



## Agency Request Legislation: Small Works Rosters and Limited Public Works

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### **STATEMENT OF NEED**

The current dollar limitations on small and limited public works bidding processes are too low, limiting the ability of small, diverse, and veteran-owned contractors to get work and slowing down the administration of public works projects. Additionally, bonding and retainage requirements for small works rosters act as a barrier for small, diverse, and veteran-owned contractors from being competitive in the marketplace. The Department of Enterprise Services (DES) proposes increasing the maximum limits on the small and limited public works bidding processes and allowing contracting agencies the option of waiving the retainage requirement for small works roster projects.

### **Background**

Currently, a small works roster is a method of delivery for public works projects that allows for a quicker and more efficient competitive process for public works projects that are under \$300,000. An authorized state agency or local government may create a small works roster through advertisement. Responsible contractors are placed on the roster at any time at their request. Multiple small works rosters may be created based on specialty or categories of work and may make distinctions based on geographic areas of work. Both the small and limited public works bidding processes use the small works roster.

When a project estimated to be under \$300,000 arises, the agency or local government can use the small works roster by soliciting quotations for the work from at least five contractors on the appropriate small works roster. Once the quotes are received, the contract is awarded to the lowest responsible bidder.

The limited public works bidding process uses the small works roster but quotations need to be solicited from three (instead of five) contractors and the limited public works process applies to projects estimated to be under \$35,000 (instead of \$300,000 for small works). Additionally, agencies and local governments can waive performance bond and retainage bond requirements for limited works and can directly target small businesses to solicit quotes.

<b>Current Small Works Roster Requirements</b>		
	Small Works	Limited Works*
Maximum dollar threshold	\$300,000	\$35,000
Minimum number of contractors solicited	5	3
Ability to waive payment/performance bond requirement?	No	Yes
Ability to waive retainage requirement?	No	Yes
Ability to solicit and award to small business?	No	Yes

**\*Note: The limited works process is a subset of the small works roster process and uses the small works roster.**

### **Proposed Changes**

DES proposes increasing the maximum dollar thresholds for small and limited public works bidding processes. For small works, the proposal increases the limit from \$300,000 to \$500,000, and for limited public works, the proposal increases the limit from \$35,000 to \$150,000.

Another proposed change is to allow contracting agencies to waive the retainage requirement for small works projects in addition to the authority agencies already have to waive retainage for limited works projects. The proposal would still allow contracting agencies to waive the payment/performance bond requirements for limited works.

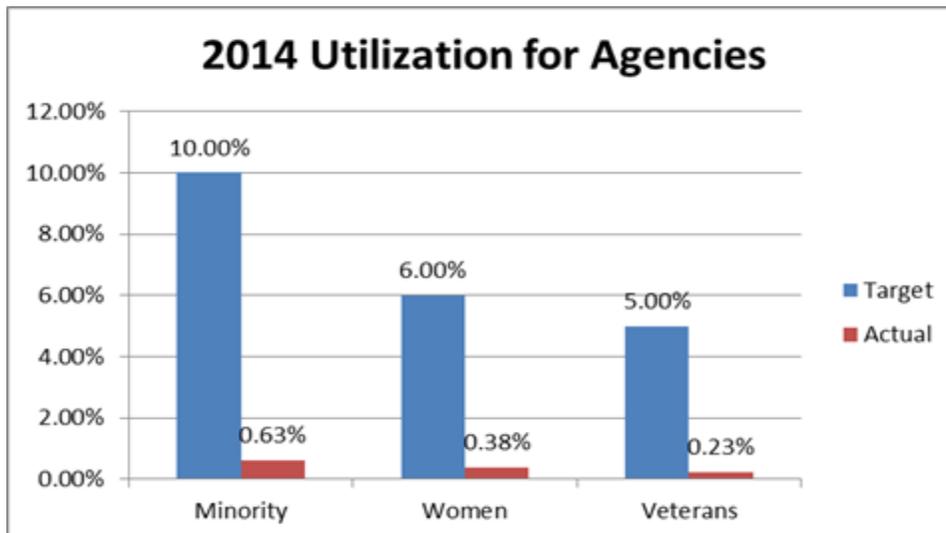
Additionally, the proposed changes would allow contracting agencies to solicit and award contracts to small and veteran-owned businesses for small works roster contracts. The proposal would modify the existing authority for contracting agencies to solicit and award contracts from small business to mini and micro businesses for limited public works construction projects.

<b><u>Proposed</u> Small Works Roster Requirements (Changes underlined)</b>		
	Small Works Roster	Limited Public Works
Maximum dollar threshold	<u>\$500,000</u>	<u>\$150,000</u>
Minimum number of contractors solicited	5	3
Ability to waive payment/performance bond requirement?	No	Yes
Ability to waive retainage requirement?	<u>Yes</u>	Yes
Ability to solicit and award to small businesses?	<u>Yes</u>	Yes
Ability to solicit and award to veteran-owned businesses?	<u>Yes</u>	No

## Reasons for Making these Changes

### Increased Opportunity for Small, Diverse, and Veteran-owned Businesses

Currently, small and diverse businesses represent only about 1 percent of total state spending with the private sector; this is well below the state’s goal of 10 percent for minority owned businesses. The chart below shows the state utilization in 2014 of minority-, women-, and veteran-owned businesses for state contracts compared to the state goals:



Source: Office of Minority & Women’s Business Enterprises



Raising the dollar thresholds for the small and limited works bidding processes is one good way the state agencies can reduce barriers to doing business with the state and increase opportunities for small and diverse business.

