

---

HOUSE BILL 3095

---

State of Washington

58th Legislature

2004 Regular Session

By Representatives Ormsby, Veloria, Eickmeyer, McCoy, Priest, G. Simpson, Chase, Morrell and O'Brien

Read first time 01/27/2004. Referred to Committee on State Government.

1 AN ACT Relating to payment and performance bond requirements on  
2 state limited public works projects; amending RCW 39.04.155; and adding  
3 a new section to chapter 39.04 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.04 RCW  
6 to read as follows:

7 (1) This section provides uniform small works roster provisions to  
8 award contracts for construction, building, renovation, remodeling,  
9 alteration, repair, or improvement of real property that may be used by  
10 state agencies. These provisions may be used in lieu of other  
11 procedures to award contracts for work with an estimated cost of two  
12 hundred thousand dollars or less. The small works roster process may  
13 award contracts using the limited public works process under subsection  
14 (3) of this section.

15 (2)(a) A state agency may create a single general small works  
16 roster, or may create a small works roster for different specialties or  
17 categories of anticipated work. Where applicable, small works rosters  
18 may make distinctions between contractors based upon different  
19 geographic areas served by the contractor. The small works roster or

1 rosters shall consist of all responsible contractors who have requested  
2 to be on the list, and where required by law are properly licensed and  
3 registered to perform the work in this state. A state agency  
4 establishing a small works roster or rosters may require eligible  
5 contractors desiring to be placed on a roster or rosters to keep  
6 current records of any applicable licenses, certifications,  
7 registrations, bonding, insurance, or other appropriate matters on file  
8 with the state agency as a condition of being placed on a roster or  
9 rosters. At least once a year, the state agency shall publish in a  
10 newspaper of general circulation within the jurisdiction a notice of  
11 the existence of the roster or rosters and solicit the names of  
12 contractors for the roster or rosters. In addition, responsible  
13 contractors shall be added to an appropriate roster or rosters at any  
14 time they submit a written request and necessary records. Master  
15 contracts may be required to be signed that become effective when a  
16 specific award is made using a small works roster.

17 (b) A state agency establishing a small works roster or rosters  
18 shall adopt rules implementing this subsection. Procedures included in  
19 rules adopted by the department of general administration in  
20 implementing this subsection must be included in any rules providing  
21 for a small works roster or rosters that is adopted by another state  
22 agency, if the authority for that state agency to engage in these  
23 activities has been delegated to it by the department of general  
24 administration under chapter 43.19 RCW. An interlocal contract or  
25 agreement between two or more state agencies establishing a small works  
26 roster or rosters to be used by the parties to the agreement or  
27 contract must clearly identify the lead entity that is responsible for  
28 implementing the provisions of this subsection.

29 (c) Procedures shall be established for securing telephone,  
30 written, or electronic quotations from contractors on the appropriate  
31 small works roster to assure that a competitive price is established  
32 and to award contracts to the lowest responsible bidder, as defined in  
33 RCW 43.19.1911. Invitations for quotations shall include an estimate  
34 of the scope and nature of the work to be performed as well as  
35 materials and equipment to be furnished. However, detailed plans and  
36 specifications need not be included in the invitation. This subsection  
37 does not eliminate other requirements for architectural or engineering  
38 approvals as to quality and compliance with building codes. Quotations

1 may be invited from all appropriate contractors on the appropriate  
2 small works roster. As an alternative, quotations may be invited from  
3 at least five contractors on the appropriate small works roster who  
4 have indicated the capability of performing the kind of work being  
5 contracted, in a manner that will equitably distribute the opportunity  
6 among the contractors on the appropriate roster. However, if the  
7 estimated cost of the work is from one hundred thousand dollars to two  
8 hundred thousand dollars, a state agency that chooses to solicit bids  
9 from less than all the appropriate contractors on the appropriate small  
10 works roster must also notify the remaining contractors on the  
11 appropriate small works roster that quotations on the work are being  
12 sought. The government has the sole option of determining whether this  
13 notice to the remaining contractors is made by: (i) Publishing notice  
14 in a legal newspaper in general circulation in the area where the work  
15 is to be done; (ii) mailing a notice to these contractors; or (iii)  
16 sending a notice to these contractors by facsimile or other electronic  
17 means. For purposes of this subsection (2)(c), "equitably distribute"  
18 means that a state agency soliciting bids may not favor certain  
19 contractors on the appropriate small works roster over other  
20 contractors on the appropriate small works roster who perform similar  
21 services.

