

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.

[Statutory Authority: RCW 28B.35.120(12) and 39.04.151. WSR 25-01-082, s 172-330-200, filed 12/13/24, effective 1/13/25.]