

SENATE BILL REPORT

SB 6393

As Reported by Senate Committee On:
Commerce & Labor, February 3, 2016

Title: An act relating to modifying and updating small works roster construction and limited public works requirements.

Brief Description: Modifying and updating small works roster construction and limited public works requirements.

Sponsors: Senators Warnick, Hasegawa, Dammeier, Lias and Chase.

Brief History:

Committee Activity: Commerce & Labor: 1/27/16, 2/03/16 [DPS, w/oRec].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 6393 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Braun, Vice Chair; Hasegawa, Ranking Minority Member; Keiser, King and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Conway.

Staff: Susan Jones (786-7404)

Background: The small works roster process is a method of delivery for public works projects estimated to cost \$300,000 or less. A small works roster contains any responsible contractor who wants to be on the roster, which may be a single list or lists separated by categories of work or by specialty. Under the small works process, instead of advertising the contract opportunity, the state agency or local government solicits bids from a minimum of five of the listed contractors on the appropriate small works roster. After soliciting the bids, the state agency or local government awards the contract to the lowest responsible bidder.

The small works roster process also allows for a limited public works process for projects estimated to cost \$35,000 or less. Under the limited public works process, the state agency or local government solicits bids from a minimum of three contractors from the appropriate small works roster and awards the contract to the lowest responsible bidder. For limited

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public works projects, the state agency or local government may waive payment and performance bond requirements and retainage requirements. Retainage is a portion of the contractor's payment, typically from 2-5 percent of the contract amount, that is withheld by the contracting agency until the project is complete. The retainage is used to satisfy claims anyone, such as a laborer or supplier, may have under the contract.

A state agency or local government may use the limited works roster to solicit and award small works contracts to small businesses that are contractors with annual gross revenues under \$1 million. When using the small works or limited works processes, state agencies and local governments must make an effort to equitably distribute the opportunity among contractors.

The Department of Commerce and the Municipal Research and Services Center prepare a small works roster manual and notify local governments of their authority to use small works rosters as a method of delivery for public works projects.

Summary of Bill (Recommended Substitute): Legislative Findings. The Legislature finds that:

- public works contracting agencies need a streamlined and effective method for delivering small public works projects; and
- small, mini, and microbusinesses are essential to a robust and high-functioning economy and that small and limited public works processes support small contractors and provide work to many citizens throughout the state.

Small Works Roster for Projects up to \$500,000. State agencies and any expressly authorized local government may use uniform small works rosters to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property with an estimated cost of \$500,000 or less. If the estimated cost of work is from \$150,000 to \$500,000, a state agency or local government inviting quotes from less than all the contractors on the roster must also notify the remaining contractors that quotes are being sought.

Limited Public Works Process for Projects less than \$150,000. For projects estimated to cost less than \$150,000, a state agency or local government may award contracts using the limited public works process. A state agency or authorized local government may use the limited public works process to solicit and award small works roster contracts to minibusinesses and microbusinesses.

Other Requirements. A state agency or authorized local government may waive the statutory retainage requirements, and assume the liability for a contractor's nonpayment of laborers, mechanics, subcontractors, material persons, and suppliers; and of taxes, increases, and penalties imposed that may be due from the contractor for the project. The state agency or local government has the right of recovery against the contractor for any payments made on the contractor's behalf.

EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Substitute): Provides that if a state agency or local government waives the retainage requirements, it assumes the liability for the contractor's nonpayment of increases

and penalties under the Unemployment Act, Industrial Insurance Act, and the Excise Tax Chapters, in addition to the liability for nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes; and makes technical changes to correct where the amount for small works roster projects under certain sections had not been increased to \$500,000.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This increases the benefits to small business. It also gives contracting agencies the ability to waive the bond and retainage and they can target small and microbusinesses. The cost of the bond and retainage is higher to small businesses. This bill levels the playing field. This gives flexibility to agencies and local governments. This is a prudent bill and gives opportunities to small businesses. It removes barriers to small businesses and diverse businesses. This may also provide savings to the state or local governments. There are a small technical changes needed.

OTHER: The bill is okay.

Persons Testifying on Original Bill: PRO: Senator Warnick, prime sponsor; Bob Maruska, Capital Projects Advisory Review Board; Bill Frare, Dept. of Ent Services; Jerry VanderWood, Associated General Contractors of WA; Charles Horn, insurance broker; Ginger Eagle, Washington Public Ports Association; Bill Frare, Dept. of Enterprise Services; Edwina Martin-Arnold, OMWBE/Assistant Director of Legal & Policy.

OTHER: Larry Stevens, Mechanical Contractors, and Electrical Contractors MCA/NECA.

Persons Signed In To Testify But Not Testifying on Original Bill: PRO: Robert Larson, Port of Benton Commissioner.