

SENATE BILL REPORT

SB 5268

As Reported by Senate Committee On:
State Government & Elections, January 27, 2023

Title: An act relating to equity and efficiencies in public works procurement including modifying small works roster requirements.

Brief Description: Addressing equity and efficiencies in public works procurement including modifying small works roster requirements.

Sponsors: Senators Hasegawa, Warnick, Hunt, Keiser, Kuderer, Nguyen, Nobles, Saldaña, Valdez, Wagoner and Wilson, C..

Brief History:

Committee Activity: State Government & Elections: 1/20/23, 1/27/23 [DPS-WM].

Brief Summary of First Substitute Bill

- Modifies small works roster requirements to address equity and efficiencies in public works procurement.
- Updates and revises the small and limited works roster process to increase administrative efficiency.
- Requires the Office of Minority and Women's Business Enterprises to adopt rules governing a public works small business certification plan.
- Removes the requirement for the Department of Enterprise Services to survey and which states provide a bidding preference on public works contracts for their resident contractors.
- Requires the Capital Projects Advisory Review Board (CPARB) to review construction cost escalation data for Washington State.
- Requires CPARB to make recommendations to the appropriate committees of the Legislature on adjustments to existing contracting thresholds.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5268 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Dozier, Fortunato, Hasegawa and Kuderer.

Staff: Danielle Creech (786-7412)

Background: Inclusion Plans. Inclusion plans are required for Department of Enterprise Services (DES) public works contracts valued at \$1 million or more. For these contracts, the prime contractor identifies subcontracting opportunities and sets voluntary goals to include small and diverse businesses.

Small Works Roster Requirements. Small works rosters consist of responsible contractors who have requested to be on the list and, where required by law, are properly licensed and registered to do work in Washington. Contractors on small works rosters can bid for eligible projects below \$350,000. Agencies may require prospective contractors to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the appropriate state agency or local government as a condition of being placed on a roster. Agencies should require contractors to update their information each year. A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. A roster can make distinctions between contractors based upon different geographic areas served by the contractor.

Eligibility. The following local government agencies are specifically authorized to use the small works roster process, including:

- cities and towns;
- counties;
- fire protection districts;
- housing authorities;
- irrigation districts; metropolitan park districts;
- port districts;
- public hospital districts;
- public utility districts;
- school districts, and;
- water-sewer districts.

Agencies without specific public works statutes are also permitted to use a similar roster process.

Procedure. Agencies must publicly advertise the roster at least once per year in a newspaper of general circulation within the district, soliciting the names of eligible contractors. At least

once per year, agencies must post a list of all small works roster contracts awarded regardless of dollar value, including the date, name of the contractor, the amount of the contract, a brief description of the type of work performed, and the location where the bid quotations for these contracts are available for public inspection.

Procedures must be established for securing quotations from contractors to assure that a competitive price is established and to award contracts to the lowest responsible bidder. Invitations for quotations must include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished, but detailed plans and specifications are not required to be included.

Awards. For projects awarded under the small works roster process, a state agency or authorized local government may waive the statutory retainage requirements, thereby assuming the liability for contractors nonpayment of laborers, mechanics, subcontractors, material persons and suppliers, and taxes, increases, and penalties that may be due from the contractor for the project.

Summary of Bill (First Substitute): Small Works Rosters. A state agency or authorized local government establishing a small works roster must require contractors who desire to be placed on the roster to indicate if they meet the definition of a women and minority-owned business, veteran-owned business, or small business. As a condition of being placed on the roster and award of contract, contractors must keep current records of any applicable licenses, certifications, registrations, bonding insurance, or other appropriate matters on file with the appropriate agency. At least once per year, the state agency or local government must publish a solicitation of contractors for the roster in a newspaper of general circulation, providing the Office of Minority and Women's Business Enterprises (OMWBE) directory of certified firms a notice of the existence of the roster.

Statewide Small Works Roster. The Department of Commerce (Commerce), through the Municipal Research and Services Center (MRSC), must develop a statewide small works roster by June 30, 2024. MRSC must develop criteria for the statewide roster with collaboration from affected state and local agencies. The roster must have features to filter the roster by different specialties, categories of anticipated work, or geographic areas served by contractors. The roster must also indicate whether the contractor is designated as a small business. Commerce must provide funding to the program as appropriated to maintain and publicize a small works roster, and work with MRSC to notify state and local governments authorized to use small works rosters. State agencies and authorized local governments using small works rosters must establish procedures for implementation.

DES must develop and make available on its website templates for bid invitations, bidding, and contracting that may be used by state agencies, authorized local governments, and contractors.

A state agency or authorized local government contracting through a small works roster

must invite bids notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographic area.

For small public works projects with an estimated cost less than \$150,000 state agencies and local governments may, and are encouraged to, direct contract with small businesses without a competitive process before direct contracting with other contractors on the appropriate small works roster.

If there are six or more contractors meeting the definition of small businesses on the applicable roster, the state agency or authorized local government must direct contract with one of those small businesses that have interest in performing work in the applicable geographic area.

If there are five or fewer contractors meeting the definition of small business on the applicable roster, the state agency or authorized local government may direct contract with any contractor on the applicable roster.

For small public works contracts under \$5,000, there is no requirement for retainage or performance bonds. After the award is made, the bid quotations must be recorded and publicly available. State agencies and authorized local governments must annually publish a list of small works contracts awarded and the contractors contacted for direct negotiation.

Administrative Procedures. A public works small business certification program is added to the Administrative Procedures Act. OMWBE must adopt rules governing a public works small business certification plan.

Other Provisions. References to disadvantaged business enterprises are replaced with references to small and women, minority, or veteran-owned small business entities. DES is no longer required to conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident contractors.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT & ELECTIONS COMMITTEE (First Substitute):

- Standardizes references to small, minority, women, and veteran-owned businesses.
- Repeals requirements of the Department of Enterprise Services to develop rules in association with a decade-old, one-time survey.
- Changes references to the Municipal Research and Services Program to the Municipal Research and Services Center.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2023.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill was recommended unanimously by the Capital Projects Advisory Review Board after many varied interests worked together to come to a consensus. Having efficient processes and equitable systems will ensure that Washington continues to have a strong small business community and worker pipeline. This bill will create standardization which will lead to consistency and accessibility to contractors. It is important to help remove barriers for small contractors to engage in public works projects.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; James King, Independent Business Association; Mark Riker, Executive Secretary, WA State Building and Construction Trades Council; Janice Zahn, Chair, CPARB; Chris Herman, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying: No one.