

SSB 5684 - S AMD 224

By Senator Hasegawa

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Award" means the formal decision by the state or
8 municipality notifying a responsible bidder with the lowest
9 responsive bid of the state's or municipality's acceptance of the bid
10 and intent to enter into a contract with the bidder.

11 (2) "Contract" means a contract in writing for the execution of
12 public work for a fixed or determinable amount duly awarded after
13 advertisement and competitive bid, or a contract awarded under the
14 small works roster process in ((RCW 39.04.155)) sections 2 and 3 of
15 this act.

16 (3) "Municipality" means every city, county, town, port district,
17 district, or other public agency authorized by law to require the
18 execution of public work, except drainage districts, diking
19 districts, diking and drainage improvement districts, drainage
20 improvement districts, diking improvement districts, consolidated
21 diking and drainage improvement districts, consolidated drainage
22 improvement districts, consolidated diking improvement districts,
23 irrigation districts, or other districts authorized by law for the
24 reclamation or development of waste or undeveloped lands.

25 (4) "Public work" means all work, construction, alteration,
26 repair, or improvement other than ordinary maintenance, executed at
27 the cost of the state or of any municipality, or which is by law a
28 lien or charge on any property therein. All public works, including
29 maintenance when performed by contract shall comply with chapter
30 39.12 RCW. "Public work" does not include work, construction,
31 alteration, repair, or improvement performed under contracts entered
32 into under RCW 36.102.060(4) or under development agreements entered

1 into under RCW 36.102.060(7) or leases entered into under RCW
2 36.102.060(8).

3 (5) "Responsible bidder" means a contractor who meets the
4 criteria in RCW 39.04.350.

5 (6) "Small business" means a business that is certified by the
6 office of minority and women's business enterprises in accordance
7 with RCW 39.19.030(7)(b).

8 (7) "State" means the state of Washington and all departments,
9 supervisors, commissioners, and agencies of the state.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04
11 RCW to read as follows:

12 (1) A state agency or an authorized local government may utilize
13 a statewide small works roster in accordance with subsection (2) of
14 this section or create and maintain one or more small works rosters
15 for different specialties, categories of anticipated work, or
16 geographic areas served by contractors on the roster that have
17 registered for inclusion on that particular roster.

18 (a) The small works roster shall consist of all responsible
19 contractors who have requested to be on the list and, where required
20 by law, are properly licensed or registered to perform such work in
21 this state in accordance with RCW 39.04.350.

22 (b) A state agency or authorized local government establishing a
23 small works roster must require contractors desiring to be placed on
24 the roster to sign an attestation document, developed and made
25 publicly available by the office of minority and women's business
26 enterprises, indicating whether they meet the definition of women and
27 minority-owned business as described in RCW 39.19.030(7)(b), veteran-
28 owned business as defined in RCW 43.60A.010, or small business as
29 defined in RCW 39.04.010, and to keep current records of any
30 applicable licenses, certifications, registrations, bonding,
31 insurance, or other appropriate matters on file with the appropriate
32 agency as a condition of being placed on the roster and award of
33 contract.

34 (c) At least once a year, the state agency or local government
35 must publish in a newspaper of general circulation and provide the
36 office of minority and women's business enterprises' directory of
37 certified firms a notice of the existence of the roster and solicit
38 contractors for the roster.

1 (d) Responsible contractors must be added to an appropriate
2 roster at any time they submit a written request and the necessary
3 records.

4 (e) The contractor must agree and be able to receive
5 notifications and other communications via email.

6 (f) State agencies or authorized local governments using a small
7 works roster may not break a project into units or construct a
8 project by phases if done for the purposes of avoiding maximum dollar
9 amounts set in section 3 of this act.

10 (2) The department of commerce through the municipal research and
11 services center shall develop a statewide small works roster in
12 compliance with subsection (1) of this section by June 30, 2024. The
13 municipal research and services center must develop criteria for the
14 statewide roster with collaboration from affected state and local
15 agencies. The statewide roster must have features to filter the
16 roster by different specialties, categories of anticipated work, or
17 geographic areas served by contractors. The roster must also indicate
18 if the contractor is designated as a small business as defined in RCW
19 39.04.010.

20 (3) The department of commerce shall provide funding to the
21 municipal research and services center as appropriated to maintain
22 and publicize a small works roster and work with the municipal
23 research and services center to notify state and local governments
24 authorized to use small works rosters of the statewide roster
25 authority and to provide guidance on how to use the authority. The
26 guidance may take the form of a manual provided to local governments.

27 (4) A state agency establishing a small works roster shall adopt
28 rules implementing this section. A local government establishing a
29 small works roster shall adopt an ordinance or resolution
30 implementing this section. Procedures included in rules adopted by
31 the department of enterprise services in implementing this section
32 must be included in any rules providing for a small works roster that
33 is adopted by another state agency, if the authority for that state
34 agency to engage in these activities has been delegated to it by the
35 department of enterprise services under chapter 43.19 RCW. An
36 interlocal contract or agreement between two or more state agencies
37 or local governments establishing a small works roster to be used by
38 the parties to the agreement or contract must clearly identify the
39 lead entity that is responsible for implementing the provisions of
40 this subsection.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04

2 RCW to read as follows:

3 (1) This section provides uniform small works roster provisions
4 to award contracts for construction, building, renovation,
5 remodeling, alteration, repair, or improvement of real property that
6 may be used by state agencies and by any local government that is
7 expressly authorized to use these provisions. These provisions may be
8 used in lieu of other procedures to award contracts for such work
9 with an estimated cost of \$350,000 or less excluding state sales tax.
10 The small works roster process includes the direct contract
11 provisions authorized under this section and any local government
12 authorized to award contracts using the small works roster process
13 under this section may award contracts using the direct contract
14 provisions of this section. State agencies and authorized local
15 governments using small works rosters must establish procedures for
16 implementing this act.