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

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

27 (3) In lieu of awarding contracts under subsection (2) of this  
28 section, a state agency may award a contract for work, construction,  
29 alteration, repair, or improvement projects estimated to cost less than  
30 two hundred thousand dollars using the limited public works process  
31 provided under this subsection. Public works projects awarded under  
32 this subsection are exempt from the other requirements of the small  
33 works roster process provided under subsection (2) of this section and  
34 are exempt from the requirement that contracts be awarded after  
35 advertisement as provided under RCW 39.04.010.

36 For limited public works projects, a state agency shall solicit  
37 electronic or written quotations from a minimum of three contractors  
38 from the appropriate small works roster and shall award the contract to

1 the lowest responsible bidder as defined under RCW 43.19.1911. After  
2 an award is made, the quotations shall be open to public inspection and  
3 available by electronic request. A state agency shall attempt to  
4 distribute opportunities for limited public works projects equitably  
5 among contractors willing to perform in the geographic area of the  
6 work. A state agency shall maintain a list of the contractors  
7 contacted and the contracts awarded during the previous twenty-four  
8 months under the limited public works process, including the name of  
9 the contractor, the contractor's registration number, the amount of the  
10 contract, a brief description of the type of work performed, and the  
11 date the contract was awarded. For limited public works projects, a  
12 state agency may waive the payment and performance bond requirements of  
13 chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW,  
14 thereby assuming the liability for the contractor's nonpayment of  
15 laborers, mechanics, subcontractors, materialmen, suppliers, and taxes  
16 imposed under Title 82 RCW that may be due from the contractor for the  
17 limited public works project, however the state agency shall have the  
18 right of recovery against the contractor for any payments made on the  
19 contractor's behalf.

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

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

32 **Sec. 2.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read  
33 as follows:

34 (1) This section provides uniform small works roster provisions to  
35 award contracts for construction, building, renovation, remodeling,  
36 alteration, repair, or improvement of real property that may be used  
37 (~~by state agencies and~~) by any local government that is expressly

1 authorized to use these provisions. These provisions may be used in  
2 lieu of other procedures to award contracts for such work with an  
3 estimated cost of two hundred thousand dollars or less. The small  
4 works roster process includes the limited public works process  
5 authorized under subsection (3) of this section and any local  
6 government authorized to award contracts using the small works roster  
7 process under this section may award contracts using the limited public  
8 works process under subsection (3) of this section.

9 (2)(a) ~~((A state agency or))~~ An authorized local government may  
10 create a single general small works roster, or may create a small works  
11 roster for different specialties or categories of anticipated work.  
12 Where applicable, small works rosters may make distinctions between  
13 contractors based upon different geographic areas served by the  
14 contractor. The small works roster or rosters shall consist of all  
15 responsible contractors who have requested to be on the list, and where  
16 required by law are properly licensed or registered to perform such  
17 work in this state. A ~~((state agency or))~~ local government  
18 establishing a small works roster or rosters may require eligible  
19 contractors desiring to be placed on a roster or rosters to keep  
20 current records of any applicable licenses, certifications,  
21 registrations, bonding, insurance, or other appropriate matters on file  
22 with the ~~((state agency or))~~ local government as a condition of being  
23 placed on a roster or rosters. At least once a year, the ~~((state  
24 agency or))~~ local government shall publish in a newspaper of general  
25 circulation within the jurisdiction a notice of the existence of the  
26 roster or rosters and solicit the names of contractors for such roster  
27 or rosters. In addition, responsible contractors shall be added to an  
28 appropriate roster or rosters at any time they submit a written request  
29 and necessary records. Master contracts may be required to be signed  
30 that become effective when a specific award is made using a small works  
31 roster.

