

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 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, 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 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) Contracting agencies 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 the contracting agency 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, 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.

[Statutory Authority: RCW 39.04.155. WSR 24-07-090, § 200-330-050, filed 3/19/24, effective 7/1/24.]