
HOUSE BILL 2469

State of Washington

66th Legislature

2020 Regular Session

By Representatives Santos, Gregerson, Tharinger, Hudgins, and Pollet

Read first time 01/14/20. Referred to Committee on Innovation, 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; and repealing RCW
4 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 2019 c 434 s 2 are each amended to
7 read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

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

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

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

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

5 ~~((4))~~ (5) "Director" means the director of the office of
6 minority and women's business enterprises.

7 ~~((5))~~ (6) "Educational institutions" means the state
8 universities, the regional universities, The Evergreen State College,
9 and the community colleges.

10 ~~((6))~~ (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 ~~((7))~~ (8) "Goods and/or services" includes professional
18 services and all other goods and services.

19 ~~((8))~~ (9) "Office" means the office of minority and women's
20 business enterprises.

21 ~~((9))~~ (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 ~~((10))~~ (11) "Procurement" means the purchase, lease, or rental
26 of any goods or services.

27 ~~((11))~~ (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 ~~((12))~~ (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 2019 c 434 s 3 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, 39.26, 43.19, and
3 47.28 RCW.

4 (2) Each state agency shall adopt a plan, developed in
5 consultation with the director and the advisory committee, to ensure
6 that minority and women-owned businesses are afforded the maximum
7 practicable opportunity to directly and meaningfully participate in
8 the execution of public contracts for public works and goods and
9 services. The plan shall include specific measures the agency will
10 undertake to increase the participation of certified minority and
11 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 ~~((f))~~ (1)(a) Except as provided in (b) of this subsection, if a
25 person, firm, corporation, or business does not comply with any
26 provision of this chapter or 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 audit and review unit is established within the office
23 for the purpose of detecting and investigating fraud and violations
24 of this chapter. The office must employ qualified personnel for the
25 unit.

26 (b) For the purpose of any investigation or proceeding under this
27 chapter, the director or the director's designee may administer oaths
28 and affirmations, subpoena witnesses, compel their attendance, take
29 evidence, and require the production of any books, papers,
30 correspondence, memoranda, agreements, or other documents or records
31 that the director or the director's designee deems relevant or
32 material to the inquiry.

33 (c) Subpoenas issued under this section may be enforced under RCW
34 34.05.588.

35 (d) The audit and review unit must annually:

36 (i) Conduct a site review of a minimum of three percent of
37 persons, firms, corporations, or businesses awarded a contract under
38 this chapter;

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

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

5 (iv) Develop and implement a process for prioritizing and
6 conducting thorough investigations of persons, firms, corporations,
7 or businesses internally identified and determined to be the highest
8 priority for the agency.

9 (5) The procedures and sanctions in this section are not
10 exclusive; nothing in this section prevents the state agency or
11 educational institution administering the contracts from pursuing
12 such procedures or sanctions as are otherwise provided by statute,
13 rule, or contract provision.

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

16 (1) The director or director's designee may apply for and obtain
17 a superior court order approving and authorizing a subpoena in
18 advance of its issuance. The application may be made in the county
19 where the subpoenaed person resides or is found, or the county where
20 the subpoenaed documents, records, or evidence are located, or in
21 Thurston county. The application must:

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

23 (b) Adequately specify the documents, records, evidence, or
24 testimony; and

25 (c) Include a declaration made under oath that an investigation
26 is being conducted for a lawfully authorized purpose related to an
27 investigation within the office's authority and that the subpoenaed
28 documents, records, evidence, or testimony are reasonably related to
29 an investigation within the office's authority.

30 (2) When an application under this section is made to the
31 satisfaction of the court, the court must issue an order approving
32 the subpoena. An order under this subsection constitutes authority of
33 law for the agency to subpoena the documents, records, evidence, or
34 testimony.

35 (3) The director or director's designee may seek approval and a
36 court may issue an order under this section without prior notice to
37 any person, including the person to whom the subpoena is directed and
38 the person who is the subject of an investigation. An application for

1 court approval is subject to the fee and process set forth in RCW
2 36.18.012(3).

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

5 The minority and women's business enterprises account is created
6 in the custody of the state treasurer. All receipts from RCW
7 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under
8 RCW 39.19.090 shall be deposited in the account. Expenditures from
9 the account may be used only for the purposes defraying all or part
10 of the costs of the office in administering this chapter. Only the
11 director or the director's designee may authorize expenditures from
12 the account. Moneys in the account may be spent only after
13 appropriation.