The proposal removes common barriers to small and diverse businesses by allowing more flexibility for contracting agencies to waive the retainage requirement in the small works process. While bonding and retainage are important tools for the state to control risk on projects, the risk for waiving them for small works roster projects is low due to the size of the projects and having other up-front methods to reduce risk, including responsibility criteria for contractors.

Making these two changes could have saved small and diverse businesses working with DES around \$650,000 in up-front costs and around \$2.24 million in retainage during the 2013-15 biennium. This is a large amount of money that gets “tied up” when doing construction for the state and may severely limit a contractor’s cash flow, especially if that contractor is a small business. Removing these barriers would not only help the small businesses currently working for the state, it is also likely to attract additional small businesses for small works rosters.

The proposal also creates more opportunity for the small businesses on small works rosters in a couple ways. First, increasing the maximum dollar thresholds for the small and limited public works increases the number of projects available for small businesses. For example, these threshold changes could have opened up an additional \$40 million in potential opportunity for small businesses during the 2013-15 biennium for DES-managed projects.

Another way the proposal increases opportunities for small businesses is by greatly increasing agencies’ ability to solicit bids exclusively from small business. In current law, this capability only exists for limited public works projects. Expanding this ability to solicit from small and veteran-owned businesses, coupled with the increase in maximum dollar thresholds, greatly increases the opportunity for small businesses to get work with the state.

Small works rosters are a great opportunity for smaller contractors because they can compete on a level playing field with other small contractors, giving them the opportunity to strengthen and grow their businesses, build relationships with subcontractors and suppliers, increase their credit and bonding capacity, and give them experience working with state and local agencies. This helps these small contractors get future work. Making the proposed changes to expand and update the small works roster is a great step to moving the need on small business participation in public works.



For these reasons, the proposal aligns with Governor Inslee's Goal #2: A Prosperous Economy and contributes to the Governor's subcabinet on business diversity's goal of increasing utilization of small and minority-, women-, and veteran-owned businesses.

#### Greater Administrative Efficiency

In addition to improving the utilization of small and diverse business in public works, another advantage is that the proposal results in an expansion of a quicker and more efficient competitive process for public works projects. The small works roster process allows agencies to solicit bids from a pre-qualified list of contractors, making it a more efficient competitive process than the traditional process. Small works rosters have the benefits of a quicker process while still making contractors compete for work, ensuring the state still gets value for its money. Increasing the maximum dollar thresholds for small and limited public works bidding processes increases the number of projects that can use this process, allowing for quicker administration of public works projects. Because of this, this proposal also aligns with Governor Inslee's Goal #5: Efficient, Effective, and Accountable Government.



## **SUMMARY OF THE MAJOR PROVISIONS IN THE DRAFT BILL**

The proposed bill updates and modifies the small and limited public works bidding process by increasing the maximum dollar thresholds for both, modifying the retainage requirements for small works roster construction projects, and expanding the ability of contracting agencies to solicit bids exclusively from small business. To make it easier for contractors, state agencies, and local governments, the current small and limited public works are repealed and replaced with the updated versions.

**Section 1:** Intent section.

**Section 2:** Authorizes state agencies and certain local governments to have a small works roster for projects under \$500,000. This section lays out what a small works roster entails, and who can be added to the small works roster. This section also requires agencies and local governments to advertise the small works roster once a year and defines “state agency” and “equitably distributes.”

**Section 3:** Lays out the procedures for small works rosters, including how many invitations for solicitations and specifies that the invitations for solicitations must be equitably distributed. This section also authorizes agencies and local governments to waive retainage for small works roster projects. Also allows agencies and local governments to solicit bids from small and veteran-owned businesses as defined under RCW 39.26.010.

**Section 4:** Allows agencies to use the small works roster process to award limited public works projects for projects under \$150,000. Lays out the process for limited public works, including how many invitations to bid must be distributed. Allows state agencies and local governments to waive bonding and retainage requirements for limited public works. Also authorizes agencies and local governments to solicit bids from mini- and microbusinesses as defined under RCW 39.26.010.



**Section 5:** Requires agencies to adopt rules or ordinances implementing small works. Requires DES (was changed from Department of Commerce in underlying statute) to work with the municipal research and services center to provide guidance on using small works rosters to local governments.

**Sections 6 through 25:** Correct cross references.

**Section 26:** Adds sections 2 through 5 to RCW 39.04

**Section 27:** Repeals RCW 39.04.155 and RCW 39.04.156.