
HOUSE BILL 1830

State of Washington

61st Legislature

2009 Regular Session

By Representative Santos

Read first time 01/30/09. Referred to Committee on Community & Economic Development & Trade.

1 AN ACT Relating to business definitions for public contracting; and
2 amending RCW 39.04.010, 39.04.155, and 39.29.006.

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) "Microbusiness" means any business entity, including a sole
17 proprietorship, corporation, partnership, or other legal entity, that:
18 (a) Is owned and operated independent from all other businesses; and

1 (b) has a gross revenue of less than one million dollars annually as
2 reported on its federal tax return or on its return filed with the
3 department of revenue.

4 (4) "Minibusiness" means any business entity, including a sole
5 proprietorship, corporation, partnership, or other legal entity, that:
6 (a) Is owned and operated independent from all other businesses; and
7 (b) has a gross revenue of less than three million dollars, but more
8 than one million dollars annually as reported on its federal tax return
9 or on its return filed with the department of revenue.

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

19 ~~((+4))~~ (6) "Public work" means all work, construction, alteration,
20 repair, or improvement other than ordinary maintenance, executed at the
21 cost of the state or of any municipality, or which is by law a lien or
22 charge on any property therein. All public works, including
23 maintenance when performed by contract shall comply with chapter 39.12
24 RCW. "Public work" does not include work, construction, alteration,
25 repair, or improvement performed under contracts entered into under RCW
26 36.102.060(4) or under development agreements entered into under RCW
27 36.102.060(7) or leases entered into under RCW 36.102.060(8).

28 ~~((+5))~~ (7) "Responsible bidder" means a contractor who meets the
29 criteria in RCW 39.04.350.

30 ~~((+6))~~ (8) "Small business" means any business entity, including
31 a sole proprietorship, corporation, partnership, or other legal entity,
32 that: (a) Is owned and operated independent from all other businesses;
33 and (b) has a gross revenue of less than seven million dollars annually
34 as reported on its federal tax return or its return filed with the
35 department of revenue.

36 (9) "State" means the state of Washington and all departments,
37 supervisors, commissioners, and agencies of the state.

1 **Sec. 2.** RCW 39.04.155 and 2008 c 130 s 17 are each amended to read
2 as follows:

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

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

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

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

13 (c) Procedures shall be established for securing telephone,
14 written, or electronic quotations from contractors on the appropriate
15 small works roster to assure that a competitive price is established
16 and to award contracts to the lowest responsible bidder, as defined in
17 RCW 39.04.010. Invitations for quotations shall include an estimate of
18 the scope and nature of the work to be performed as well as materials
19 and equipment to be furnished. However, detailed plans and
20 specifications need not be included in the invitation. This subsection
21 does not eliminate other requirements for architectural or engineering
22 approvals as to quality and compliance with building codes. Quotations
23 may be invited from all appropriate contractors on the appropriate
24 small works roster. As an alternative, quotations may be invited from
25 at least five contractors on the appropriate small works roster who
26 have indicated the capability of performing the kind of work being
27 contracted, in a manner that will equitably distribute the opportunity
28 among the contractors on the appropriate roster. However, if the
29 estimated cost of the work is from one hundred thousand dollars to two
30 hundred thousand dollars, a state agency or local government that
31 chooses to solicit bids from less than all the appropriate contractors
32 on the appropriate small works roster must also notify the remaining
33 contractors on the appropriate small works roster that quotations on
34 the work are being sought. The government has the sole option of
35 determining whether this notice to the remaining contractors is made
36 by: (i) Publishing notice in a legal newspaper in general circulation
37 in the area where the work is to be done; (ii) mailing a notice to
38 these contractors; or (iii) 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) 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 For limited public works projects, a state agency or authorized
22 local government shall solicit electronic or written quotations from a
23 minimum of three contractors from the appropriate small works roster
24 and shall award the contract to the lowest responsible bidder as
25 defined under RCW 39.04.010. After an award is made, the quotations
26 shall be open to public inspection and available by electronic request.
27 A state agency or authorized local government shall attempt to
28 distribute opportunities for limited public works projects equitably
29 among contractors willing to perform in the geographic area of the
30 work. A state agency or authorized local government shall maintain a
31 list of the contractors contacted and the contracts awarded during the
32 previous twenty-four months under the limited public works process,
33 including the name of the contractor, the contractor's registration
34 number, the amount of the contract, a brief description of the type of
35 work performed, and the date the contract was awarded. For limited
36 public works projects, a state agency or authorized local government
37 may waive the payment and performance bond requirements of chapter
38 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby

1 assuming the liability for the contractor's nonpayment of laborers,
2 mechanics, subcontractors, materialpersons, suppliers, and taxes
3 imposed under Title 82 RCW that may be due from the contractor for the
4 limited public works project, however the state agency or authorized
5 local government shall have the right of recovery against the
6 contractor for any payments made on the contractor's behalf.