14 **Sec. 7.** RCW 39.19.250 and 2019 c 434 s 4 are each amended to
15 read as follows:

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

26 (2) The office must develop and maintain a list of contact people
27 at each state agency and educational institution who are able to
28 present to hearings of the appropriate committees of the legislature
29 its progress in carrying out the purposes of chapter 39.19 RCW.

30 (3) The office must submit a report aggregating the data received
31 from each state agency and educational institution, and the
32 information identified and actions taken under RCW 39.19.060(3) and
33 39.19.090(4), to the legislature and the governor.

34 **Sec. 8.** RCW 39.04.155 and 2019 c 434 s 5 are each amended to
35 read as follows:

36 (1) This section provides uniform small works roster provisions
37 to award contracts for construction, building, renovation,

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

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

35 (b) A state agency establishing a small works roster or rosters
36 shall adopt rules implementing this subsection. A local government
37 establishing a small works roster or rosters shall adopt an ordinance
38 or resolution implementing this subsection. Procedures included in
39 rules adopted by the department of enterprise services in
40 implementing this subsection must be included in any rules providing

1 for a small works roster or rosters that is adopted by another state
2 agency, if the authority for that state agency to engage in these
3 activities has been delegated to it by the department of enterprise
4 services under chapter 43.19 RCW. An interlocal contract or agreement
5 between two or more state agencies or local governments establishing
6 a small works roster or rosters to be used by the parties to the
7 agreement or contract must clearly identify the lead entity that is
8 responsible for implementing the provisions of this subsection.

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

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

3 (e) Immediately after an award is made, the bid quotations
4 obtained shall be recorded, open to public inspection, and available
5 by at least one of the following: Telephone or electronic request.

6 (f) For projects awarded under the small works roster process
7 established under this subsection, a state agency or authorized local
8 government may waive the retainage requirements of RCW
9 60.28.011(1)(a), thereby assuming the liability for contractor's
10 nonpayment of: (i) Laborers, mechanics, subcontractors,
11 materialpersons, and suppliers; and (ii) taxes, increases, and
12 penalties under Titles 50, 51, and 82 RCW that may be due from the
13 contractor for the project. However, the state agency or local
14 government has the right of recovery against the contractor for any
15 payments made on the contractor's behalf. Recovery of unpaid wages
16 and benefits are the first priority for actions filed against the
17 contract.

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

28 (b) For limited public works projects, a state agency or
29 authorized local government shall solicit electronic or written
30 quotations from a minimum of three contractors from the appropriate
31 small works roster and shall award the contract to the lowest
32 responsible bidder as defined under RCW 39.04.010. After an award is
33 made, the quotations shall be open to public inspection and available
34 by electronic request. A state agency or authorized local government
35 must equitably distribute opportunities for limited public works
36 projects among contractors willing to perform in the geographic area
37 of the work. A state agency or authorized local government shall
38 maintain a list of the contractors contacted and the contracts
39 awarded during the previous twenty-four months under the limited
40 public works process, including the name of the contractor, the

1 contractor's registration number, the amount of the contract, a brief
2 description of the type of work performed, and the date the contract
3 was awarded. For limited public works projects, a state agency or
4 authorized local government may waive the payment and performance
5 bond requirements of chapter 39.08 RCW and may waive the retainage
6 requirements of RCW 60.28.011(1)(a), thereby assuming the liability
7 for the contractor's nonpayment of laborers, mechanics,
8 subcontractors, materialpersons, suppliers, and taxes, increases, and
9 penalties imposed under Titles 50, 51, and 82 RCW that may be due
10 from the contractor for the limited public works project, however the
11 state agency or authorized local government shall have the right of
12 recovery against the contractor for any payments made on the
13 contractor's behalf.

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

18 (5) A state agency or authorized local government may use the
19 limited public works process in this section to solicit and award
20 small works roster contracts to minibusinesses and microbusinesses as
21 defined under RCW 39.26.010 that are registered contractors.

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

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

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

36 NEW SECTION. **Sec. 9.** The following acts or parts of acts are
37 each repealed:

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

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

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