

## Chapter 200-330 WAC SMALL WORKS ROSTER

### WAC 200-330-010 Purpose and authority.

(1) The purpose of this chapter is to establish a common procedure that state agencies and local governments may use to award contracts under the small works roster process established in RCW 39.04.151.

(2) This chapter of the Washington Administrative Code is adopted pursuant to chapter 98, Laws of 1982 RCW 39.04.151, which authorizes requires the director of the department of enterprise services to adopt by rule a procedure to prequalify contractors for inclusion on a small works roster established by the state agencies enumerated in section 2, chapter 98, Laws of 1982. The procedure set forth in this chapter shall be utilized by those agencies in establishing a small works roster. procedures by rule implementing RCW 39.04.151.

### WAC 200-330-020 ~~Notice required by agency establishing small works roster~~Definitions.

~~Agencies desiring to establish an initial small works roster shall give notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be given by advertisements in publications widely circulated to the contracting community, by notices mailed directly to trade associations or to individual contractors, or by any effort reasonably calculated to assure that all contractors in the state of Washington become aware of the opportunity to be included on the small works roster.~~

As used in this chapter the terms:

(1) “Contracting agency” means all agencies and political subdivisions of the state with public works contracting authority.

(2) “Independent roster” means a small works roster established by a contracting agency either by itself or with another contracting agency.

(2) “MRSC” means the Municipal Research and Services Center.

(3) “OMWBE” means the Office of Minority and Women’s Business Enterprises.

(3) “Publicly available” means published on a contracting agency’s public website.

If an agency does not support a public website, the agency must make printed copies of the material available at the reception area of its headquarters by having printed copies available at the office’s reception desk or posted on a bulletin board available to the public at the office.

(4) “Public work” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the contracting agency, or

which is by law a lien or charge on any property therein. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Statewide roster" means the statewide small works roster developed by the Department of Commerce through MRSC.

WAC 200-330-030 ~~Contractors application form—Information required~~General Roster Rules and Procedures.

~~Contractors desiring to be included on a small works roster established by a state agency pursuant to chapter 98, Laws of 1982, shall submit a completed application form on a form prescribed by the director, department of enterprise services. Copies of the form may be obtained from the division of engineering and architecture and will contain the following information:~~

- ~~(a) Name of contracting firm, including designation as corporation, partnership, sole proprietorship, or otherwise;~~
- ~~(b) Address of contracting firm;~~
- ~~(c) Telephone number of contracting firm;~~
- ~~(d) State contractor's license number;~~
- ~~(e) Indication of type of construction firm by categories enumerated; on the form.~~
- ~~(f) State of Washington department of revenue tax number;~~
- ~~(g) An indication of those counties in which the contractor is interested in being considered for projects;~~
- ~~(h) Indication whether contractor is certified as a minority or women's business enterprise pursuant to chapter 326-20 WAC.~~

~~Upon receipt of the application, the agency shall enter the information set forth therein into its small works roster, and send a copy of the information which is entered to the applicant contractor. Contractors should not consider themselves to be enrolled in a small works roster until they have received this verification. It is the responsibility of the contractor to notify the agency of any incorrect information set forth on the notice of verification, and to notify the agency of any change in the information set forth in its application as such changes may occur from time to time.~~

(1) **Small works rosters.** Contracting agencies may use the statewide roster or an independent roster when contracting for small works. Contracting agencies are

encouraged to use the statewide roster to promote administrative efficiency for both contracting agencies and contractors.

(2) **Requirements.** The statewide roster and independent rosters must meet the requirements of RCW 39.04.151, RCW 39.04.152, and this chapter, including, but not limited to, the following:

(a) **Roster inclusion.** All qualified responsible, licensed contractors must be included on the roster at their request. MRSC and contracting agencies with independent rosters may implement an application process for contractors to be placed on the roster.

(b) **Contact information.** Contractors included on the roster must designate an official email to receive bids notifications from the contracting agency.

(c) **Contractor recordkeeping.** Contractors included on the roster must keep records of applicable licenses, certifications, registrations, bonding, and insurance as required by RCW 39.04.350. This information must be made available at the request of the contracting agency.

