

## SMALL WORKS ROSTER Frequently Asked Questions

### A WALK THROUGH THE NEW ACT:

**Section 1** begins with the Intent behind this re-write of the Small Works Roster legislation. Administrative efficiency for owners and increased utilization of small business participation and protection of the rights of workers.

**Section 2** provides definitions for this chapter.

The subcommittee found these two sections are important to provide clear expectations for and the goals set by the content within this act and how it is intended to be utilized by all parties.

**Section 3** sets the foundation for establishing, maintaining, and utilizing a Small Works Roster. In addition, MRSC rosters will be expanded and enhanced to create a statewide roster available to contractors and agencies for streamlined participation by contractors and procurement activities for agencies.

**Section 4** outlines the competitive bidding and direct contracting tools that are available under this act. *See images below for comparison of the changes.*

**Section 5** sets the rotation cycle for regular review of the public works threshold.

**Section 6** corresponding/affected statutes for agencies authorized to use the provisions of this act

- **What is new in the proposed legislation change for Small Works Roster?**

An update and revision to the process to increase administrative efficiency, to encourage greater participation and utilization by women-, minority-, and veteran-owned business and small business entities, and to protect the rights of workers engaging in public works projects.

## SMALL WORKS ROSTER Frequently Asked Questions

### PREVIOUS STATUTE OVERVIEW:

PUBLIC WORKS CATEGORIES	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Limited Public Works	< \$50,000	Small Works Roster Process, Invite Quotes from All or select minimum of 3	Public Owners allowed the option to assess risk and determine waiver of retainage	Allows waiver of bonds	Allows for combined intent/affidavit forms per 39.12.040 (2)  Otherwise, Individual Intent/Affidavits Required
Small Works	\$50,000 - \$250,000	Small Works Roster Process, Invite Quotes from All or select from minimum of 5	Public Owners allowed the option to assess risk and determine waiver of retainage	Allow 10% retainage in lieu of Bond for public works contracts under \$150,000	Individual Intent/Affidavits Required
	\$250,000 – \$350,000 *\$300,000 for Port and Irrigation Districts	Small Works Roster Process, Invite Quotes from all Contractors on Rosters	Public Owners allowed the option to assess risk and determine waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

### PROPOSED LEGISLATION OVERVIEW:

PUBLIC WORKS CATEGORY	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Small Works	Under \$150,000	1) Contract through direct negotiation with equitable distribution OR 2) solicit quotes from all on the appropriate roster	Under \$5,000 – No retainage Required  All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Under \$5,000 – No bond Required  Allow 10% retainage in lieu of Bond	Under \$5,000 – Combo Forms allowed  Individual Intent/Affidavits Required
	\$150,000 – \$350,000	Invite Quotes from all Contractors on Rosters	All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

## SMALL WORKS ROSTER Frequently Asked Questions

- What is the public works threshold...does it increase the dollar limit for the SWR?**

This act sets the threshold for public works at \$350,000 and standardizes that dollar value for all agencies authorized to utilize the Small Works Roster Act. Small Works Roster projects are those public works with an estimated cost under \$350,000 exclusive of WA state sales tax.

The previous limited public works threshold of \$50K is replaced by a new threshold of \$150k and allows for direct contracting under certain conditions.

For projects \$150k or less, the public body may send notice to bid to all firms on the roster category, OR the public body may contract directly with a firm on the roster category. There is a preference for small business built into the act to encourage the utilization of these contractors. See Section 4 subsection 2.

