



# **SCHOOL BOARD ACTION REPORT**

**DATE:** May 8, 2020  
**FROM:** Denise Juneau, Superintendent  
**LEAD STAFF:** JoLynn Berge, Chief Financial Officer, [jdberge@seattleschools.org](mailto:jdberge@seattleschools.org);

**For Introduction:** June 10, 2020  
**For Action:** June 24, 2020

## **1. TITLE**

Amending Board Policy No. 6222, Selection of Contractors for Small Construction Projects

## **2. PURPOSE**

This Board Action Report makes edits to Board Policy No. 6222, Selection of Contractors for Small Construction Projects, in order to align with new limits in state law. This edit modifies the contract amount for which a Small Works Roster may be used in accordance with RCW 28A.335.190 and RCW 39.04.155.

## **3. RECOMMENDED MOTION**

I move that that the School Board amend Board Policy No. 6222, Selection of Contractors for Small Construction Projects, as attached to the Board Action Report.

## **4. BACKGROUND INFORMATION**

### **a. Background**

Small Works Rosters were created to minimize procedural work associated with bidding smaller projects. As part of recent legislation, the contract amount for which a Small Works Roster may be used was increased to \$350,000. This proposed policy change would modify the contract amount for which a Small Works Roster may be used in accordance with RCW 28A.335.190 and RCW 39.04.155.

The proposed change to Board Policy 6222 is necessary to align amounts in district policy to current law.

### **b. Alternatives**

Do not take action. This is not recommended because it would result in District policy being more restrictive than state law. This would impact operational efficiencies. It is also confusing when district policy does not align with state law for contracting limits.

### **c. Research**

RCW 28A.335.190 and RCW 39.04.155.

## **5. FISCAL IMPACT/REVENUE SOURCE**

It is assumed that raising this threshold will result in some savings from expanded use of the Small Works Roster. Actual savings amounts are indeterminate.

Expenditure: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

## 6. **COMMUNITY ENGAGEMENT**

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☒ Not applicable

☐ Tier 1: Inform

☐ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

## 7. **EQUITY ANALYSIS**

This motion was not put through a formal racial equity analysis as the proposed edits conform to language in applicable state law.

## 8. **STUDENT BENEFIT**

Incorporating the new legal requirements allows the district to take advantage of higher contract limits. Small Works Rosters were created to minimize procedural work associated with bidding smaller projects. When fewer resources and staff are needed to administer central office functions, more funding is available to benefit students.

## 9. **WHY BOARD ACTION IS NECESSARY**

☐ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)

☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)

☒ Adopting, amending, or repealing a Board policy

☐ Formally accepting the completion of a public works project and closing out the contract

☐ Legal requirement for the School Board to take action on this matter

☐ Board Policy No. \_\_\_\_\_, [TITLE], provides the Board shall approve this item

☐ Other: \_\_\_\_\_

## **10. POLICY IMPLICATION**

This motion would update Policy No. 6222, Selection of Contractors for Small Construction Projects, to incorporate new statutory limits for Small Works Rosters.

## **11. BOARD COMMITTEE RECOMMENDATION**


This motion was discussed at the A&F Committee meeting on May 18, 2020. The Committee reviewed the motion and moved the item forward for Approval by the full board.

## **12. TIMELINE FOR IMPLEMENTATION**

Upon approval of this motion, revised Board Policy No. 6222, Selection of Contractors for Small Construction Projects, will immediately go into effect and will be posted online. Superintendent Procedure 6220SP.B will be updated to reflect the amended policy.

## **13. ATTACHMENTS**

- Amended Board Policy No. 6222, Selection of Contractors for Small Construction Projects – clean (for approval)
- Amended Board Policy No. 6222, Selection of Contractors for Small Construction Projects – track changes (for reference)
- RCW 28A.335.190, Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies (for reference)
- RCW 39.04.155, Small works roster contract procedures—Limited public works process—Definitions (for reference)

	<p>SELECTION OF CONTRACTORS FOR SMALL CONSTRUCTION PROJECTS</p>	<p>Policy No. 6222</p> <p>[date]</p> <p>Page 1 of 1</p>
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The School Board hereby authorizes the creation and maintenance of a Small Works Roster pursuant to RCW 28A.335.190 and RCW 39.04.155, and directs that it be used for contracts expected to cost under \$350,000.00 to the extent consistent with applicable law, cost and schedule constraints, and sound business practices.

Pursuant to RCW 39.04.155(5), the Board directs that the district shall establish a sub-roster for each trade, consisting of firms with annual gross revenue less than \$1,000,000 as shown on the federal tax return, and that contracts of less than \$35,000 shall be competed among firms listed on the applicable sub-roster whenever feasible. The district shall not require retainage or corporate surety bonds on small works contracts of less than \$35,000.

The Superintendent is authorized to develop procedures to implement the intent and requirements of this policy.

Adopted: February 2012

Revised: [date]

Cross Reference: 6220

Related Superintendent Procedure: 6220SP.B

Previous Policies: H47.00

Legal References: RCW 39.04.155, Small works roster contract procedures—Limited public works process—Definitions; RCW 28A.335.190, Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies

Management Resources:



## BAR:

June 4, 2020


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JoLynn Berge  
Chief Financial Officer  
[BudgetOffice@seattleschools.org](mailto:BudgetOffice@seattleschools.org)

This Board Action Report makes edits to Board Policy No. 6222, Selection of Contractors for Small Construction Projects, in order to align with new limits in state law. This edit modifies the contract amount for which a Small Works Roster may be used in accordance with RCW 28A.335.190 and RCW 39.04.155

	<p>SELECTION OF CONTRACTORS FOR SMALL CONSTRUCTION PROJECTS</p>	<p>Policy No. 6222</p> <p><u>[date]</u><del>February</del> <del>15, 2012</del></p> <p>Page 1 of 1</p>
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The School Board hereby authorizes the creation and maintenance of a Small Works Roster pursuant to RCW 28A.335.190 and RCW 39.04.155, and directs that it be used for contracts expected to cost under ~~-\$200,000-~~ -\$350,000.00 to the extent consistent with applicable law, cost and schedule constraints, and sound business practices.