(d) **Small and Diverse Business Certification.** (i) At the time of a contractor's application to be included on a roster, the contractor must indicate its certification status with OMWBE and the Department of Veterans Affairs.

(ii) MRSC and contracting agencies with independent rosters must be able to download data from OMWBE and the Department of Veteran's Affairs to obtain current information on contractor certifications at the time of solicitation.

#### NEW SECTION

#### WAC 200-330-040 Small Works Competitive Contracting

(1) **Small works bid process.** In lieu of a formal public works bidding process, contracting agencies may use the following small works competitive contracting process to invite contractors from the small works roster to submit bids for small works contracts. To use the competitive contracting process, the contracting agency's estimate of the work must be equal to or less than the competitive contracting cost limit established in RCW 39.04.152(4)(a), excluding sales tax.

(2) **Requirements.** Contracting agencies must meet the requirements of RCW 39.04.151, RCW 39.04.152, and this chapter when implementing a small works competitive contracting process, inclusive of but not limited to the following.

(a) **Invitations to bid.** (i) Invitations to bid must include:

(1) Plans, specifications, and an estimate of the work sufficient to define the work and for the contractor to generate a bid; and

(2) A date and time for receipt of bids through the designated bidding system.

(ii) Contracting agencies must provide an invitation to bid to all contractors on the appropriate roster category associated with the work to be performed.

(b) **Estimated cost.** The contracting agency's estimate of the work must be equal to or under the cost limit specified in RCW 39.04.152 to solicit bids under competitive contracting process. The contracting agency may award contracts for more than this amount if the contract cost is not excessive or does not constitute a cardinal change. A general guideline is that 10 percent or less of the statutory bid limit will not constitute a cardinal change.

(c) **Change orders.** Change orders may be added to the contract amount at the discretion of the contracting agency if the change orders are necessary to complete the work described in the plans, specifications, and estimate, or do not constitute a cardinal change. Contracting agencies shall not use change orders to avoid the statutory bid limit for this type of solicitation.

(d) **Retainage.** Retainage may be waived or reduced by the contracting agency. If the contracting agency waives or reduces retainage, the waiver or reduction must be indicated in the invitation to bid at the time of solicitation, and the contracting agency assumes liability for any unpaid wages and taxes.

(e) **Bid acceptance.** Contracting agencies;

(i) Must accept bids through electronic methods such as electronic mail or an electronic bid system;

(ii) Shall not establish a formal bid opening; and

(iii) Must make bid tabs publicly available.

#### WAC 200-330-050 Small Works Direct Contracting

(1) **Direct contracting process.** In lieu of a formal public works bidding process and the small works competitive contracting process provided in WAC 200-330-040, contracting agencies may enter into direct contracts with a contractor by soliciting a quote from a single selected contractor on the statewide roster or independent roster and negotiate a final price. Pursuant to the limits set forth in RCW 39.04.151 and RCW 39.04.152, the direct contracting process may be used when the contracting agency's estimate for the work is equal to or less than the cost limit specified in RCW 39.04.152(4)(b), excluding sales tax.

(2) **Requirements.** Contracting agencies must meet the requirements of RCW 39.04.151, RCW 39.04.152, and this chapter when implementing a small works direct contracting process, inclusive of but not limited to the following.

(a) **Administrative efficiency.** Direct contracting is intended to be a quick and administratively efficient process with a focus on promoting the use of small and diverse businesses. This is not a competitive solicitation.

(b) **Diverse business utilization plan.** Contracting agencies must establish a small, minority, women, and veteran-owned business utilization plan prior to using the direct contracting process.

(c) **Contractor rotation.** (i) Contracting agencies must rotate direct contracting opportunities among the available contractors on the appropriate roster.

(ii) Contracting agencies must not favor certain contractors by repeatedly awarding contracts to contractors without documented attempts to directly contract with other contractors.

(iii) Contracting agencies must adopt a policy regarding how contract opportunities will be rotated to avoid favoritism in direct contracting. Contracting agencies must make this policy publicly available.

