
SUBSTITUTE HOUSE BILL 1173

State of Washington

62nd Legislature

2011 Regular Session

By House Community Development & Housing (originally sponsored by Representatives Kenney, Orcutt, Hasegawa, Finn, Smith, Santos, and Maxwell)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to small works roster contracting procedures; and
2 amending RCW 39.04.010 and 39.04.155.

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

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

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

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

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

16 (3) "In-state business" means the same as the definition in RCW
17 39.29.006.

18 (4) "Microbusiness" means an in-state business, including a sole
19 proprietorship, corporation, partnership, or other legal entity, that

1 is owned and operated independently from all other businesses and has
2 an annual gross revenue of less than one million dollars as reported on
3 its federal income tax return or its return filed with the department
4 of revenue over the previous three consecutive years.

5 (5) "Minibusiness" means an in-state business, including a sole
6 proprietorship, corporation, partnership, or other legal entity, that
7 is owned and operated independently from all other businesses and has
8 an annual gross revenue of one million dollars or more, but less than
9 three million dollars, as reported on its federal income tax return or
10 its return filed with the department of revenue over the previous three
11 consecutive years.

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

21 ~~((+4))~~ (7) "Public work" means all work, construction, alteration,
22 repair, or improvement other than ordinary maintenance, executed at the
23 cost of the state or of any municipality, or which is by law a lien or
24 charge on any property therein. All public works, including
25 maintenance when performed by contract shall comply with chapter 39.12
26 RCW. "Public work" does not include work, construction, alteration,
27 repair, or improvement performed under contracts entered into under RCW
28 36.102.060(4) or under development agreements entered into under RCW
29 36.102.060(7) or leases entered into under RCW 36.102.060(8).

30 ~~((+5))~~ (8) "Responsible bidder" means a contractor who meets the
31 criteria in RCW 39.04.350.

32 ~~((+6))~~ (9) "Small business" means the same as the definition in
33 RCW 39.29.006.

34 (10) "State" means the state of Washington and all departments,
35 supervisors, commissioners, and agencies of the state.

36 **Sec. 2.** RCW 39.04.155 and 2009 c 74 s 1 are each amended to read
37 as follows:

1 (1)(a) This section provides uniform small works roster provisions
2 to award contracts for construction, building, renovation, remodeling,
3 alteration, repair, or improvement of real property that may be used by
4 state agencies and by any local government that is expressly authorized
5 to use these provisions. These provisions may be used in lieu of other
6 procedures to award contracts for such work with an estimated cost of
7 three hundred thousand dollars or less.

8 (b) The small works roster process includes the limited public
9 works process authorized under subsection (3) of this section and any
10 local government authorized to award contracts using the small works
11 roster process under this section may award contracts using the limited
12 public works process under subsection (3) of this section.

13 (2)(a)(i) A state agency or authorized local government may create
14 a single general small works roster, or may create a small works roster
15 for different specialties or categories of anticipated work. Where
16 applicable, small works rosters may make distinctions between
17 contractors based upon different geographic areas served by the
18 contractor. The small works roster or rosters shall consist of all
19 responsible contractors who have requested to be on the list, and where
20 required by law are properly licensed or registered to perform such
21 work in this state. A state agency or local government establishing a
22 small works roster or rosters may require eligible contractors desiring
23 to be placed on a roster or rosters to keep current records of any
24 applicable licenses, certifications, registrations, bonding, insurance,
25 or other appropriate matters on file with the state agency or local
26 government as a condition of being placed on a roster or rosters.

27 (ii) At least once a year, the state agency or local government
28 shall publish in a newspaper of general circulation within the
29 jurisdiction a notice of the existence of the small works roster or
30 rosters and solicit the names of contractors for such roster or
31 rosters. In addition, responsible contractors shall be added to an
32 appropriate roster or rosters at any time they submit a written request
33 and necessary records.

34 (iii) Master contracts may be required to be signed that become
35 effective when a specific award is made using a small works roster.

36 (b) A state agency establishing a small works roster or rosters
37 shall adopt rules implementing this subsection. A local government
38 establishing a small works roster or rosters shall adopt an ordinance

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

12 (c)(i) Procedures shall be established for securing telephone,
13 written, or electronic quotations from contractors on the appropriate
14 small works roster to assure that a competitive price is established
15 and to award contracts to the lowest responsible bidder, as defined in
16 RCW 39.04.010. Invitations for quotations shall include an estimate of
17 the scope and nature of the work to be performed as well as materials
18 and equipment to be furnished. However, detailed plans and
19 specifications need not be included in the invitation. This subsection
20 does not eliminate other requirements for architectural or engineering
21 approvals as to quality and compliance with building codes.

