Small Business Survival, A Joint Report to the Governor" October 2007*].
- "Any business entity (including a sole proprietorship, corporation, partnership, or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has 50 or fewer employees, or which has a \$1 million or less per year in gross sales of window products" [*State Energy Code/Building Code Council WAC 51-11-0201*].
- "A corporation, partnership, sole proprietorship, or individual, operating a business for profit, with 250 employees or fewer, including employees employed in a subsidiary or affiliated corporation, that otherwise meets the requirements of the federal small business innovation research program" [*Washington Technology Center/ Small Business Innovation Research Assistance Program RCW 28B.20.297*].

#### Small Works Roster and the Limited Public Work Process.

Public work includes all work, construction, alteration, and repair or improvement other than ordinary maintenance which is executed at a cost to the state or a municipality. For public work projects estimated to cost \$200,000 or less, state agencies and certain local governments may use the "small works roster" (Roster) process to award contracts. No advertising of such contract opportunities is required. When an agency or local government elects to use this process, it must solicit bids from at least five contractors who have requested to be listed on a Roster. The agency or local government, if it decides to award the contract, awards it to the lowest responsible bidder. The agency or local government must make an effort to equitably distribute the opportunity among contractors on the roster if the bids are solicited from fewer than all the contractors on the Roster.

The Roster process also allows for a "limited public work process" for projects estimated to cost less than \$35,000. No advertising of such contract opportunities is required. Under this process, a state agency or authorized local government may solicit electronic, phone, or written quotations from a minimum of three contractors from the Roster and shall award the contract to the lowest responsible bidder. A state agency or authorized local government may use the limited public works process to solicit and award the Roster contracts to small businesses that are registered contractors with gross revenues under \$1 million annually as reported on their federal tax return.

**Summary of Bill:**

For purposes of state contracting for public work and personal services, a sole proprietorship, corporation, partnership, or other legal entity owned and operated independent from all other businesses is defined as: (1) a small business, if it has gross annual revenues less than \$7 million; (2) a mini-business, if it has gross annual revenues of more than \$1 million and less than \$3 million; or (3) a micro-business, if it has gross annual revenues less than \$1 million.

State agencies and authorized local governments may use the limited public work process to solicit and award the Roster contracts to small businesses, mini-businesses, and micro-businesses.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Some agencies, particularly local governments and school districts, use the U.S. Small Business Administration (SBA) definition of "small business" to solicit bids under the Roster and limited public works processes. The SBA size standards are not aligned with the reality of business sizes in Washington. Depending on the type of solicitation, the SBA definition can enable businesses with annual gross incomes ranging from \$14 - \$17 million to qualify. This means unfair competition for businesses in local communities that are actually small, and it means that most of the state's public contracting benefits go to larger businesses. If competition for these contracts was "right-sized," as has been done in California and Michigan, the fiscal impact on small businesses could be huge, especially with opportunities afforded through the federal economic stimulus package. This bill is permissive, not mandatory, but it gives public agencies a tool to help small businesses, which do create the majority of jobs. It could also result in reduced agency costs, as happened recently when the Seattle School District saved \$866,000 in contract costs due to opening up contracts to greater competition by actual small businesses.

(Opposed) None.

**Persons Testifying:** Representative Santos, prime sponsor; Eddie Rye, Community Coalition for Contracts and Jobs; Marget Chappel, Small Business Action Coaching; Silas Potter, Seattle Public Schools; Ralph Ibarra, Diverse America Network; Dan Seydel, Platinum Group; and Tony Orange, AFAR Associates.

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