

Small Works

Efficiency and Equity in Public Works Contracting

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FACILITY PROFESSIONAL SERVICES

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DES

Washington State
DEPARTMENT OF
ENTERPRISE SERVICES



AGENDA

- Rulemaking process
- Background
- Outline review
- Discussion

WASHINGTON LAWS & RULES

State law – Revised Code of Washington (RCW)

- Passed by Legislature
- Signed by Governor or allowed to go into law
- State agency “marching orders”

Agency rules – Washington Administrative Code (WAC)

- Adopted by state agencies
- Public rulemaking process
- Administrative Procedures Act
- Interprets & implements state law

RULEMAKING PROCESS

Step 1
Announce rulemaking

Step 2
Publish draft
Public comment period

Step 3
File rule
Respond to comments
Explain decision

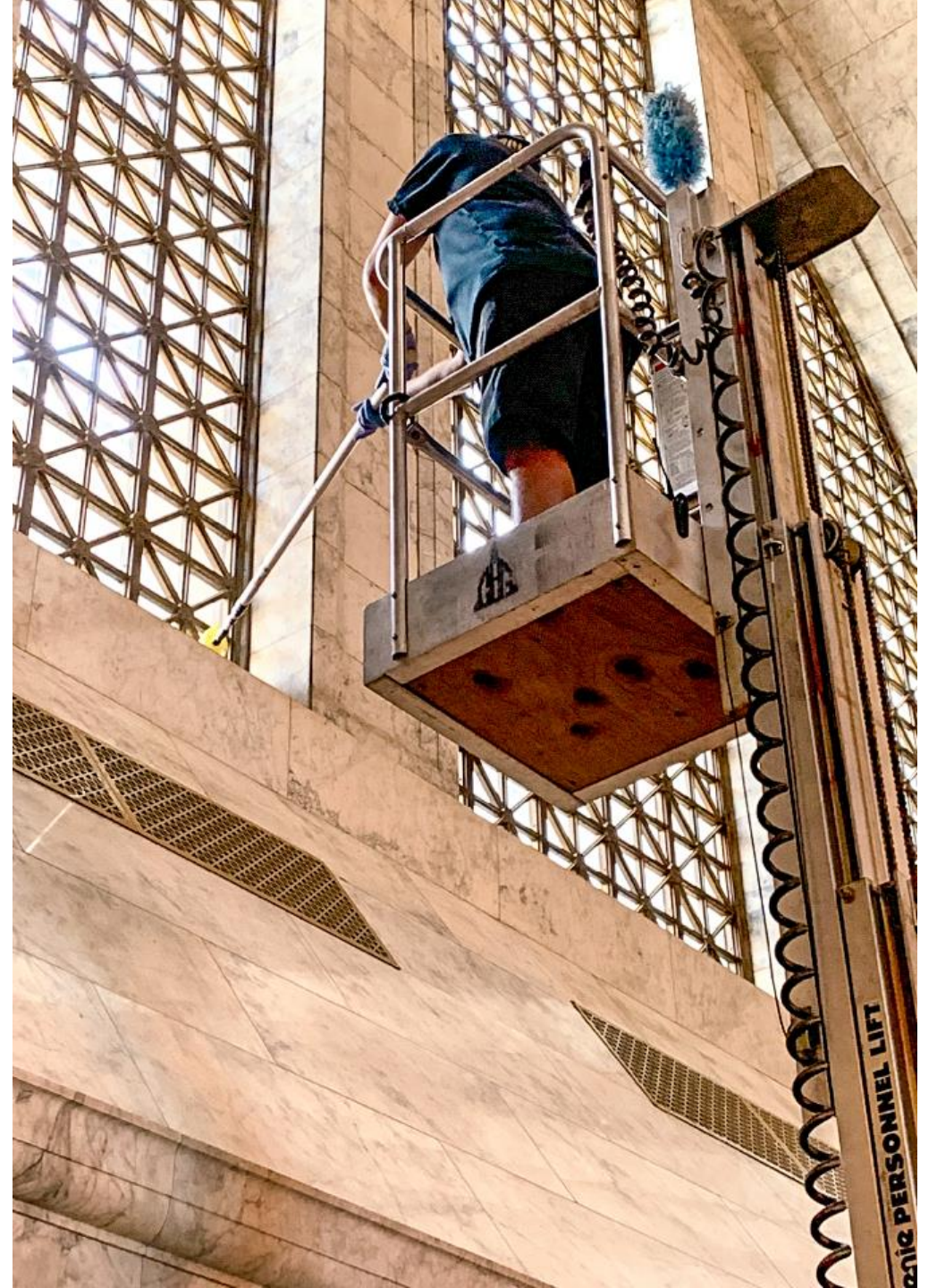


DES	Analyze law/rule, develop outline	Consider comments	Final rule
Public	Public and partner input	Public comment period	

BACKGROUND

PURPOSE OF CHANGES

- 1. Administratively efficient**
- 2. Promote small and diverse businesses**
- 3. Maintain labor protections**



KEY OVERALL CHANGES



Creates Small Business Certification



Establishes statewide small works roster



Clarifies language



Standardizes cost thresholds and adds direct contracting



Requires small business utilization plan – each agency creates



Builds in future market updates

SMALL WORKS CONTRACTS

Under \$350,000

- ✓ Agency estimate, does not include sales tax
- ✓ Agencies invite all contractors from the appropriate roster to bid
- ✓ Informal process
- ✓ Award to lowest responsive and responsible bidder

Under \$150,000*

- ✓ Agencies may direct contract through negotiation with a contractor from the appropriate roster
- ✓ Agencies must notify all contractors on the roster
- ✓ Agencies must rotate and not select the same firm repeatedly
- ✓ Small business preference
- ✓ *Six or more rule

DES' RULEMAKING

PURPOSE OF RULES UPDATE

WAC 200-330

- Align rules with state law
