

RCW 39.04.152 Uniform small works roster provisions—Invitations for bids—Retainage, performance bonds—Bid quotations—List of small works contracts awarded. (Effective July 1, 2024.)

(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 \$350,000 or less excluding state sales tax. The small works roster process includes the direct contract provisions authorized under this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the direct contract provisions of this section. State agencies and authorized local governments using small works rosters must establish procedures for implementing chapter 395, Laws of 2023.

(2) State agencies and authorized local governments must document good faith efforts annually implementing subsections (6) and (7) of this section.

(3) 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.

(4) The department of enterprise services must develop and make available on its public-facing website templates for bid invitations, bidding, and contracting that may be used by state agencies, authorized local governments, and contractors.

(a) (i) For small works roster projects with an estimated cost less than \$350,000, not including sales tax, state agencies and authorized local governments may contract by securing written or electronic quotations to assure that a competitive price is established and to award contracts to the responsible bidder with the lowest responsive bid.

(ii) A state agency or authorized local government contracting through a small works roster shall invite bids notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographical area.

(b) 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 chapter 395, Laws of 2023, before direct contracting with other contractors on the appropriate small works roster without a competitive process as follows:

(i) If there are six 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. A state agency or authorized local government utilizing direct contracting pursuant to this subsection must rotate through the contractors on the appropriate small works roster and must, when qualified contractors are available from the roster who may perform the work or deliver the services within the budget described in the notice or request for proposals, utilize different contractors on different projects.

(ii) If there are five 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.

(iii) The state agency or authorized local government must notify small, minority, women, or veteran-owned businesses on the applicable roster when direct contracting is utilized.

(iv) It is the intent of the legislature to increase utilization of small, minority, women, and veteran-owned businesses. Each state agency and authorized local government shall establish a small, minority, women, and veteran-owned business utilization plan. A state agency or authorized local government engaging in direct contracting may not favor certain contractors on the appropriate small works roster by repeatedly awarding contracts without documented attempts to direct contract with other contractors on the appropriate small works roster.

(v) If the state agency or authorized local government elects not to use the methods outlined in this subsection, it may not use direct contracting and must invite bids by electronically notifying all contractors on the applicable roster that have indicated interest in performing work in the applicable geographical area as described in this section.

(5) For small public works contracts under \$5,000, there is no requirement for retainage or performance bonds. Small public works contracts valued at more than \$5,000 shall be subject to performance bond requirements set forth in chapter 39.08 RCW and retainage requirements set forth in chapter 60.28 RCW, provided, however, that the awarding state agency or authorized local government may reduce or waive retainage requirements set forth in RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of: (a) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (b) taxes, increases, and penalties pursuant to Titles 50, 51, and 82 RCW that may be due from the contractor for the project. Any such waiver will not affect the rights of the state agency or local government to recover against the contractor for any payments made on the contractor's behalf. For small public works contracts awarded through a bid solicitation, notice of any retainage reduction or waiver must be provided in bid solicitations.

(6) After an award is made, the bid quotations obtained shall be recorded, publicly available, and available by request.

(7) 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 RCW 39.04.200. [2023 c 395 § 15.]

Effective date—2023 c 395 §§ 1-30, 32-34, 36, and 37: See note following RCW 39.04.010.

Findings—Intent—2023 c 395: See note following RCW 39.04.010.