

# HOUSE BILL REPORT

## SHB 1328

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### As Passed Legislature

**Title:** An act relating to small works roster contracting procedures.

**Brief Description:** Concerning small works roster contracting procedures.

**Sponsors:** By House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Santos, Anderson, Green, Hunt, Miloscia, McDermott, Hasegawa, Hudgins, Chandler, Darneille, Haigh, Hankins, Wallace, Kristiansen, Kagi, Pettigrew, Kenney and Conway).

**Brief History:**

**Committee Activity:**

State Government & Tribal Affairs: 1/23/07, 1/26/07 [DPS].

**Floor Activity:**

Passed House: 2/5/07, 95-0.

Senate Amended.

Passed Senate: 4/5/07, 43-3.

House Concurred.

Passed House: 4/16/07, 95-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Allows a state agency or authorized local government to use the limited public works process to solicit and award small works roster contracts to certain small businesses, and to adopt procedures to encourage small businesses to submit quotations or bids on small works roster contracts.
- Allows the alternative procedure for submission of an intent to pay prevailing wages to be used for projects using the limited public works process.
- Allows public entities to retain 50 percent of a public works contract in lieu of a bond on contracts up to \$35,000.
- Requires public entities to notify the Department of Revenue of completion of public works contracts for contracts totaling \$35,000 and over.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hunt, Chair; Appleton, Vice Chair; Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Green, Kretz, McDermott, Miloscia and Ormsby.

**Staff:** Marsha Reilly (786-7135).

### **Background:**

#### Small Works Roster

State agencies and local governments may use the small works roster process to award contracts for public works projects estimated to cost \$200,000 or less. When an agency or local government elects to use this process, it must solicit bids from at least five contractors who have requested to be listed on a small works roster. The agency or local government, if it decides to award the contract, awards the contract to the lowest responsible bidder. The agency or local government must make an effort to equitably distribute the opportunity among contractors on the roster if the bids are solicited from less than all the contractors on the roster.

The small works roster process also allows for a limited process for projects estimated to cost less than \$35,000. Under this process, a state agency or authorized local government may solicit electronic or written quotations from a minimum of three contractors from the small works roster, and shall award the contract to the lowest responsible bidder.

Bonds and RetainageIn most instances, the general contractor on a public works project is required to post a performance bond to faithfully perform all work under the contract and to pay laborers, materialmen, and subcontractors. Also, in most instances, a retainage of up to 5 percent of the contract amount is required on public works contracts to be paid to the contractors 45 days after the completion of the project. The amount serves as a trust fund for payment of laborers, subcontractors, materialmen, and excise taxes that are imposed on the contract.

For contracts of \$25,000 or less, the public entity may, in lieu of a bond, retain 50 percent of the contract price for a period of 30 days until receipt of all releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed against the contractor for the public works project.

Upon completion of contracts over \$20,000, the public entity must notify the Department of Revenue of contract completion. Payment of the retained funds may not be made until the Department of Revenue issues a certificate that all taxes, increases, and penalties due from the contractor have been paid in full or are readily collectible without recourse to the state's lien.

#### Statement of Intent to Pay Prevailing Wages

Contractors and subcontractors on public works projects are required to submit a "statement of intent to pay prevailing wages" that must be approved by the Department of Labor and Industries before it is submitted to the public entity. Following final acceptance of the project, the contractor and each subcontractor must submit an "affidavit of wages paid" that must also be approved by the Department of Labor and Industries before it is submitted to the public entity for final payment. For public works projects of \$2,500 or less, the statement of intent and the affidavit of wages paid may be submitted directly to the public entity without approval of the Department of Labor and Industries.

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### **Summary of Substitute Bill:**

#### Small Works Roster

A state agency or authorized local government may use the limited public works process to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under \$1 million annually as reported on their federal tax return. A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under \$250,000 annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

#### Bonds and Retainage

The dollar threshold of a public works contract in which public entities may retain 50 percent of the contract amount in lieu of a bond is increased from \$25,000 to \$35,000. The dollar threshold in which a public entity is required to notify the Department of Revenue upon completion of a public works contract for tax lien purposes is changed from \$20,000 to \$35,000.

#### Statement of Intent to Pay Prevailing Wages

The alternative procedure for submission of an intent to pay prevailing wages may be used for projects using the limited public works process.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

#### **Staff Summary of Public Testimony:**

(In support) The bill was brought forward by community members and a school district administrator who is administering such a program. This bill is important because we have a policy that recognizes the important role small businesses play in our local communities

spurring economic development and creating jobs. Small businesses must be given a fair opportunity to compete.

A business that specializes in the removing of graffiti cannot compete on small works roster projects because it is usually bundled with other work that that business may not be qualified to complete. Bidding costs time and money and there needs to be a fair chance for competing for public money. The benefits of public sector work is that it allows businesses to pay the prevailing wage. Small business wants a fair opportunity to do what they do well. The Seattle public schools have developed a program to develop small business in the public works sector. This bill will allow development of small business to get to the next level. It allows programs to be put in place to develop such a program which is precluded in current laws. Competitive bidding is not competitive and many times there aren't bidders available. Sometimes bids have to be put out two or three times in rural areas. This is an economic development bill that allows development of a procedure to grow small business. A major obstacle to small businesses is the bundling of projects. The bill will help increase the pool of small business and increase competition. Technical assistance can include pre-bid support as well as accounting services. It requires support and collaborative effort from the agency.

(With concerns) The bill is designed to assist smaller business to compete. However, the language authorizing public entities to assume liability is of concern.

**Persons Testifying:** (In support) Representative Santos, prime sponsor; Laurie Rasmussen, Goodbye Graffiti, Silas Potter and Velma Veloria, Seattle Public Schools; Erin Nielsen, Snohomish County Education District; Fred Aiwekhoe, Fredhoses General Electric; Dr. L. F. Skip Rowland, Tabor 100; Tony Benjamin, Contract Development and Competitiveness Center; Dan Seydel, Platinum; and Carolyn Growson, Office of Minority Women Business Enterprises.

(With concerns) Gary Smith, Individual Business Association; and Grant Nelson, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.