

# Chapter 468-15 WAC

## SMALL WORKS ROSTER

### WAC

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**WAC 468-15-010 Purpose and authority.** This chapter is adopted pursuant to RCW 39.04.155, which requires a state agency establishing a small works roster or rosters to adopt rules implementing the statute. It is further intended to:

- (1) Establish procedures for solicitation of contractors interested in being placed on the department's small works roster(s).
- (2) Provide a fair cost effective alternative method of contracting through the small works roster process.
- (3) Provide for a clear concise method for a contractor to qualify for placement on the department's small works roster(s).
- (4) Provide for an appeal and for a hearing procedure, for denial, suspension, or removal from a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-010, filed 1/7/03, effective 2/7/03.]

**WAC 468-15-020 Contractor prequalification.** No contract for the construction, alteration, improvement, or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work per the requirements of chapter 468-16 WAC. Bidding proposals will be issued only to prequalified contractors. Only prequalified contractors will be placed on a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-020, filed 1/7/03, effective 2/7/03.]

**WAC 468-15-030 Public notice required by department establishing small works roster.** The department will at a minimum once per year provide a public notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be mailed directly to trade associations or to individual contractors, by publishing the notice in one trade publication of general circulation within the state, a minimum once per week for two weeks, preceding the date for establishment of the small works roster, or by any method reasonably calculated to assure that all contractors in the state of Washington are aware of the opportunity to be included on the small works roster. The notice shall include the address and phone number, of the department's contract ad and award office from which to request the required questionnaire form

for application and approval to be placed on the small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-030, filed 1/7/03, effective 2/7/03.]

**WAC 468-15-040 Contractors questionnaire form—Information required.** Contractors desiring to be included on a small works roster established by Washington state department of transportation pursuant to RCW 39.04.155, shall submit a completed small works roster questionnaire on a form prescribed by the secretary of transportation. Copies of the form may be obtained from the department's contract ad and award office. The completed questionnaire shall be prepared and transmitted to the secretary, attention: Contractor prequalification office. The questionnaire shall include the following information:

- (1) The contractor's name, address, telephone number, fax number, e-mail address, and type of organization (corporation, partnership, sole proprietorship, etc.);
- (2) A statement of ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies;
- (3) State contractor's license number;
- (4) State of Washington unified business identifier number (UBI) and UBI expiration date;
- (5) Federal tax ID number;
- (6) List of classes of work as enumerated on the form that the firm desires to be considered for such work class;
- (7) Indication of those counties in which the contractor is interested in being considered for small works projects;
- (8) Indication whether the contractor is certified as a minority or women's business enterprise or a disadvantaged business enterprise by the office of minority women business enterprises;
- (9) List all contracts or subcontracts performed in whole or in part within the immediate three preceding years. Include the contract amount, date of completion, classes of work performed, owner or prime contractor's name, mailing address, phone number, fax number, and name of a contact person for the owner/prime for which the contractor performed the work. Only that work completed by the contractor's own organization under its own supervision will be considered for qualification. A minimum three completed projects must be listed.

(a) Personnel requirements.

(i) List principal officers and key employees indicating their years of experience in the classes of work for which qualification is sought.

(ii) A firm must have, within its own organization, qualified permanent, full-time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which qualification is sought. Those firms seeking qualification for electrical work

(classes 9, 16, 41, and 42) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(iii) "Its own organization" shall be construed to include only the contractor's permanent, full-time employed office and site supervisory personnel. Workers of the organization shall be employed and paid directly by the prime contractor.

(b) The applicant shall list the following occurrences within the previous three years:

(i) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(ii) Convictions for felonies listed in WAC 468-16-050.

(iii) Failure to complete a contract.

(c) The small works roster questionnaire shall be processed as follows:

(i) A small works roster questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether or not the applicant has qualified for or been denied qualification for the small works roster. The applicant will be advised of lack of receipt of data corroborating project completion and error or omissions in the questionnaire and a request for additional information necessary to complete the evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(ii) The department will enter the contractor's information on the appropriate small works roster. The department will notify the contractor by letter of placement on the appropriate small works roster. An applicant should not consider itself enrolled on the small works roster until receipt of such written notice.

It is the responsibility of the contractor to notify the department of any incorrect information set forth in the notice, and to notify the department of any change in the information set forth in its application.

[Statutory Authority: RCW 39.04.155, 47.01.101, 47.28.030. WSR 06-24-118, § 468-15-040, filed 12/6/06, effective 1/6/07. Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-040, filed 1/7/03, effective 2/7/03.]

**WAC 468-15-050 Denial or removal of contractor 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:

(1) Information set forth in the contractor's application is not accurate or can not be verified;

(2) The contractor fails to notify the department 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 the change;

(3) The contractor fails to respond to five solicitations for bids on jobs offered through the small works roster;

(4) 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;

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

(6) Conviction of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or

(7) Knowingly concealing any deficiency in the performance of a prior contract; or

(8) Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings; or

(9) Debarment of the contractor by a federal or state agency; or

(10) Willful disregard for applicable laws, rules or regulations.

The reasons for the denial or removal from the small works roster must be based on acts or omissions which took place within the five years preceding the date of the most recent submitted questionnaire.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-050, filed 1/7/03, effective 2/7/03.]

**WAC 468-15-060 Hearings procedure.** (1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, submit to the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

(j) That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

(3) The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

(4) In the course of the hearing, the hearing official shall:

(a) Regulate the course and scheduling of the hearings;

(b) Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

(c) Take action necessary to insure an orderly hearing; and

(d) At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

(5) The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-15-050 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal there from to the superior court of Thurston County pursuant to RCW 47.28.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-060, filed 1/7/03, effective 2/7/03.]