32 (b) ~~((A state agency establishing a small works roster or rosters  
33 shall adopt rules implementing this subsection.))~~ A local government  
34 establishing a small works roster or rosters shall adopt an ordinance  
35 or resolution implementing this subsection. ~~((Procedures included in  
36 rules adopted by the department of general administration in  
37 implementing this subsection must be included in any rules providing  
38 for a small works roster or rosters that is adopted by another state~~

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

8 (c) Procedures shall be established for securing telephone,  
9 written, or electronic quotations from contractors on the appropriate  
10 small works roster to assure that a competitive price is established  
11 and to award contracts to the lowest responsible bidder, as defined in  
12 RCW 43.19.1911. Invitations for quotations shall include an estimate  
13 of the scope and nature of the work to be performed as well as  
14 materials and equipment to be furnished. However, detailed plans and  
15 specifications need not be included in the invitation. This subsection  
16 does not eliminate other requirements for architectural or engineering  
17 approvals as to quality and compliance with building codes. Quotations  
18 may be invited from all appropriate contractors on the appropriate  
19 small works roster. As an alternative, quotations may be invited from  
20 at least five contractors on the appropriate small works roster who  
21 have indicated the capability of performing the kind of work being  
22 contracted, in a manner that will equitably distribute the opportunity  
23 among the contractors on the appropriate roster. However, if the  
24 estimated cost of the work is from one hundred thousand dollars to two  
25 hundred thousand dollars, a ((state agency or)) local government, other  
26 than a port district, that chooses to solicit bids from less than all  
27 the appropriate contractors on the appropriate small works roster must  
28 also notify the remaining contractors on the appropriate small works  
29 roster that quotations on the work are being sought. The government  
30 has the sole option of determining whether this notice to the remaining  
31 contractors is made by: (i) Publishing notice in a legal newspaper in  
32 general circulation in the area where the work is to be done; (ii)  
33 mailing a notice to these contractors; or (iii) sending a notice to  
34 these contractors by facsimile or other electronic means. For purposes  
35 of this subsection (2)(c), "equitably distribute" means that a ((state  
36 agency or)) local government soliciting bids may not favor certain  
37 contractors on the appropriate small works roster over other

1 contractors on the appropriate small works roster who perform similar  
2 services.

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

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

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

18 For limited public works projects, (~~(a state agency or)~~) an  
19 authorized local government shall solicit electronic or written  
20 quotations from a minimum of three contractors from the appropriate  
21 small works roster and shall award the contract to the lowest  
22 responsible bidder as defined under RCW 43.19.1911. After an award is  
23 made, the quotations shall be open to public inspection and available  
24 by electronic request. (~~(A state agency or)~~) An authorized local  
25 government shall attempt to distribute opportunities for limited public  
26 works projects equitably among contractors willing to perform in the  
27 geographic area of the work. (~~(A state agency or)~~) An authorized local  
28 government shall maintain a list of the contractors contacted and the  
29 contracts awarded during the previous twenty-four months under the  
30 limited public works process, including the name of the contractor, the  
31 contractor's registration number, the amount of the contract, a brief  
32 description of the type of work performed, and the date the contract  
33 was awarded. For limited public works projects, (~~(a state agency or)~~)  
34 an authorized local government may waive the payment and performance  
35 bond requirements of chapter 39.08 RCW and the retainage requirements  
36 of chapter 60.28 RCW, thereby assuming the liability for the  
37 contractor's nonpayment of laborers, mechanics, subcontractors,  
38 materialmen, suppliers, and taxes imposed under Title 82 RCW that may

1 be due from the contractor for the limited public works project,  
2 however the (~~state agency or~~) authorized local government shall have  
3 the right of recovery against the contractor for any payments made on  
4 the contractor's behalf.

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

9 (~~(5) As used in this section, "state agency" means the department  
10 of general administration, the state parks and recreation commission,  
11 the department of natural resources, the department of fish and  
12 wildlife, the department of transportation, any institution of higher  
13 education as defined under RCW 28B.10.016, and any other state agency  
14 delegated authority by the department of general administration to  
15 engage in construction, building, renovation, remodeling, alteration,  
16 improvement, or repair activities.~~)

--- END ---