- Make the rules easier to read
- Update administrative procedures
- Provide guidance and interpretation

DRAFT RULE OUTLINE

1. Purpose and Authority
2. General roster rules and procedures
3. Small works contracting \$350,000 and under
4. Direct contracting \$150,000 and under
5. Miscellaneous

DISCUSSION

GROUND RULES

What we're discussing

- Rules provided in outline form to stimulate conversation
- Initial thoughts on sections in draft outline
- DES rules in WAC 200-330

Out of scope

- Recommendations for other agency rulemakings
- Changes to adopted state law
- Other DES rules

CONTRACT CAP

SB 5268 – 3 locations; “... to award contracts...with an estimated cost of \$350,000/\$150,000 or less excluding state sales tax.”

- **What if the agency estimate is \$340,000 and all bids come in at \$360,000?**
- **What if there is a change order exceeding the limits?**

DIRECT CONTRACTING - ROTATION

SB 5268 – Section 15; “[Agencies]... must rotate through the contractors on the appropriate small works roster”

- **What does rotation mean?**
- **How do we provide direction in the rules?**

DIRECT CONTRACTING - ROTATION

What happens if a contractor fails to respond to a solicitation for a Direct Contract?

- **How does this affect rotation?**

DIRECT CONTRACTING – ROTATION CON.

What happens if an agency and contractor cannot agree on a price for a Direct Contract?

- **How does this affect rotation?**

RESPONSIBILITY CRITERIA

RCW 39.04.350 Responsibility Criteria

- **Should the rules direct agencies to the responsibility criteria?**
- **How do we ensure contractors are set up to be successful?**

RECORD KEEPING

Should the Rules require specific records be kept?

- **On Rotation?**
- **Contractors who fail to respond to a solicitation for a direct contract?**
- **Agency and contractor negotiations for a direct contract?**

FUTURE

What are other topics that need clarity or direction through this DES rule making?



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THANK YOU



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