### Defining Thresholds

- Two primary public works thresholds
  - Bid Threshold
  - SWR
- Take a variety of forms across agency types

Government Type	Bid Threshold	Small Works Roster Threshold	Applicable RCW	Limits for Work by Agency Employees
Area Agency on Aging	Subject to state bid requirements of RCW 43.19		74.38.050	Follows state requirements of RCW 43.19
City, first class	\$75,500 (1 craft) \$150,000 (>1 craft)	\$350,000	35.22.620	Per project: \$75,500 (1 trade), \$150,000 (>1 trade), NTE 10% of public works budget.
City, second class and towns city code	\$75,500 (1 craft) \$116,155 (>1 craft)	\$350,000	35.23.352 35A.40.210	Per project: \$75,500 (1 trade), \$116,155 (>1 trade), NTE 10% of public works budget.
Conservation district	None; established by policy		89.08	No statutory limits - set by policy
County, population >400k with purchasing department	\$0	\$350,000	36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade), NTE 10% of public works budget.
County, population <400,000 with purchasing department	\$0	\$350,000	36.32.240 36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade), NTE 10% of public works budget.
County without purchasing department	\$40,000	\$350,000	36.32.250	Allowed for non-road projects; road project limits set according to population and motor vehicle fuel tax factor
Educational service district (ESD)	None; established by policy (unless contracting on behalf of a school district, in which case school district bid laws apply)		28A.310	Most restrictive of establishing jurisdiction; if NA then by policy
Fire district	\$20,000	\$350,000	52.14.110	Not authorized
Flood/diking/drainage district	\$5,000	\$350,000	85.38.190	\$5,000
Health district	None; established by policy		70.46	No statutory limits - set by policy
Hospital district	\$75,000	\$350,000	70.44.140	\$75,000
Housing authority	None; established by policy		35.82; AGO 2009 No. 2	No statutory limits - set by policy

Government Type	Bid Threshold	Small Works Roster Threshold	Applicable RCW	Limits for Work by Agency Employees
Intergovernmental agreement	Most restrictive of establishing jurisdiction		39.34	Most restrictive of establishing jurisdiction
Irrigation district	\$0	\$300,000	8703.435-436	No limit; must bid materials used by employees; must follow public works bid process when materials unless provided by contractor
Library district	None; established by policy		27.12	Most restrictive of establishing jurisdiction; if NA then by policy
Mosquito control district	None; established by policy		17.28	No statutory limits - set by policy
Park and recreation district	None; established by policy		36.69	Most restrictive of establishing jurisdiction; if NA then by policy
Metropolitan parks district	\$20,000	\$350,000	35.61.135	\$20,000
Port district	\$40,000	\$300,000	53.08.120	Allowed for all projects, except when over \$40k; must make a determination whether cost is lower performed by contract
Public development authority (PDA)	Statutes of creating city or county		35.21.730	Statutes of creating city or county
Public facilities district (PFD)	None; established by policy		36.100.030 35.570.20	No statutory limits - set by policy
Public utility district (PUD)	\$50,000	\$350,000	54.04.070	\$300,000
Reclamation district (over 1 million acres)	All public works must be formally bid		89.30.154	Not authorized
Regional support network (RSN)	Statutes of creating county		71.24.300	Statutes of creating county
School district	\$100,000	\$350,000	28A.335.190	\$75,000
Self-insurance risk pool	Most restrictive of establishing jurisdiction		48.62	Most restrictive of establishing jurisdictions
State college or university	\$45,000 (1 craft) \$90,000 (>1 craft)	\$350,000	28B.10.350 28B.50.330	\$45,000 (1 craft) \$90,000 (>1 craft)
Transportation authority (under RCW 36.57 or 36.57A)	None; established by policy		36.57A	No statutory limits - set by policy
Transportation authority (under RCW 35.21.225 or 36.73)	Statutes of creating city or county		35.21.225 36.73	Most restrictive of establishing jurisdictions
Water-sewer district	\$50,000	\$350,000	5708.050	\$50,000

Note: "Craft" refers to professional trades. The bid threshold is thus based on the number of professional trades required to complete a project.

- Which businesses are eligible to be on the SWR?**

SWR is open to all responsible contractors who have requested to be on the list, and where required by law, are properly licensed or registered to perform such work in this state in accordance with 39.04.350.