(iv) A contracting agency's rotation policy must, at minimum, provide the following:

(1) Contractors that have been issued a contract under the direct contracting process must not be offered a future contract until all other contractors on the roster have received a solicitation for a quote through the direct contracting process; and

(2) Contracting agencies must consider non-responsive solicitations and the inability to negotiate an agreed price in their rotation policy.

(d) **Soliciting quotes.** (i) Solicitations for a quote under the direct contracting process must include the following:

(1) A description of the work to be performed sufficient for the contractor to develop a price;

(2) The date the contracting agency must receive the contractor's quote; and

(3) Any timeline requirements for mobilization.

(ii) When six or more contractors certified as Public Works Small Business Enterprises by OMWBE are listed on the appropriate roster, the contracting agency must solicit a quote from a certified Public Works Small Business Enterprise contractor on the roster in accordance with the agency's rotation policy.

(iii) When five or fewer contractors certified as Public Works Small Business Enterprises by OMWBE are listed on the appropriate small works roster for this type of work, the contracting agency may solicit a quote from any contractor on the roster in accordance with the agency's rotation policy.

(e) **Negotiated price.** (i) A contract price must be negotiated with a single selected contractor from the statewide or independent roster. The negotiated price should be based on the quote from the contractor and available project funds identified by the contracting agency.

(ii) If the contractor and the contracting agency cannot agree on a price, the agency may elect to end negotiations and move to the next contractor on the rotation in accordance with the agency's rotation policy.

(iii) Once a price is established and all other requirements are met, the contracting agency may proceed with award and execution of the contract.

(iv) Contracting agencies are prohibited from bid shopping using the direct contracting process. If the contracting agency and the next contractor on the rotation cannot agree on a contract price, the contracting agency must competitively bid the work under WAC 200-300-040 if the agency intends to proceed with the work.

(f) **Notice of award.** Contracting agencies must provide notice of a small works contract award to all other contractors on the appropriate roster of award.

(g) **LNI portal.** Contracting agencies are required to initiate the small works project using Labor and Industries' Awarding Agency portal when awarding a contract under the direct contracting process.

(h) **Recordkeeping.** Contracting agencies must keep documented records of their efforts under the direct contracting process, including records of the following:

(i) The contractors that the contracting agency solicited for the contract;

(ii) Whether the contractor responded to the solicitation;

(iii) Records of price negotiations;

(iv) The contracts that were awarded and to whom; and

(v) Records documenting the reasons a negotiated price could not be reached.

#### WAC 200-330-060 Small Works Roster Contracting Templates

The Department of Enterprise Services will develop and make publicly available templates for bid invitations, bidding, and contracting using the direct contracting process for the use all contracting agencies.

#### WAC 200-330-070

Denial or removal of contractors from small works roster — Reasons.

A contractor may be denied placement on or, after such placement, may be removed from, a small works roster for any one or more of the following reasons:

(a) The information set forth in the contractor's application is not accurate;

(b) The contractor fails to notify the agency maintaining the small works roster of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of such change.

(c) The contractor has failed to respond to five solicitations for bids on jobs offered through the small works roster;

~~(d) The contractor's past performance demonstrates a lack of qualification in any specialty area indicated by the contractor in the application for placement on the small works roster;~~

~~(e) The contractor fails to complete and return to the agency maintaining the small works roster any periodic update submitted by the agency to determine the contractor's ongoing interest in maintaining its placement on the small works roster.~~

#### ~~WAC 200-330-080~~

~~Denial or removal from roster— Notice and hearing.~~

~~Whenever the agency maintaining a small works roster believes that grounds exist for denying an application for placement on a small works roster, or removing the name of a contractor from a small works roster, notice of said grounds shall be given to the contractor by first class mail. If the contractor fails to object or request a hearing within twenty days after the mailing of said notice, then the denial or removal shall be made effective. If the contractor requests a hearing within forty-five days after the mailing of the notice, then a hearing will be conducted in accordance with chapter 34.04 RCW.~~

**Commented [MD(1)]:** Discuss with OCR whether to strike or repeal these provisions.