
HOUSE BILL 2933

State of Washington

64th Legislature

2016 Regular Session

By Representatives Gregerson, Santos, and Ryu

Read first time 01/28/16. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to small works rosters; amending RCW 39.19.020,
2 39.19.060, 39.19.080, 39.19.090, 39.19.200, 39.19.250, and 39.04.155;
3 adding a new section to chapter 39.19 RCW; prescribing penalties; and
4 repealing RCW 39.19.100 and 39.19.110.

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

6 **Sec. 1.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read
7 as follows:

8 (~~Unless the context clearly requires otherwise,~~) The
9 definitions in this section apply throughout this chapter unless the
10 context clearly requires otherwise.

11 (1) "Advisory committee" means the advisory committee on minority
12 and women's business enterprises.

13 (2) "Broker" means a person that provides a bona fide service,
14 such as professional, technical, consultant, brokerage, or managerial
15 services and assistance in the procurement of essential personnel,
16 facilities, equipment, materials, or supplies required for
17 performance of a contract.

18 (3) "Contractor" means an individual or entity granted state
19 certification and awarded either a direct contract with an agency or
20 an indirect contract as a subcontractor to perform a service or
21 provide goods.

1 (4) "Debar" means to prohibit a contractor, individual, or other
2 entity from submitting a bid, having a bid considered, or entering
3 into a state contract during a specified period of time as set forth
4 in a debarment order.

5 (5) "Director" means the director of the office of minority and
6 women's business enterprises.

7 ~~((4))~~ (6) "Educational institutions" means the state
8 universities, the regional universities, The Evergreen State College,
9 and the community colleges.

10 ~~((5))~~ (7) "Goals" means annual overall agency goals, expressed
11 as a percentage of dollar volume, for participation by minority and
12 women-owned and controlled businesses and shall not be construed as a
13 minimum goal for any particular contract or for any particular
14 geographical area. It is the intent of this chapter that such overall
15 agency goals shall be achievable and shall be met on a contract-by-
16 contract or class-of-contract basis.

17 ~~((6))~~ (8) "Goods and/or services" includes professional
18 services and all other goods and services.

19 ~~((7))~~ (9) "Office" means the office of minority and women's
20 business enterprises.

21 ~~((8))~~ (10) "Person" includes one or more individuals,
22 partnerships, associations, organizations, corporations,
23 cooperatives, legal representatives, trustees and receivers, or any
24 group of persons.

25 ~~((9))~~ (11) "Procurement" means the purchase, lease, or rental
26 of any goods or services.

27 ~~((10))~~ (12) "Public works" means all work, construction,
28 highway and ferry construction, alteration, repair, or improvement
29 other than ordinary maintenance, which a state agency or educational
30 institution is authorized or required by law to undertake.

31 ~~((11))~~ (13) "State agency" includes the state of Washington and
32 all agencies, departments, offices, divisions, boards, commissions,
33 and correctional and other types of institutions.

34 **Sec. 2.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to
35 read as follows:

36 (1) Each state agency and educational institution shall comply
37 with the annual goals established for that agency or institution
38 under this chapter for public works and procuring goods or services.
39 This chapter applies to all public works and procurement by state

1 agencies and educational institutions, including all contracts and
2 other procurement under chapters 28B.10, 39.04, ~~((39.29))~~ 39.26,
3 43.19, and 47.28 RCW.

4 (2) Each state agency shall adopt a plan, developed in
5 consultation with the director and the advisory committee, to
6 ~~((insure))~~ ensure that minority and women-owned businesses are
7 afforded the maximum practicable opportunity to directly and
8 meaningfully participate in the execution of public contracts for
9 public works and goods and services. The plan shall include specific
10 measures the agency will undertake to increase the participation of
11 certified minority and women-owned businesses.

12 (3) Of all state agencies and educational institutions, the
13 office must annually identify those: (a) In the lowest quintile of
14 utilization of minority and women-owned contractors as a percentage
15 of all contracts issued by the agency; (b) in the lowest quintile of
16 the dollar value awarded to minority and women-owned contractors as a
17 percentage of the dollar value of all contracts issued by the agency;
18 and (c) that are performing significantly below their established
19 goals, as determined by the office. The office must meet with each
20 identified agency to review its plan and identify available tools and
21 actions for increasing participation.

22 (4) The office shall annually notify the governor, the state
23 auditor, and the joint legislative audit and review committee of all
24 agencies and educational institutions not in compliance with this
25 chapter.

