
HOUSE BILL 1438

State of Washington

59th Legislature

2005 Regular Session

By Representatives Haigh, Nixon, Green, Ormsby and Chase; by request of Department of General Administration

Read first time 01/24/2005. Referred to Committee on State Government Operations & Accountability.

1 AN ACT Relating to authorizing state agencies to waive bond and
2 retainage requirements on small works roster contracts; and amending
3 RCW 39.04.155.

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

5 **Sec. 1.** RCW 39.04.155 and 2001 c 284 s 1 are each amended to read
6 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 and by any local government that is expressly authorized
11 to use these provisions. These provisions may be used in lieu of other
12 procedures to award contracts for such work with an estimated cost of
13 two hundred thousand dollars or less. The small works roster process
14 includes the limited public works process authorized under subsection
15 (3) of this section and any local government authorized to award
16 contracts using the small works roster process under this section may
17 award contracts using the limited public works process under subsection
18 (3) of this section.

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

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

37 (c) Procedures shall be established for securing telephone,
38 written, or electronic quotations from contractors on the appropriate

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

31 (d) For small works roster projects, a state agency may waive the
32 payment and performance bond requirements of chapter 39.08 RCW and the
33 retainage requirements of chapter 60.28 RCW on a small works roster
34 contract, thereby assuming the liability for the contractor's
35 nonpayment of laborers, mechanics, subcontractors, materialmen,
36 suppliers, and taxes imposed under Title 82 RCW that may be due from
37 the contractor for the public works project. However, the state agency

1 has the right of recovery against the contractor for any payments made
2 on the contractor's behalf.

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

5 ~~((e))~~ (f) Immediately after an award is made, the bid quotations
6 obtained 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 authorized local government may award a
10 contract for work, construction, alteration, repair, or improvement
11 project [projects] estimated to cost less than thirty-five thousand
12 dollars using the limited public works process provided under this
13 subsection. Public works projects awarded under this subsection are
14 exempt from the other requirements of the small works roster process
15 provided under subsection (2) of this section and are exempt from the
16 requirement that contracts be awarded after advertisement as provided
17 under RCW 39.04.010.

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

1 public works project, however the state agency or authorized local
2 government shall have the right of recovery against the contractor for
3 any payments made on the contractor's behalf.

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

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

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