

## WSR 24-20-076

## PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed September 27, 2024, 11:55 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 172-330 WAC, Small works roster.

Hearing Location(s): On November 22, 2024, at 12:00 p.m., at 215A Tawanka Commons, Eastern Washington University (EWU), Cheney, WA 99004.

Date of Intended Adoption: December 13, 2024.

Submit Written Comments to: Annika Scharosch, 211 Tawanka, Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), website <https://inside.ewu.edu/policies>, beginning October 1, 2024, at 8:00 a.m., by 5:00 p.m. on November 22, 2024.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by November 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt procedures consistent with the model rules issued by the department of enterprise services for purposes of implementing and utilizing a small works roster.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28B.35.120(12), 39.04.151.

Statute Being Implemented: RCW 39.04.151; chapter 200-330 WAC.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not subject to RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: EWU is adopting internal small works roster procedures consistent with the model rules adopted by the department of enterprise services, chapter 200-330 WAC, and RCW 39.04.151.

Scope of exemption for rule proposal:

Is fully exempt.

September 27, 2024

Annika Scharosch  
Associate Vice President for Civil Rights  
Compliance and Business Services

OTS-5896.1

**Chapter 172-330 WAC  
SMALL WORKS ROSTER**NEW SECTION

**WAC 172-330-010 Purpose and authority.** This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.151. This chapter sets forth the procedures for Eastern Washington University's (EWU) use of small works rosters for different specialties, categories of anticipated work, and geographical locations consistent with RCW 39.04.151 and the model rules issued by the department of enterprise services in chapter 200-330 WAC. The vice president for business and finance, or designee, is authorized to establish additional procedures for EWU's use of statewide and independent small works rosters.

NEW SECTION

**WAC 172-330-020 Definitions.** As used in this chapter the terms:

- (1) "Contracting agency" means EWU.
- (2) "Independent roster" means a small works roster established by EWU by itself or with another contracting agency.
- (3) "MRSC" means the municipal research and services center.
- (4) "OMWBE" means the office of minority and women's business enterprises.
- (5) "Publicly available" means published on EWU's public website.
- (6) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of EWU, 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 39.102.060(4) or other development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).
- (7) "Statewide roster" means the statewide small works roster developed by the department of commerce through MRSC.

NEW SECTION

**WAC 172-330-030 Roster requirements.** EWU is encouraged to use the statewide roster to promote administrative efficiency. The statewide roster must meet all of the requirements set forth in WAC 200-330-035. If EWU chooses to create its own small works roster, the roster must meet the requirements of RCW 39.04.151, 39.04.152, and the following:

- (1) Roster inclusion. All qualified responsible, licensed contractors must be included on the roster at their request. Potential

contractors must complete an application with EWU to be placed on the roster. Applications may be submitted at any time.

(2) Contact information. Contractors on the roster must designate an official email to receive bid notifications from EWU.

(3) Contractor recordkeeping. Contractors included on EWU's roster must keep records of applicable licenses, certifications, registrations, bonding, and insurance as required by RCW 39.04.350. This information must be made immediately available to EWU upon request.

(4) Small and diverse business certification.

(a) At the time of a contractor's application to be included on the roster, the contractor must indicate its certification status with OMWBE and the department of veterans affairs.

(b) EWU must be able to download data from OMWBE and the department of veterans affairs to obtain current information on contractor certifications at the time of solicitation.

(5) Denial or removal of contractors from small works roster. A contractor may be denied placement on, or after such placement, may be removed from a small works roster for any of the following reasons:

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

(b) The contractor does not meet the responsible bidder provisions contained in RCW 39.04.350; or

(c) The contractor does not meet supplemental criteria identified by EWU for a specific project consistent with RCW 39.04.350.

#### NEW SECTION

**WAC 172-330-100 Small works competitive contracting.** (1) Small works bid process. Whenever the estimated cost of construction for a project does not exceed \$350,000 or the current threshold set in RCW 39.04.152, excluding state sales tax, EWU may use the small works competitive contracting process. EWU may either use the statewide roster or establish its own small works roster. Under the small works bid process, contractors included on a small works roster are invited to submit bids for small works projects. No project shall be broken into units or phases for the purpose of allowing the project to qualify for a small works roster process.

(2) Requirements. The small works bid process must meet all of the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(a) Invitations to bid.

(i) Invitations to bid must include:

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

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

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

(b) Estimated cost. EWU's estimate of the work must be equal to or under the cost limit specified in RCW 39.04.152 to solicit bids under the small works competitive contracting process. EWU 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 EWU if the change orders are necessary to complete the work described in the plans, specifications, and estimate, or do not constitute a cardinal change. EWU 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 EWU. If EWU waives or reduces retainage, the waiver or reduction must be indicated in the invitation to bid at the time of solicitation, and EWU then assumes liability for any unpaid wages and taxes.

(e) Bid acceptance. EWU:

(i) Must accept written quotations or accept quotations 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 upon request. Bid tabulations may be requested by emailing EWU's public records manager at prr@ewu.edu.

#### NEW SECTION

**WAC 172-330-200 Small works direct contracting.** (1) Direct contracting process. In lieu of following a formal public works bidding process or the small works competitive contracting process outlined in WAC 172-330-100, EWU may enter into direct contracts with a contractor by soliciting a quote from a single selected contractor on the state-wide roster or EWU's independent roster and negotiate a final price. Consistent with the limits identified in RCW 39.04.151 and 39.04.152, this process may only be used when EWU's estimate for the work is equal to or less than \$150,000, not including sales tax, or any future limit set by the legislature consistent with RCW 39.04.152 (4) (b).

(2) Requirements. The small works direct contracting process must meet the requirements of RCW 39.04.151, 39.04.152, and chapter 200-330 WAC. This includes, but is not limited to, the following requirements:

(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. EWU must establish a small, minority, women, and veteran-owned business utilization plan prior to using the direct contracting process.

(c) Contractor rotation.

(i) EWU must rotate direct contracting opportunities among the available contractors on the appropriate roster.

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

(iii) EWU must adopt a policy regarding how contract opportunities will be rotated to avoid favoritism in direct contracting. This policy will be posted on EWU's website.

(iv) The rotation policy must, at a minimum, provide the following:

(A) 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

(B) EWU must consider nonresponsive 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:

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

(B) The date EWU must receive the contractor's quote; and

(C) 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, EWU must solicit a quote from a certified public works small business enterprise contractor on the roster in accordance with EWU'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, EWU 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 EWU.

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

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

(iv) EWU is prohibited from bid shopping using the direct contracting process. If EWU and the next contractor on the rotation cannot agree on a contract price, EWU must competitively bid the work if it intends to proceed with the work.

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

(g) Department of labor and industries portal. EWU is 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. EWU must keep documented records of their efforts under the direct contracting process, including records of the following:

(i) The contractors EWU 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.