26 **Sec. 3.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to
27 read as follows:

28 ~~((1))~~ A person, firm, corporation, business, union, or other
29 organization shall not:

30 ~~((a))~~ (1) Prevent or interfere with a contractor's or
31 subcontractor's compliance with this chapter, or any rule adopted
32 under this chapter;

33 ~~((b))~~ (2) Submit false or fraudulent information to the state
34 concerning compliance with this chapter or any such rule;

35 ~~((c))~~ (3) Fraudulently obtain, retain, attempt to obtain or
36 retain, or aid another in fraudulently obtaining or retaining or
37 attempting to obtain or retain certification as a minority or women's
38 business enterprise for the purpose of this chapter;

1 ~~((d))~~ (4) Knowingly make a false statement, whether by
2 affidavit, verified statement, report, or other representation, to a
3 state official or employee for the purpose of influencing the
4 certification or denial of certification of any entity as a minority
5 or women's business enterprise;

6 ~~((e))~~ (5) Knowingly obstruct, impede, or attempt to obstruct or
7 impede any state official or employee who is investigating the
8 qualification of a business entity that has requested certification
9 as a minority or women's business enterprise;

10 ~~((f))~~ (6) Fraudulently obtain, attempt to obtain, or aid
11 another person in fraudulently obtaining or attempting to obtain
12 public moneys to which the person is not entitled under this chapter;
13 or

14 ~~((g))~~ (7) Knowingly make false statements that any entity is or
15 is not certified as a minority or women's business enterprise for
16 purposes of obtaining a contract governed by this chapter.

17 ~~((2) Any person or entity violating this chapter or any rule
18 adopted under this chapter shall be subject to the penalties in RCW
19 39.19.090. Nothing in this section prevents the state agency or
20 educational institution from pursuing such procedures or sanctions as
21 are otherwise provided by statute, rule, or contract provision.))~~

22 **Sec. 4.** RCW 39.19.090 and 1987 c 328 s 6 are each amended to
23 read as follows:

24 (1)(a) If a person, firm, corporation, or business does not
25 comply with any provision of this chapter ~~((e))~~ other than RCW
26 39.19.080, or does not comply with a contract requirement established
27 under this chapter, the state may ~~((withhold payment, debar the~~
28 ~~contractor, suspend, or terminate the contract and subject))~~ impose
29 one or more of the following penalties: Withholding payment,
30 decertifying the contractor, debarring the contractor, suspending or
31 terminating the contract, or subjecting the contractor to civil
32 penalties of up to ten percent of the amount of the contract or up to
33 five thousand dollars for each violation. ~~((The office shall adopt,~~
34 ~~by rule, criteria for the imposition of penalties under this section.~~
35 ~~Wilful))~~

36 (b) If a person, firm, corporation, or business commits any of
37 the activities prohibited in RCW 39.19.080, the state must impose one
38 or more of the following penalties: Withholding payment, decertifying
39 the contractor, debarring the contractor for a period between one and

1 three years, terminating the contract, or subjecting the contractor
2 to civil penalties of between two and ten percent of the amount of
3 the contract or between one and five thousand dollars for each
4 violation.

5 (c) In addition to any other penalties imposed, willful repeated
6 violations, exceeding a single violation, (~~may~~) must disqualify the
7 contractor from further participation in state contracts for a period
8 of (~~up to~~) three years. A willful violation includes a conscious or
9 deliberate false statement, misrepresentation, omission, or
10 concealment of a material fact, with the specific intent of
11 obtaining, continuing, or increasing benefits under this chapter.

12 (2) An apparent low-bidder must be in compliance with the
13 contract provisions required under this chapter as a condition
14 precedent to the granting of a notice of award by any state agency or
15 educational institution.

16 (3) The office shall follow administrative procedures under
17 chapter 34.05 RCW in determining a violation and imposing penalties
18 under this chapter. The office shall adopt by rule criteria for the
19 imposition of penalties under this section. The rule may incorporate
20 the debarment process authorized for the department of enterprise
21 services in RCW 39.26.200.

22 (4)(a) An investigation unit is established within the office for
23 the purpose of detecting and investigating fraud and violations of
24 this chapter. The office must employ qualified personnel for the
25 unit.

26 (b) The director and the investigation unit are authorized to
27 receive criminal history record information that includes
28 nonconviction data for any purpose associated with the investigation
29 of fraud or for violations of this chapter. Dissemination or use of
30 nonconviction data for purposes other than that authorized in this
31 section is prohibited.

32 (c) For the purpose of any investigation or proceeding under this
33 chapter, the director or the director's designee may administer oaths
34 and affirmations, subpoena witnesses, compel their attendance, take
35 evidence, and require the production of any books, papers,
36 correspondence, memoranda, agreements, or other documents or records
37 that the director or the director's designee deems relevant or
38 material to the inquiry.

