
HOUSE BILL 3055

State of Washington

61st Legislature

2010 Regular Session

By Representatives Hinkle and Kretz

Read first time 01/21/10. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to conditions of requirements of contractors' bonds
2 for public contracts; amending RCW 39.04.155; and reenacting and
3 amending RCW 39.08.010.

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

5 **Sec. 1.** RCW 39.08.010 and 2007 c 218 s 88 and 2007 c 210 s 3 are
6 each reenacted and amended to read as follows:

7 Whenever any board, council, commission, trustees, or body acting
8 for the state or any county or municipality or any public body shall
9 contract with any person or corporation to do any work for the state,
10 county, or municipality, or other public body, city, town, or district,
11 such board, council, commission, trustees, or body shall require the
12 person or persons with whom such contract is made to make, execute, and
13 deliver to such board, council, commission, trustees, or body a good
14 and sufficient bond, with a surety company as surety, conditioned that
15 such person or persons shall faithfully perform all the provisions of
16 such contract and pay all laborers, mechanics, and subcontractors and
17 material suppliers, and all persons who supply such person or persons,
18 or subcontractors, with provisions and supplies for the carrying on of
19 such work, which bond in cases of cities and towns shall be filed with

1 the clerk or comptroller thereof, and any person or persons performing
2 such services or furnishing material to any subcontractor shall have
3 the same right under the provisions of such bond as if such work,
4 services, or material was furnished to the original contractor:
5 PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through
6 39.08.030 shall not apply to any money loaned or advanced to any such
7 contractor, subcontractor or other person in the performance of any
8 such work: PROVIDED FURTHER, That on contracts of thirty-five thousand
9 dollars or less, no bond will be required: PROVIDED FURTHER, That on
10 contracts of thirty-five thousand dollars (~~(or less)~~) to one hundred
11 thousand dollars, at the option of the (~~(contractor)~~) county,
12 municipality, or any public entity the respective public entity may, in
13 lieu of the bond, retain (~~(fifty)~~) twenty-five percent of the contract
14 amount for a period of thirty days after date of final acceptance, or
15 until receipt of all necessary releases from the department of revenue
16 and the department of labor and industries and settlement of any liens
17 filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER,
18 That for contracts of one hundred thousand dollars or less but greater
19 than thirty-five thousand dollars, the public entity may accept a full
20 payment and performance bond from an individual surety or sureties:
21 AND PROVIDED FURTHER, That the surety must agree to be bound by the
22 laws of the state of Washington and subjected to the jurisdiction of
23 the state of Washington.

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

26 (1) This section provides uniform small works roster provisions to
27 award contracts for construction, building, renovation, remodeling,
28 alteration, repair, or improvement of real property that may be used by
29 state agencies and by any local government that is expressly authorized
30 to use these provisions. These provisions may be used in lieu of other
31 procedures to award contracts for such work with an estimated cost of
32 three hundred thousand dollars or less. The small works roster process
33 includes the limited public works process authorized under subsection
34 (3) of this section and any local government authorized to award
35 contracts using the small works roster process under this section may
36 award contracts using the limited public works process under subsection
37 (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 39.04.010. Invitations for quotations shall include an estimate of
4 the scope and nature of the work to be performed as well as materials
5 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 fifty thousand dollars
16 to three hundred thousand dollars, a state agency or local government
17 that chooses to solicit bids from less than all the appropriate
18 contractors on the appropriate small works roster must also notify the
19 remaining contractors on the appropriate small works roster that
20 quotations on the work are being sought. The government has the sole
21 option of determining whether this notice to the remaining contractors
22 is made by: (i) Publishing notice in a legal newspaper in general
23 circulation in the area where the work is to be done; (ii) mailing a
24 notice to these contractors; or (iii) sending a notice to these
25 contractors by facsimile or other electronic means. For purposes of
26 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) A contract awarded from a small works roster under this section
32 need not be advertised.

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

36 (3) In lieu of awarding contracts under subsection (2) of this
37 section, a state agency or authorized local government may award a
38 contract for work, construction, alteration, repair, or improvement

1 projects estimated to cost less than thirty-five thousand dollars using
2 the limited public works process provided under this subsection.
3 Public works projects awarded under this subsection are exempt from the
4 other requirements of the small works roster process provided under
5 subsection (2) of this section and are exempt from the requirement that
6 contracts be awarded after advertisement as provided under RCW
7 39.04.010.

8 For limited public works projects, a state agency or authorized
9 local government shall solicit electronic or written quotations from a
10 minimum of three contractors from the appropriate small works roster
11 and shall award the contract to the lowest responsible bidder as
12 defined under RCW 39.04.010. After an award is made, the quotations
13 shall be open to public inspection and available by electronic request.
14 A state agency or authorized local government shall attempt to
15 distribute opportunities for limited public works projects equitably
16 among contractors willing to perform in the geographic area of the
17 work. A state agency or authorized local government shall maintain a
18 list of the contractors contacted and the contracts awarded during the
19 previous twenty-four months under the limited public works process,
20 including the name of the contractor, the contractor's registration
21 number, the amount of the contract, a brief description of the type of
22 work performed, and the date the contract was awarded. For limited
23 public works projects, a state agency or authorized local government
24 may waive (~~the payment and performance bond requirements of chapter~~
25 ~~39.08 RCW and~~) the retainage requirements of chapter 60.28 RCW,
26 thereby assuming the liability for the contractor's nonpayment of
27 laborers, mechanics, subcontractors, materialpersons, suppliers, and
28 taxes imposed under Title 82 RCW that may be due from the contractor
29 for the limited public works project, however the state agency or
30 authorized local government shall have the right of recovery against
31 the contractor for any payments made on the contractor's behalf.

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

36 (5)(a) A state agency or authorized local government may use the
37 limited public works process of subsection (3) of this section to

1 solicit and award small works roster contracts to small businesses that
2 are registered contractors with gross revenues under one million
3 dollars annually as reported on their federal tax return.

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

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

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