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**SUBSTITUTE SENATE BILL 5684**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senator Hasegawa)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to small works rosters; amending RCW 39.04.010;  
2 adding new sections to chapter 39.04 RCW; creating a new section;  
3 repealing RCW 39.04.155; and providing a contingent effective date.

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

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

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

18 (3) "Municipality" means every city, county, town, port district,  
19 district, or other public agency authorized by law to require the  
20 execution of public work, except drainage districts, diking  
21 districts, diking and drainage improvement districts, drainage

1 improvement districts, diking improvement districts, consolidated  
2 diking and drainage improvement districts, consolidated drainage  
3 improvement districts, consolidated diking improvement districts,  
4 irrigation districts, or other districts authorized by law for the  
5 reclamation or development of waste or undeveloped lands.

6 (4) "Public work" means all work, construction, alteration,  
7 repair, or improvement other than ordinary maintenance, executed at  
8 the cost of the state or of any municipality, or which is by law a  
9 lien or charge on any property therein. All public works, including  
10 maintenance when performed by contract shall comply with chapter  
11 39.12 RCW. "Public work" does not include work, construction,  
12 alteration, repair, or improvement performed under contracts entered  
13 into under RCW 36.102.060(4) or under development agreements entered  
14 into under RCW 36.102.060(7) or leases entered into under RCW  
15 36.102.060(8).

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

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

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

23 NEW SECTION. Sec. 2. A new section is added to chapter 39.04  
24 RCW to read as follows:

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

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

35 (b) A state agency or authorized local government establishing a  
36 small works roster must require contractors desiring to be placed on  
37 the roster to indicate if they meet the definition of women and  
38 minority-owned business as described in RCW 39.19.030(7)(b), veteran-  
39 owned business as defined in RCW 43.60A.010, or small business as

1 defined in RCW 39.04.010, and to keep current records of any  
2 applicable licenses, certifications, registrations, bonding,  
3 insurance, or other appropriate matters on file with the appropriate  
4 agency as a condition of being placed on the roster and award of  
5 contract.

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

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

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

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

20 (2) The department of commerce through the municipal research and  
21 services center shall develop a statewide small works roster in  
22 compliance with subsection (1) of this section by June 30, 2024. The  
23 municipal research and services center must develop criteria for the  
24 statewide roster with collaboration from affected state and local  
25 agencies. The statewide roster must have features to filter the  
26 roster by different specialties, categories of anticipated work, or  
27 geographic areas served by contractors. The roster must also indicate  
28 if the contractor is designated as a small business as defined in RCW  
29 39.04.010.

30 (3) The department of commerce shall provide funding to the  
31 municipal research and services center as appropriated to maintain  
32 and publicize a small works roster and work with the municipal  
33 research and services center to notify state and local governments  
34 authorized to use small works rosters of the statewide roster  
35 authority and to provide guidance on how to use the authority. The  
36 guidance may take the form of a manual provided to local governments.

37 (4) A state agency establishing a small works roster shall adopt  
38 rules implementing this section. A local government establishing a  
39 small works roster shall adopt an ordinance or resolution  
40 implementing this section. Procedures included in rules adopted by

1 the department of enterprise services in implementing this section  
2 must be included in any rules providing for a small works roster that  
3 is adopted by another state agency, if the authority for that state  
4 agency to engage in these activities has been delegated to it by the  
5 department of enterprise services under chapter 43.19 RCW. An  
6 interlocal contract or agreement between two or more state agencies  
7 or local governments establishing a small works roster to be used by  
8 the parties to the agreement or contract must clearly identify the  
9 lead entity that is responsible for implementing the provisions of  
10 this subsection.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04  
12 RCW to read as follows:

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

27 (2) State agencies and authorized local governments must document  
28 good faith efforts annually implementing subsections (6) and (7) of  
29 this section.

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

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

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

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

11 (b) For small public works projects with an estimated cost less  
12 than \$150,000, not including sales tax, to increase the utilization  
13 of small businesses, state agencies and local governments are  
14 encouraged to and may direct contract with small businesses as  
15 defined in RCW 39.04.010, before direct contracting with other  
16 contractors on the appropriate small works roster without a  
17 competitive process as follows:

18 (i) If there are two to three contractors meeting the definition  
19 of small business on the applicable roster, the state agency or  
20 authorized local government must direct contract with one of those  
21 small businesses on the applicable roster that have indicated  
22 interest in performing work in the applicable geographical area.

23 (ii) If there are more than three contractors meeting the  
24 definition of small business on the applicable roster, the state  
25 agency or authorized local government may invite bids from any  
26 contractor on the applicable roster.

27 (iii) It is the intent of the legislature to increase utilization  
28 of small, minority, women, and veteran-owned businesses. Each state  
29 agency and authorized local government shall establish a women,  
30 minority, and veteran-owned business and small business utilization  
31 plan. A state agency or authorized local government engaging in  
32 direct contracting may not favor certain contractors on the  
33 appropriate small works roster by repeatedly awarding contracts  
34 without documented attempts to direct contract with other contractors  
35 on the appropriate small works roster.

36 (iv) If the state agency or authorized local government elects  
37 not to use the methods outlined in this subsection, it may not use  
38 direct contracting and must invite bids by electronically notifying  
39 all contractors on the applicable roster that have indicated interest

1 in performing work in the applicable geographical area as described  
2 in this section.

3 (5) For small public works contracts under \$5,000, there is no  
4 requirement for retainage or performance bonds. Small public works  
5 contracts valued at more than \$5,000 shall be subject to performance  
6 bond requirements set forth in chapter 39.08 RCW and retainage  
7 requirements set forth in RCW 60.28.011(1)(a), provided, however,  
8 that the awarding state agency or local government may reduce or  
9 waive retainage requirements, thereby assuming the liability for the  
10 contractor's nonpayment of: (a) Laborers, mechanics, subcontractors,  
11 materialpersons, and suppliers; and (b) taxes, increases, and  
12 penalties pursuant to Titles 50, 51, and 82 RCW that may be due from  
13 the contractor for the project. Any such waiver will not affect the  
14 rights of the state agency or local government to recover against the  
15 contractor for any payments made on the contractor's behalf. For  
16 small public works contracts awarded through a bid solicitation,  
17 notice of any retainage reduction or waiver must be provided in bid  
18 solicitations.

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

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

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

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

31 NEW SECTION. **Sec. 6.** This act takes effect only if  
32 chapter . . . , Laws of 2023 (Substitute Senate Bill No. 5268) is  
33 enacted by June 30, 2023.

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