39 (d) Subpoenas issued under this section may be enforced under RCW
40 34.05.588.

1 (e) The investigation unit must annually:

2 (i) Conduct a site review of a minimum of three percent of
3 persons, firms, corporations, or businesses awarded a contract under
4 this chapter;

5 (ii) Submit a response for all complaints for investigation made
6 by an external agency to the agency submitting the complaint;

7 (iii) Develop and implement a process for prioritizing and
8 conducting thorough investigations of persons, firms, corporations,
9 or businesses identified by an external complaint and determined to
10 be the highest priority for the agency; and

11 (iv) Develop and implement a process for prioritizing and
12 conducting thorough investigations of persons, firms, corporations,
13 or businesses internally identified and determined to be the highest
14 priority for the agency.

15 (5) The procedures and sanctions in this section are not
16 exclusive; nothing in this section prevents the state agency or
17 educational institution administering the contracts from pursuing
18 such procedures or sanctions as are otherwise provided by statute,
19 rule, or contract provision.

20 NEW SECTION. Sec. 5. A new section is added to chapter 39.19
21 RCW to read as follows:

22 (1) The director or director's designee may apply for and obtain
23 a superior court order approving and authorizing a subpoena in
24 advance of its issuance. The application may be made in the county
25 where the subpoenaed person resides or is found, or the county where
26 the subpoenaed documents, records, or evidence are located, or in
27 Thurston county. The application must:

28 (a) State that an order is sought under this section;

29 (b) Adequately specify the documents, records, evidence, or
30 testimony; and

31 (c) Include a declaration made under oath that an investigation
32 is being conducted for a lawfully authorized purpose related to an
33 investigation within the office's authority and that the subpoenaed
34 documents, records, evidence, or testimony are reasonably related to
35 an investigation within the office's authority.

36 (2) When an application under this section is made to the
37 satisfaction of the court, the court must issue an order approving
38 the subpoena. An order under this subsection constitutes authority of

1 law for the agency to subpoena the documents, records, evidence, or
2 testimony.

3 (3) The director or director's designee may seek approval and a
4 court may issue an order under this section without prior notice to
5 any person, including the person to whom the subpoena is directed and
6 the person who is the subject of an investigation. An application for
7 court approval is subject to the fee and process set forth in RCW
8 36.18.012(3).

9 **Sec. 6.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to
10 read as follows:

11 The minority and women's business enterprises account is created
12 in the custody of the state treasurer. All receipts from RCW
13 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under
14 RCW 39.19.090 shall be deposited in the account. Expenditures from
15 the account may be used only for the purposes defraying all or part
16 of the costs of the office in administering this chapter. Only the
17 director or the director's designee may authorize expenditures from
18 the account. Moneys in the account may be spent only after
19 appropriation.

20 **Sec. 7.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to
21 read as follows:

22 (1) For the purpose of annual reporting on progress required by
23 (~~section 1 of this act~~) this chapter, each state agency and
24 educational institution shall submit data to the office and the
25 office of minority and women's business enterprises on the
26 participation by qualified minority and women-owned and controlled
27 businesses in the agency's or institution's contracts and other
28 related information requested by the director. The director of the
29 office of minority and women's business enterprises shall determine
30 the content and format of the data and the reporting schedule, which
31 must be at least annually.

32 (2) The office must develop and maintain a list of contact people
33 at each state agency and educational institution (~~that is~~) who are
34 able to present to hearings of the appropriate committees of the
35 legislature its progress in carrying out the purposes of chapter
36 39.19 RCW.

37 (3) The office must submit a report aggregating the data received
38 from each state agency and educational institution, and the

1 information identified and actions taken under RCW 39.19.060(3) and
2 39.19.090(4), to the legislature and the governor.

3 **Sec. 8.** RCW 39.04.155 and 2015 c 225 s 33 are each amended to
4 read as follows:

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

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

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

15 (c) Procedures shall be established for securing telephone,
16 written, or electronic quotations from contractors on the appropriate
17 small works roster to assure that a competitive price is established
18 and to award contracts to the lowest responsible bidder, as defined
19 in RCW 39.04.010. Invitations for quotations shall include an
20 estimate of the scope and nature of the work to be performed as well
21 as materials and equipment to be furnished. However, detailed plans
22 and specifications need not be included in the invitation. This
23 subsection does not eliminate other requirements for architectural or
24 engineering approvals as to quality and compliance with building
25 codes. Quotations may be invited from all appropriate contractors on
26 the appropriate small works roster. As an alternative, quotations
27 (~~may~~) must be invited from at least five contractors on the
28 appropriate small works roster who have indicated the capability of
29 performing the kind of work being contracted, in a manner that will
30 equitably distribute the opportunity among the contractors on the
31 appropriate roster. However, if the estimated cost of the work is
32 from one hundred fifty thousand dollars to (~~three~~) five hundred
33 thousand dollars, a state agency or local government that chooses to
34 solicit bids from less than all the appropriate contractors on the
35 appropriate small works roster must also notify the remaining
36 contractors on the appropriate small works roster that quotations on
37 the work are being sought. The government has the sole option of
38 determining whether this notice to the remaining contractors is made
39 by: (i) Publishing notice in a legal newspaper in general circulation
40 in the area where the work is to be done; (ii) mailing a notice to

1 these contractors; or (iii) sending a notice to these contractors by
2 facsimile or other electronic means. For purposes of this subsection
3 (2)(c), "equitably distribute" means that a state agency or local
4 government soliciting bids may not favor certain contractors on the
5 appropriate small works roster over other contractors on the
6 appropriate small works roster who perform similar services.

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

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

12 (f) For projects awarded under the small works roster process
13 established under this subsection, a state agency or authorized local
14 government may waive the retainage requirements of RCW
15 60.28.011(1)(a), thereby assuming the liability for contractor's
16 nonpayment of: (i) Laborers, mechanics, subcontractors,
17 materialpersons, and suppliers; and (ii) taxes, increases, and
18 penalties under Titles 50, 51, and 82 RCW that may be due from the
19 contractor for the project. However, the state agency or local
20 government has the right of recovery against the contractor for any
21 payments made on the contractor's behalf.

22 (3)(a) In lieu of awarding contracts under subsection (2) of this
23 section, a state agency or authorized local government may award a
24 contract for work, construction, alteration, repair, or improvement
25 projects estimated to cost less than ~~((thirty-five))~~ one hundred
26 fifty thousand dollars using the limited public works process
27 provided under this subsection. Public works projects awarded under
28 this subsection are exempt from the other requirements of the small
29 works roster process provided under subsection (2) of this section
30 and are exempt from the requirement that contracts be awarded after
31 advertisement as provided under RCW 39.04.010.

32 (b) For limited public works projects, a state agency or
33 authorized local government shall solicit electronic or written
34 quotations from a minimum of three contractors from the appropriate
35 small works roster and shall award the contract to the lowest
36 responsible bidder as defined under RCW 39.04.010. After an award is
37 made, the quotations shall be open to public inspection and available
38 by electronic request. A state agency or authorized local government
39 ~~((shall attempt to))~~ must equitably distribute opportunities for
40 limited public works projects ~~((equitably))~~ among contractors willing

1 to perform in the geographic area of the work. A state agency or
2 authorized local government shall maintain a list of the contractors
3 contacted and the contracts awarded during the previous twenty-four
4 months under the limited public works process, including the name of
5 the contractor, the contractor's registration number, the amount of
6 the contract, a brief description of the type of work performed, and
7 the date the contract was awarded. For limited public works projects,
8 a state agency or authorized local government may waive the payment
9 and performance bond requirements of chapter 39.08 RCW and the
10 retainage requirements of chapter 60.28 RCW, thereby assuming the
11 liability for the contractor's nonpayment of laborers, mechanics,
12 subcontractors, materialpersons, suppliers, and taxes imposed under
13 Title 82 RCW that may be due from the contractor for the limited
14 public works project, however the state agency or authorized local
15 government shall have the right of recovery against the contractor
16 for any payments made on the contractor's behalf.

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

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

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

31 ~~(6) As used in this section,~~) A state agency or authorized local
32 government may use the limited public works process in this section
33 to solicit and award small works roster contracts to minibusinesses
34 and microbusinesses as defined under RCW 39.26.010 that are
35 registered contractors.

36 (6) The department of enterprise services shall work with the
37 municipal research and services center to notify local governments
38 authorized to use small works rosters of this authority and to
39 provide guidance on how to use the authority. The guidance may take
40 the form of a manual provided to local governments.

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

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

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

15 NEW SECTION. Sec. 9. The following acts or parts of acts are
16 each repealed:

17 (1) RCW 39.19.100 (Enforcement by attorney general—Injunctive
18 relief) and 1987 c 328 s 12; and

19 (2) RCW 39.19.110 (Enforcement by attorney general—Investigative
20 powers) and 1987 c 328 s 13.

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