17 (2) State agencies and authorized local governments must document
18 good faith efforts annually implementing subsections (6) and (7) of
19 this section.

20 (3) Invitations for bids or direct contract negotiation must
21 include, at a minimum, an estimate for the scope of work including
22 the nature of the work to be performed as well as the materials and
23 equipment to be furnished. Detailed plans and specifications need not
24 be included.

25 (4) The department of enterprise services must develop and make
26 available on its public-facing website templates for bid invitations,
27 bidding, and contracting that may be used by state agencies,
28 authorized local governments, and contractors.

29 (a) (i) For small works roster projects with an estimated cost
30 less than \$350,000, not including sales tax, state agencies and
31 authorized local governments may contract by securing written or
32 electronic quotations to assure that a competitive price is
33 established and to award contracts to the responsible bidder with the
34 lowest responsive bid.

35 (ii) A state agency or authorized local government contracting
36 through a small works roster shall invite bids notifying all
37 contractors on the applicable roster that have indicated interest in
38 performing work in the applicable geographical area.

39 (b) For small public works projects with an estimated cost less
40 than \$150,000, not including sales tax, to increase the utilization

1 of small businesses, state agencies and local governments are
2 encouraged to and may direct contract with small businesses as
3 defined in RCW 39.04.010, before direct contracting with other
4 contractors on the appropriate small works roster without a
5 competitive process as follows:

6 (i) If there are four or more contractors meeting the definition
7 of small business on the applicable roster, the state agency or
8 authorized local government must direct contract with one of those
9 small businesses on the applicable roster that have indicated
10 interest in performing work in the applicable geographical area.

11 (ii) If there are three or fewer contractors meeting the
12 definition of small business on the applicable roster, the state
13 agency or authorized local government must direct contract with any
14 certified small business contractor on the applicable roster.

15 (iii) It is the intent of the legislature to increase utilization
16 of small, minority, women, and veteran-owned businesses. Each state
17 agency and authorized local government shall establish a women,
18 minority, and veteran-owned business and small business utilization
19 plan. A state agency or authorized local government engaging in
20 direct contracting may not favor certain contractors on the
21 appropriate small works roster by repeatedly awarding contracts
22 without documented attempts to direct contract with other contractors
23 on the appropriate small works roster.

24 (iv) If the state agency or authorized local government elects
25 not to use the methods outlined in this subsection, it may not use
26 direct contracting and must invite bids by electronically notifying
27 all contractors on the applicable roster that have indicated interest
28 in performing work in the applicable geographical area as described
29 in this section.

30 (5) For small public works contracts under \$5,000, there is no
31 requirement for retainage or performance bonds. Small public works
32 contracts valued at more than \$5,000 shall be subject to performance
33 bond requirements set forth in chapter 39.08 RCW and retainage
34 requirements set forth in chapter 60.28 RCW, provided, however, that
35 the awarding state agency or authorized local government may reduce
36 or waive retainage requirements set forth in RCW 60.28.011(1)(a),
37 thereby assuming the liability for the contractor's nonpayment of:

38 (a) Laborers, mechanics, subcontractors, materialpersons, and
39 suppliers; and (b) taxes, increases, and penalties pursuant to Titles
40 50, 51, and 82 RCW that may be due from the contractor for the

1 project. Any such waiver will not affect the rights of the state
2 agency or local government to recover against the contractor for any
3 payments made on the contractor's behalf. For small public works
4 contracts awarded through a bid solicitation, notice of any retainage
5 reduction or waiver must be provided in bid solicitations.

6 (6) After an award is made, the bid quotations obtained shall be
7 recorded, publicly available, and available by request.

8 (7) Annually, a state agency or authorized local government must
9 publish a list of small works contracts awarded and contractors
10 contacted for direct negotiation pursuant to RCW 39.04.200.

11 NEW SECTION. **Sec. 4.** RCW 39.04.155 (Small works roster contract
12 procedures—Limited public works process—Definitions) and 2019 c 434
13 s 5, 2015 c 225 s 33, 2009 c 74 s 1, & 2008 c 130 s 17 are each
14 repealed.

15 NEW SECTION. **Sec. 5.** Sections 2, 14, and 15, chapter . . . ,
16 Laws of 2023 (Second Substitute Senate Bill No. 5268) are null and
17 void if this act becomes law.

18 NEW SECTION. **Sec. 6.** This act takes effect only if
19 chapter . . . , Laws of 2023 (Second Substitute Senate Bill No. 5268)
20 is enacted by June 30, 2023."

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21 On page 1, line 1 of the title, after "rosters;" strike the
22 remainder of the title and insert "amending RCW 39.04.010; adding new
23 sections to chapter 39.04 RCW; creating a new section; repealing RCW
24 39.04.155; and providing a contingent effective date."

EFFECT: Requires contractors wishing to be placed on a small
works roster to sign an attestation document developed and made
publicly available by the Office of Minority and Women's Business
Enterprises. Changes the criteria for contracting bid procedures.
Corrects references to Second Substitute Senate Bill No. 5268.

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