
SENATE BILL 5970

State of Washington

64th Legislature

2015 Regular Session

By Senator Hasegawa

Read first time 02/13/15. Referred to Committee on Government Operations & Security.

1 AN ACT Relating to creating a best investment selection option
2 for use in public works contracts; amending RCW 39.04.010, 39.04.015,
3 39.04.155, and 39.04.190; adding a new section to chapter 39.04 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the lowest
7 responsive bid process used in awarding public works contracts may
8 limit the flexibility of both the state and municipalities in
9 determining whether other bids are more beneficial to the state or to
10 the community where the project is located. The legislature also
11 finds that selection of the lowest responsive bidder may not always
12 result in the contracting agency achieving all of its goals.

13 The legislature intends to create an additional bidding process
14 that the state and municipalities may elect to use in selecting
15 bidders for public works contracts. In electing to use this process,
16 the contracting authority is allowed to determine which of the bids
17 submitted best achieve the regulatory, commercial, and socio-economic
18 goals as determined by the authority.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04
20 RCW to read as follows:

1 (1) If the state or a municipality elects to use the best
2 investment selection optional bidding process as defined in RCW
3 39.04.010, it must provide notice of the process in its solicitation
4 for bids and include a list of the goals and factors that will be
5 used in determining the selection of the winning bid.

6 (2) In setting its socio-economic goals in the best investment
7 selection process, the contracting authority may consider factors
8 such as: The opportunities created for small businesses, new
9 businesses, businesses owned by socially or economically
10 disadvantaged individuals; businesses more likely to consult with and
11 work with local communities; businesses that can be more innovative;
12 proximity of the company to the project; response time to the job
13 site; the ready availability of workers and whether the workers are
14 from the community where the project is being built; the impact on
15 local employment, including the likelihood of utilization of
16 secondary employment resources such as the unemployed, the
17 underemployed, part-time workers, and first-time entrants in the
18 workforce; the overall impact on the community in terms of putting
19 money back into the local economy; and whether the bid represents the
20 best investment for the taxpayers.

21 **Sec. 3.** RCW 39.04.010 and 2008 c 130 s 16 are each amended to
22 read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Award" means the formal decision by the state or
26 municipality notifying a responsible bidder with the lowest
27 responsive bid or the best investment selection of the state's or
28 municipality's acceptance of the bid and intent to enter into a
29 contract with the bidder.

30 (2) "Contract" means a contract in writing for the execution of
31 public work for a fixed or determinable amount duly awarded after
32 advertisement and competitive bid, or a contract awarded under the
33 small works roster process in RCW 39.04.155.

34 (3) "Municipality" means every city, county, town, port district,
35 district, or other public agency authorized by law to require the
36 execution of public work, except drainage districts, diking
37 districts, diking and drainage improvement districts, drainage
38 improvement districts, diking improvement districts, consolidated
39 diking and drainage improvement districts, consolidated drainage

1 improvement districts, consolidated diking improvement districts,
2 irrigation districts, or other districts authorized by law for the
3 reclamation or development of waste or undeveloped lands.

4 (4) "Public work" means all work, construction, alteration,
5 repair, or improvement other than ordinary maintenance, executed at
6 the cost of the state or of any municipality, or which is by law a
7 lien or charge on any property therein. All public works, including
8 maintenance when performed by contract shall comply with chapter
9 39.12 RCW. "Public work" does not include work, construction,
10 alteration, repair, or improvement performed under contracts entered
11 into under RCW 36.102.060(4) or under development agreements entered
12 into under RCW 36.102.060(7) or leases entered into under RCW
13 36.102.060(8).

14 (5) "Responsible bidder" means a contractor who meets the
15 criteria in RCW 39.04.350.

16 (6) "State" means the state of Washington and all departments,
17 supervisors, commissioners, and agencies of the state.

18 (7) "Best investment selection" means the optional bidding
19 process that may be used by the state or a municipality in
20 determining which bid meets the regulatory, commercial, and socio-
21 economic goals of the public works project as determined by the
22 contracting agency.

