

Small Works Roster Sample Direct Contracting Procedures

1.0 Purpose

- 1.1 This document provides the procedures to be followed under direct contracting using the small works roster allowed under RCW 39.04.152 for contracts estimated to cost \$150,000 or less.

2.0 Policy

- 2.1 It is [authorized local government/agency's] policy **not to favor contractors** by repeatedly awarding contracts to the same contractor without documented attempts to rotate.
- 2.2 It is [authorized local government/agency's] policy **to equitably distribute contracting opportunities** to small businesses that are registered on the small works roster, and as feasible, not award to the same contractor twice in a row.
- 2.3 When project(s) are estimated to cost \$150,000 or less, excluding sales tax, contract and procurement staff will endeavor to exercise the option to direct contract with small, women, minority, and veteran-owned firms registered *on the small works roster* as allowed under RCW 39.04.152(4)(b).

3.0 Procedures

3.1 Planning to Direct Contract

3.1.1 Project Estimate

When a project intended to be procured using the small works roster process and is estimated to cost **\$150,000** or less, the agency will attempt to direct contract.

The project's estimated cost is assumed to **include** change orders but **exclude** sales tax. To account for inclusions and exclusions, the maximum project cost estimate to use the direct contracting process is **\$135,000**.

3.1.2 Business Utilization Plan

When planning to direct contract agency staff must review the current Business Utilization Plan to understand if the project type and/or (work) category has been identified as a small business opportunity.

3.1.3 Prepare Direct Contracting Bidding Documents

Using the agency's **small works direct contracting templates**, prepare the following project-specific documents:

- A. Invitation to Direct Contract/Negotiate
- B. Direct Contracting/Negotiation Bid Form

- C. Contract (general conditions, etc.)
- D. Other project-specific documents as may be necessary.

3.2 Generating a “project specific roster”

- 3.2.1 After the “direct contracting bidding documents” are prepared, log into MRSC Rosters using your specific credentials and select “generate a small works roster.”
- 3.2.2 Enter the agency project name and contract number then select “under \$150,000.”
- 3.2.3 Select the primary project type and (work) category. The project type and work category should reflect the majority project need, it is best not select smaller work scopes or anticipated subcontracting scopes.
- 3.2.4 Generate the roster, assess distribution of certified/small contractors verses non-certified contractors.
- 3.2.5 Apply *rotation*.

3.3 Rotating

When using the direct contracting small works process the agency will rotate or attempt to rotate in all cases. If the agency’s rotation policy does not apply to your specific project, you will document the process and rotation applied to assure that a different contractor than the last contracted is provided the opportunity to direct contract.

3.3.1 Six or more Small Businesses

If the project specific roster contains **6 or more** Small Businesses, *rotation* must be applied to those Small Businesses.

A. Rotation Process: Rotation is applied by reviewing the date of the last contract with business on the project specific roster in the order they appear. If the last contracted date is within a **12-month period**, the next business on the project specific roster is reviewed. This review approach is to continue until a business that has not been contracted with in the last **12-month** period is identified.

B. Once the next available/rotated contractor is identified, they are sent a procurement package in accordance with the **Small Works Direct Contracting Negotiation** procedure.

3.3.2 Five or fewer Small Businesses

If the project specific roster contains **5 or fewer** Small Businesses, rotation must be applied to **all businesses** within the project specific roster.

A. Rotation Process is applied. Once the rotated contractor is identified, they are sent a procurement package in accordance with the **Small Works Direct Contracting Negotiation** policy/procedure.

3.3.3 No Small Businesses

If there are no Small Businesses listed on the **project specific roster**, rotation is applied to all businesses.

Rotation Process is applied. Once the rotated contractor is identified, they are sent a procurement package in accordance with the **Small Works Direct Contracting Negotiation** policy/procedure.

3.3.4 One Business

If there is only one business on the **project specific roster**, rotation is not practicable. Documentation will include the project specific roster to demonstrate the single contractor.

Once the contractor is identified, they are sent a procurement package in accordance with the **Small Works Direct Contracting Negotiation** policy/procedure.

3.3.5 Rotation Documentation

Procurement staff shall document the process and approach used to rotate through responsible contractors on a project specific roster. Documentation could include, but is not limited to, printing the project specific roster, and noting each contractor considered through review of their “last contracted” date and reference to the Small Business Utilization Plan. Staff are encouraged to use the “Rotation Documentation Form.”