22 (ii) Quotations may be invited from all appropriate contractors on
23 the appropriate small works roster. As an alternative, quotations may
24 be invited from at least five contractors on the appropriate small
25 works roster who have indicated the capability of performing the kind
26 of work being contracted, in a manner that will (~~equitably~~)
27 distribute equitably the opportunity among the contractors on the
28 appropriate roster. However, if the estimated cost of the work is from
29 one hundred fifty thousand dollars to three hundred thousand dollars,
30 a state agency or local government that chooses to solicit bids from
31 less than all the appropriate contractors on the appropriate small
32 works roster must also notify the remaining contractors on the
33 appropriate small works roster that quotations on the work are being
34 sought. The government has the sole option of determining whether this
35 notice to the remaining contractors is made by: ((+i)) (A) Publishing
36 notice in a legal newspaper in general circulation in the area where
37 the work is to be done; ((+ii)) (B) mailing a notice to these
38 contractors; or ((+iii)) (C) sending a notice to these contractors by

1 facsimile or other electronic means. (~~For purposes of this subsection~~
2 ~~(2)(c), "equitably distribute" means that a state agency or local~~
3 ~~government soliciting bids may not favor certain contractors on the~~
4 ~~appropriate small works roster over other contractors on the~~
5 ~~appropriate small works roster who perform similar services.))~~

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

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

11 (3)(a) In lieu of awarding contracts under subsection (2) of this
12 section, a state agency or authorized local government may award a
13 contract for work, construction, alteration, repair, or improvement
14 projects estimated to cost less than thirty-five thousand dollars using
15 the limited public works process provided under this subsection.
16 Public works projects awarded under this subsection are exempt from the
17 other requirements of the small works roster process provided under
18 subsection (2) of this section and are exempt from the requirement that
19 contracts be awarded after advertisement as provided under RCW
20 39.04.010.

21 (b) For limited public works projects, a state agency or authorized
22 local government:

23 (i) Shall solicit electronic or written quotations from a minimum
24 of three contractors from the appropriate small works roster and shall
25 award the contract to the lowest responsible bidder as defined under
26 RCW 39.04.010. After an award is made, the quotations shall be open to
27 public inspection and available by electronic request(~~(. — A state~~
28 ~~agency or authorized local government))i~~

29 (ii) Shall attempt to distribute equitably opportunities for
30 limited public works projects (~~(equitably)~~) among contractors willing
31 to perform in the geographic area of the work. A state agency or
32 authorized local government shall maintain a list of the contractors
33 contacted and the contracts awarded during the previous twenty-four
34 months under the limited public works process, including the name of
35 the contractor, the contractor's registration number, the amount of the
36 contract, a brief description of the type of work performed, and the
37 date the contract was awarded(~~(. — For limited public works projects, a~~
38 ~~state agency or authorized local government))i and~~

1 (iii) May waive the payment and performance bond requirements of
2 chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW,
3 thereby assuming the liability for the contractor's nonpayment of
4 laborers, mechanics, subcontractors, materialpersons, suppliers, and
5 taxes imposed under Title 82 RCW that may be due from the contractor
6 for the limited public works project(~~(7)~~). However the state agency or
7 authorized local government shall have the right of recovery against
8 the contractor for any payments made on the contractor's behalf.

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

13 (5)(a) A state agency or authorized local government may use the
14 limited public works process of subsection (3) of this section to
15 solicit quotations for and award small works roster contracts to small
16 businesses that are registered contractors (~~(with gross revenues under~~
17 ~~one million dollars annually as reported on their federal tax return)~~).

18 (b) A state agency or authorized local government may adopt
19 additional procedures to encourage (~~(small businesses)~~) minibusinesses
20 and/or microbusinesses that are registered contractors (~~(with gross~~
21 ~~revenues under two hundred fifty thousand dollars annually as reported~~
22 ~~on their federal tax returns)~~) to submit quotations or bids on small
23 works roster contracts.

24 (~~As used in~~) The definitions in this subsection apply
25 throughout this section(~~(7)~~).

26 (a) "State agency" means the department of general administration,
27 the state parks and recreation commission, the department of natural
28 resources, the department of fish and wildlife, the department of
29 transportation, any institution of higher education as defined under
30 RCW 28B.10.016, and any other state agency delegated authority by the
31 department of general administration to engage in construction,
32 building, renovation, remodeling, alteration, improvement, or repair
33 activities.

34 (b) "Distribute equitably" means that a state agency or local
35 government soliciting bids may not favor certain contractors on the
36 appropriate small works roster over other contractors on the

1 appropriate small works roster who perform similar services.

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