Contractors must indicate if they meet the definition of women-, minority-, veteran-owned business and/or small business as defined in this act.

## **SMALL WORKS ROSTER**

### **Frequently Asked Questions**

Contractors must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on the roster.

- **What is considered a small business?**

- “Small business” means a business meeting certification criterion for size, ownership, control, and personal net worth adopted by the Office of Minority & Women’s Business Enterprises in accordance with RCW 39.19.030(7)(b).
- A small business is based on U.S. Small Business Administration (SBA) size standards.
- Average of annual gross revenue less than \$28.48M, or less depending on NAICS code (specialty subcontractors are \$16.5M for example). And owner’s net worth must be \$1.32M or less, excluding value of primary residence and business.
- The definition of small business matches the federal definition without the requirement for citizenship or permanent resident.
- There is no race or gender preference in the definition or certification of a small business.

- **What are the requirements for direct contracting?**

- For small public works projects with an estimated cost less than \$150,000, not including sales tax, to increase the utilization of small businesses, state agencies and local governments are encouraged to and may direct contract with small businesses as defined in the act.
  - (a) if there are 6 or more contractors meeting the definition of small business on the applicable roster the state agency or authorized local government must direct contract with one of those small businesses on the applicable roster that have indicated interest in performing work in the applicable geographical area.
  - (b) if there are 5 or less 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.
- Invitations for bids or direct contract negotiation must include, at a minimum, an estimate for the scope of work including the nature of the work to be performed as well as the materials and equipment to be furnished. Detailed plans and specifications need not be included.

- **Why are the direct contract numbers at 6 or more and 5 or less?**

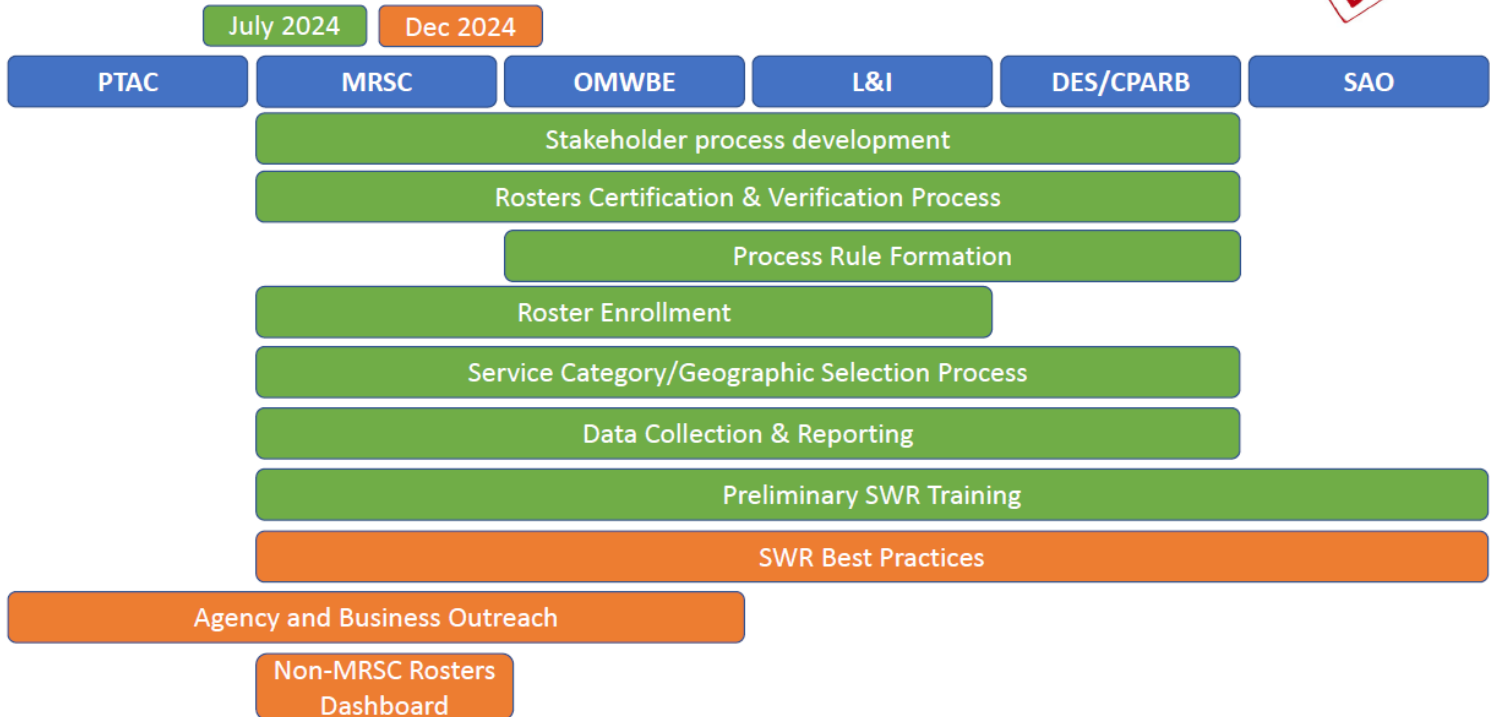
- Finding a consensus and a middle ground for this number was a major discussion.
- While using a smaller number would give the perception that there is more of an opportunity for smaller businesses, using a larger number provides a pool of contractors available to do the work, particularly for smaller agencies and authorized local governments struggling to find contractors to perform work today.