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

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

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

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

30 **Sec. 3.** RCW 39.29.006 and 2002 c 354 s 235 are each amended to
31 read as follows:

32 As used in this chapter:

33 (1) "Agency" means any state office or activity of the executive
34 and judicial branches of state government, including state agencies,
35 departments, offices, divisions, boards, commissions, and educational,
36 correctional, and other types of institutions.

1 (2) "Client services" means services provided directly to agency
2 clients including, but not limited to, medical and dental services,
3 employment and training programs, residential care, and subsidized
4 housing.

5 (3) "Competitive solicitation" means a documented formal process
6 providing an equal and open opportunity to qualified parties and
7 culminating in a selection based on criteria which may include such
8 factors as the consultant's fees or costs, ability, capacity,
9 experience, reputation, responsiveness to time limitations,
10 responsiveness to solicitation requirements, quality of previous
11 performance, and compliance with statutes and rules relating to
12 contracts or services.

13 (4) "Consultant" means an independent individual or firm
14 contracting with an agency to perform a service or render an opinion or
15 recommendation according to the consultant's methods and without being
16 subject to the control of the agency except as to the result of the
17 work. The agency monitors progress under the contract and authorizes
18 payment.

19 (5) "Emergency" means a set of unforeseen circumstances beyond the
20 control of the agency that either:

21 (a) Present a real, immediate threat to the proper performance of
22 essential functions; or

23 (b) May result in material loss or damage to property, bodily
24 injury, or loss of life if immediate action is not taken.

25 (6) "Evidence of competition" means documentation demonstrating
26 that the agency has solicited responses from multiple firms in
27 selecting a consultant.

28 (7) "Microbusiness" means any business entity, including a sole
29 proprietorship, corporation, partnership, or other legal entity, that:
30 (a) Is owned and operated independent from all other businesses; and
31 (b) has a gross revenue of less than one million dollars annually as
32 reported on its federal tax return or on its return filed with the
33 department of revenue.

34 (8) "Minibusines" means any business entity, including a sole
35 proprietorship, corporation, partnership, or other legal entity, that:
36 (a) Is owned and operated independent from all other businesses; and
37 (b) has a gross revenue of less than three million dollars, but more

1 than one million dollars annually as reported on its federal tax return
2 or its return filed with the department of revenue.

3 (9) "Personal service" means professional or technical expertise
4 provided by a consultant to accomplish a specific study, project, task,
5 or other work statement. This term does not include purchased services
6 as defined under subsection ~~((+9+))~~ (11) of this section. This term
7 does include client services.

8 ~~((+8+))~~ (10) "Personal service contract" means an agreement, or any
9 amendment thereto, with a consultant for the rendering of personal
10 services to the state which is consistent with RCW 41.06.142.

11 ~~((+9+))~~ (11) "Purchased services" means services provided by a
12 vendor to accomplish routine, continuing and necessary functions. This
13 term includes, but is not limited to, services acquired under RCW
14 43.19.190 or 43.105.041 for equipment maintenance and repair; operation
15 of a physical plant; security; computer hardware and software
16 maintenance; data entry; key punch services; and computer time-sharing,
17 contract programming, and analysis.

18 ~~((+10+))~~ (12) "Small business" means any business entity, including
19 a sole proprietorship, corporation, partnership, or other legal entity,
20 that: (a) Is owned and operated independent from all other businesses;
21 and (b) has a gross revenue of less than seven million dollars annually
22 as reported on its federal tax return or its return filed with the
23 department of revenue.

24 (13) "Sole source" means a consultant providing professional or
25 technical expertise of such a unique nature that the consultant is
26 clearly and justifiably the only practicable source to provide the
27 service. The justification shall be based on either the uniqueness of
28 the service or sole availability at the location required.

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