Pursuant to RCW 39.04.155(5), the Board directs that the district shall establish a sub-roster for each trade, consisting of firms with annual -gross revenue less than \$1,000,000 -as shown- on the federal -tax return, and that -contracts of -less- than \$35,000 shall be competed among firms listed on the applicable sub-roster whenever feasible. The district shall not require retainage or corporate surety bonds on small works contracts of less than \$35,000.

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[RCWs](#) > [Title 28a](#) > [Chapter 28a.335](#) > [Section 28a.335.190](#)[28A.335.180](#) << 28a.335.190 >> [28A.335.200](#)**RCW [28A.335.190](#)****Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies.**

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the threshold levels specified in subsections (2) and (4) of this section, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids and that specifications and other information may be examined at the office of the board or any other officially designated location. The cost of any public work, improvement, or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment, or supplies, except books, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from forty thousand dollars up to seventy-five thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of seventy-five thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Any school district may purchase goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections pursuant to RCW [72.09.100](#), including but not limited to furniture, equipment, or supplies. School districts are encouraged to set as a target to contract, beginning after June 30, 2006, to purchase up to one percent of the total goods required by the school districts each year, goods

produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(4) The board may make improvements or repairs to the property of the district through a department within the district without following the public bidding process provided in subsection (1) of this section when the total of such improvements or repairs does not exceed the sum of seventy-five thousand dollars. Whenever the estimated cost of a building, improvement, repair, or other public works project is one hundred thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW [39.04.155](#) or under any other procedure authorized for school districts. One or more school districts may authorize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW [39.04.155](#).

(5) The contract for the work or purchase shall be awarded to the lowest responsible bidder as described in RCW [39.26.160](#)(2) but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(6) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(7) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW [28A.160.195](#).

(8) This section does not apply to the purchase of Washington grown food.

(9) At the discretion of the board, a school district may develop and implement policies and procedures to facilitate and maximize to the extent practicable, purchases of Washington grown food including, but not limited to, policies that permit a percentage price preference for the purpose of procuring Washington grown food.

(10) As used in this section, "Washington grown" has the definition in RCW [15.64.060](#).

(11) As used in this section, "price percentage preference" means the percent by which a responsive bid from a responsible bidder whose product is a Washington grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a Washington grown food.

[ [2013 c 223 § 1](#); [2008 c 215 § 6](#). Prior: [2005 c 346 § 2](#); [2005 c 286 § 1](#); [2000 c 138 § 201](#); [1995 1st sp.s. c 10 § 3](#); [1994 c 212 § 1](#); [1990 c 33 § 362](#); [1985 c 324 § 1](#); [1980 c 61 § 1](#); 1975-'76 2nd ex.s. c 26 § 1; [1969 ex.s. c 49 § 2](#); [1969 ex.s. c 223 § 28A.58.135](#); prior: [1961 c 224 § 1](#). Formerly RCW [28A.58.135](#), [28.58.135](#).]

## NOTES:

**Findings—Intent—Short title—Captions not law—Conflict with federal requirements—2008 c 215:** See notes following RCW [15.64.060](#).

**Purpose—Part headings not law—2000 c 138:** See notes following RCW [39.04.155](#).

*Alternative public works contracting procedures: Chapter [39.10](#) RCW.*

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[RCWs](#) > [Title 39](#) > [Chapter 39.04](#) > [Section 39.04.155](#)[39.04.135](#) << [39.04.155](#) >> [39.04.156](#)**RCW [39.04.155](#)****Small works roster contract procedures—Limited public works process—Definitions.**

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred fifty thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) 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. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of 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. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to 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 a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of enterprise services in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter [43.19](#) RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

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

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

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

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

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

(b) For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW [39.04.010](#). After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract

was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter [39.08](#) RCW and may waive the retainage requirements of RCW [60.28.011](#)(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes, increases, and penalties imposed under Titles [50](#), [51](#), and [82](#) RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

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

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

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

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

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

[ [2019 c 434 § 5](#); [2015 c 225 § 33](#); [2009 c 74 § 1](#); [2008 c 130 § 17](#). Prior: [2007 c 218 § 87](#); [2007 c 210 § 1](#); [2007 c 133 § 4](#); [2001 c 284 § 1](#); [2000 c 138 § 101](#); [1998 c 278 § 12](#); [1993 c 198 § 1](#); [1991 c 363 § 109](#).]

## NOTES:

**Finding—Intent—2019 c 434:** See note following RCW [35.23.352](#).

**Intent—Finding—2007 c 218:** See note following RCW [1.08.130](#).

**Purpose—2000 c 138:** "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [ [2000 c 138 § 1](#).]

**Part headings not law—2000 c 138:** "Part headings used in this act are not any part of the law." [ [2000 c 138 § 302](#).]

**Purpose—Captions not law—1991 c 363:** See notes following RCW [2.32.180](#).

*Competitive bids—Contract procedure:* RCW [36.32.250](#).

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