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- The limited public works and small works roster processes from the past used a “3-5 contractors” in the solicitation process. Various iterations of this new SWR act were written/re-written with 5 being the accepted compromise.
  
- **What is the effective date of this bill?**  
 The expected implementation date is no later than July 1, 2024.
  
- **Why will it take until July 2024 to fully execute this bill?**
  - Pending approval by the Legislature in spring of 2023, various agencies’ tasks, hiring, technical requirements and processes will need time to be funded, developed, tested, and training developed before full implementation can occur.
  - We currently don’t have a small business certification process today – the work to be completed to implement a successful roll out is depicted here below:

### Small Works Roster Implementation Tasks

**DRAFT**



## SMALL WORKS ROSTER Frequently Asked Questions

		Business Type								
		Not Small	Small							
<\$150K Direct Contract										
Action	Scenarios									
Direct Contract any	No Small									
Direct Contract Small Business	6 or more Small									
Direct Contract any	5 or less Small									

### GUIDANCE TO BE PROVIDED TO PUBLIC OWNERS.

- What does the small business certification process look like?**

Certification is a rigorous process to eliminate fraud. Non-certified firms are encouraged to be certified.

If found not meeting the definition, a business may not receive preference for small works projects under \$150K where direct contracting is utilized.

- What about specialized work?**

A public body or roster sponsor needs to determine what categories it needs in its roster.

Should it believe there is a need for a roster category of various specialized work, then it needs to establish that roster category.

The process of populating the all the roster categories is as noted above and the process of sending invitations to bid to all firms in the roster remains the same.

- Why is \$5,000 the threshold at which retainage and bonding is not required (why not higher)?**

Contractor's must provide surety bond for their contractor license/registration, which is either \$6,000 or \$12,000, depending on their specialty. This should cover any unpaid wages thereby protecting the rights of the workers.

For contracts greater than \$5,000, the awarding agency may reduce or waive retainage requirements up to \$350K, thereby assuming the liability for the contractor's nonpayment of: (a) Laborers, subcontractors, and suppliers; and (b) taxes (see Section 4 (3)).

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- **What needs to be included in the Small Business Utilization Plan?**

A stakeholder group will be meeting including business and agency outreach to define and develop best practices.

- **What does documentation look like for good faith efforts look like?**

Annually, a state agency or authorized local government must publish a list of small works contracts awarded and contractors contacted for direct negotiation pursuant to 39.04.200. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.