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**SUBSTITUTE HOUSE BILL 2933**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** House Technology & Economic Development (originally sponsored by Representatives Gregerson, Santos, and Ryu)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to small works rosters; and amending RCW  
2 39.04.155.

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

4 **Sec. 1.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to  
5 read as follows:

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

18 (2)(a) A state agency or authorized local government may create a  
19 single general small works roster, or may create a small works roster  
20 for different specialties or categories of anticipated work. Where  
21 applicable, small works rosters may make distinctions between

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

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

34 (c) Procedures shall be established for securing telephone,  
35 written, or electronic quotations from contractors on the appropriate  
36 small works roster to assure that a competitive price is established  
37 and to award contracts to the lowest responsible bidder, as defined  
38 in RCW 39.04.010. Invitations for quotations shall include an  
39 estimate of the scope and nature of the work to be performed as well  
40 as materials and equipment to be furnished. However, detailed plans

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

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

28 (e) Immediately after an award is made, the bid quotations  
29 obtained shall be recorded, open to public inspection, and available  
30 by (~~telephone inquiry~~) electronic request.

31 (f) For projects awarded under the small works roster process  
32 established under this subsection, a state agency or authorized local  
33 government may waive the retainage requirements of RCW  
34 60.28.011(1)(a), thereby assuming the liability for contractor's  
35 nonpayment of: (i) Laborers, mechanics, subcontractors,  
36 materialpersons, and suppliers; and (ii) taxes, increases, and  
37 penalties under Titles 50, 51, and 82 RCW that may be due from the  
38 contractor for the project. However, the state agency or local  
39 government has the right of recovery against the contractor for any  
40 payments made on the contractor's behalf. Recovery of unpaid wages

1 and benefits shall be the first priority for actions filed against  
2 the retainage.

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

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

38 (4) The breaking of any project into units or accomplishing any  
39 projects by phases is prohibited if it is done for the purpose of

1 avoiding the maximum dollar amount of a contract that may be let  
2 using the small works roster process or limited public works process.

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

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

13 (6) As used in this section,)) A state agency or authorized local  
14 government may use the limited public works process in this section  
15 to solicit and award small works roster contracts to minibusinesses  
16 and microbusinesses as defined under RCW 39.26.010 that are  
17 registered contractors.

18 (6) The department of enterprise services shall work with the  
19 municipal research and services center to notify local governments  
20 authorized to use small works rosters of this authority and to  
21 provide guidance on how to use the authority. The guidance may take  
22 the form of a manual provided to local governments.

23 (7) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Equitably distributes" means that a state agency or  
26 authorized local government may not favor certain contractors on the  
27 appropriate small works roster over other contractors on the same  
28 roster who perform similar services.

29 (b) "State agency" means the department of enterprise services,  
30 the state parks and recreation commission, the department of natural  
31 resources, the department of fish and wildlife, the department of  
32 transportation, any institution of higher education as defined under  
33 RCW 28B.10.016, and any other state agency delegated authority by the  
34 department of enterprise services to engage in construction,  
35 building, renovation, remodeling, alteration, improvement, or repair  
36 activities.

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