23 **Sec. 4.** RCW 39.04.015 and 1989 c 59 s 1 are each amended to read
24 as follows:

25 Notwithstanding the provisions of RCW 39.04.010, a state
26 contracting authority is authorized to negotiate an adjustment to a
27 bid price, based upon agreed changes to the contract plans and
28 specifications, with a low responsive bidder or a bidder with the
29 best investment selection under the following conditions:

30 (1) All bids for a state public works project involving buildings
31 and any associated building utilities and appendants exceed the
32 available funds, as certified by the appropriate fiscal officer;

33 (2) The apparent low responsive bid or the bid with the best
34 investment selection does not exceed the available funds by: (a) Five
35 percent on projects valued under one million dollars; (b) the greater
36 of fifty thousand dollars or two and one-half percent for projects
37 valued between one million dollars and five million dollars; or (c)
38 the greater of one hundred twenty-five thousand dollars or one
39 percent for projects valued over five million dollars; and

1 (3) The negotiated adjustment will bring the bid price within the
2 amount of available funds.

3 **Sec. 5.** RCW 39.04.155 and 2009 c 74 s 1 are each amended to read
4 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 hundred thousand dollars or less. The
12 small works roster process includes the limited public works process
13 authorized under subsection (3) of this section and any local
14 government authorized to award contracts using the small works roster
15 process under this section may award contracts using the limited
16 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 (~~general administration~~)
6 enterprise services in implementing this subsection must be included
7 in any rules providing for a small works roster or rosters that is
8 adopted by another state agency, if the authority for that state
9 agency to engage in these activities has been delegated to it by the
10 department of (~~general administration~~) enterprise services under
11 chapter 43.19 RCW. An interlocal contract or agreement between two or
12 more state agencies or local governments establishing a small works
13 roster or rosters to be used by the parties to the agreement or
14 contract must clearly identify the lead entity that is responsible
15 for implementing the provisions of this subsection.

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

1 newspaper in general circulation in the area where the work is to be
2 done; (ii) mailing a notice to these contractors; or (iii) sending a
3 notice to these contractors by facsimile or other electronic means.
4 For purposes of this subsection (2)(c), "equitably distribute" means
5 that a state agency or local government soliciting bids may not favor
6 certain contractors on the appropriate small works roster over other
7 contractors on the appropriate small works roster who perform similar
8 services.

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

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

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

24 For limited public works projects, a state agency or authorized
25 local government shall solicit electronic or written quotations from
26 a minimum of three contractors from the appropriate small works
27 roster and shall award the contract to the lowest responsible bidder
28 or the bidder with the best investment selection as those terms are
29 defined under RCW 39.04.010. After an award is made, the quotations
30 shall be open to public inspection and available by electronic
31 request. A state agency or authorized local government shall attempt
32 to distribute opportunities for limited public works projects
33 equitably among contractors willing to perform in the geographic area
34 of the work. A state agency or authorized local government shall
35 maintain a list of the contractors contacted and the contracts
36 awarded during the previous twenty-four months under the limited
37 public works process, including the name of the contractor, the
38 contractor's registration number, the amount of the contract, a brief
39 description of the type of work performed, and the date the contract
40 was awarded. For limited public works projects, a state agency or

1 authorized local government may waive the payment and performance
2 bond requirements of chapter 39.08 RCW and the retainage requirements
3 of chapter 60.28 RCW, thereby assuming the liability for the
4 contractor's nonpayment of laborers, mechanics, subcontractors,
5 materialpersons, suppliers, and taxes imposed under Title 82 RCW that
6 may be due from the contractor for the limited public works project,
7 however the state agency or authorized local government shall have
8 the right of recovery against the contractor for any payments made on
9 the contractor's behalf.

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

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

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

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

33 **Sec. 6.** RCW 39.04.190 and 1993 c 198 s 2 are each amended to
34 read as follows:

35 (1) This section provides a uniform process to award contracts
36 for the purchase of any materials, equipment, supplies, or services
37 by those municipalities that are authorized to use this process in
38 lieu of the requirements for formal sealed bidding. The state
39 statutes governing a specific type of municipality shall establish

1 the maximum dollar thresholds of the contracts that can be awarded
2 under this process, and may include other matters concerning the
3 awarding of contracts for purchases, for the municipality.

4 (2) At least twice per year, the municipality shall publish in a
5 newspaper of general circulation within the jurisdiction a notice of
6 the existence of vendor lists and solicit the names of vendors for
7 the lists. Municipalities shall by resolution establish a procedure
8 for securing telephone or written quotations, or both, from at least
9 three different vendors whenever possible to assure that a
10 competitive price is established and for awarding the contracts for
11 the purchase of any materials, equipment, supplies, or services to
12 the lowest responsible bidder or the bidder with the best investment
13 selection, as those terms are defined in RCW ((43.19.1911))
14 39.04.010. Immediately after the award is made, the bid quotations
15 obtained shall be recorded, open to public inspection, and shall be
16 available by telephone inquiry. A contract awarded pursuant to this
17 section need not be advertised.

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