3.3.6 Multiple Procurements in the same Project Type and Category

Procurement staff are encouraged to use **the same project specific roster** and rotate starting at the bottom of the list when procurements for the same Project Type and Category are anticipated. This approach provides the maximum practicable opportunities to rotate through the same list of contractors and equitably distribute work among all Small Businesses in registered in a project type and category. (e.g., 3 roof replacements in a 12-month period, goes to 3 different roofers).

3.3.7 Rotated Businesses Declines to Negotiate

If rotated business declines to negotiate, procurement staff will first attempt to negotiate with the next rotated business. If all rotated businesses decline to negotiate, procurement staff can elect to revert the solicitation to the competitive process and invite all businesses on a project specific roster, cancel the solicitation all together, or publicly bid. Procurement staff are encouraged to ask contractors that decline the reason.

3.4 Determining interest and inviting “rotated” contractor.

Direct contracting will be conducted using agency **email only**. **Only one contractor will be invited to direct contract at a time.**

3.4.1 Using the agency email **template** for “direct contracting interest request,” notify **the contractor** that they are the next rotated business and give them **one business day** to agree or decline the opportunity. Be sure to include the project type, (work) category, estimate, and general description along with the anticipated timeframe for construction.

A. Should the contractor decline, or not respond within the time given, document the outcome, and move to the next rotated contractor.

3.4.2 Send Invitation and Bidding Documents *only to the next rotated contractor on the project-specific roster*. Include a time frame to receive the bid. Bid due date and time can be project specific and depends on the level of effort involved in preparing a bid, **the default is 10 business days**.

3.4.3 Should the contractor request a site-walk or need to ask questions, the request is to be accommodated similar to the “standard” public works process.

3.5 Direct contracting without negotiation

A bid submitted within the stated contract/project estimate should be accepted without negotiation. Only if a bid amount is not acceptable or if the contractor requests negotiations should negotiation be used.

3.6 Negotiating to determine the award amount.

“Negotiation” is the term used to indicate a process to be followed when an award amount needs to be established that is different from a bid amount or a potential bid amount. **Negotiation process and documentation requirements are to be included in the **Instructions to Bidders**.**

3.6.1 Intent

The direct contracting “negotiation” process is intended to the build capacity of small contractors by affording the contractor one-on-one conversation with **the agency** to prepare a bid without the pressure of competition. It is not intended to be a process to “haggle” or “lower” a bid price. The intent is to build a “pathway to being a prime.”

3.6.2 Negotiation option 1 – Q&A, Addenda

One option for documenting negotiations is to set up a specific “question and answer” process. In this option, *the bidder requests “negotiations”* by

submitting questions/clarifications in the **form and format provided in the bidding documents**. Staff will then respond as appropriate and then *issue an addendum* that memorializes the new agreed terms, schedule, price, etc. The bidder proceeds to submit a bid on the template bid form.

3.6.3 Negotiation option 2 – Bid Form

Another option for documenting negotiations is to use the **Small Works Direct Contracting Bid Form** that includes a section for “negotiation.” In this option, *staff requests “negotiations” by “countering”* the bid submitted with questions, clarifications, or similar, to establish an award amount.

3.6.4 Bid Breakdown

It is the policy of [agency/local government] to review all bids received through direct contracting at the “bid item” or “schedule of values” level to help the small business carefully and accurately build a bid. As such, all direct contracting processes will include a review of the bid item breakdown and or schedule of values with the award request.

3.6.5 Failure to reach an agreed award amount.

Although rare, there may be an occasion where an award amount cannot be agreed upon. If such occurs, staff will need to send notice to the contractor that the “negotiation process” is terminated and provide 2 business days (protest period) before contacting the next rotated contractor from the project-specific roster. Should a negotiation process be terminated staff will need to document the rationale in place in the project file.

Allowable rationale for terminating direct contract negotiations is:

- A. Scope. The scope of work cannot be agreed.
- B. Schedule. The schedule cannot be agreed.
- C. Budget.* After confirmation of scope, schedule, and some cost verification, the budget is determined not sufficient.

*If budget/cost is confirmed to be outside of the project estimate, the solicitation is to be cancelled reassessed. Staff is not allowed to rotate to the next available contractor to try to renegotiate with the next contractor. This will be considered “haggling” and is not compliant with this procedure or our direct contracting policy.

3.7 Awarding

Awarding a small works direct contract is the same as awarding a small works competitive contract and will follow standard public works award processes. The successful contractor will be sent a notice of award and requests for bonding and insurance per the contract documents.

3.8 Notification

At the conclusion of negotiations with the directly selected, rotated contractor, procurement staff must send notification to all the *small businesses* on **the project specific roster** of the selection which includes the basis of rotation as documented.

3.9 Posting data

At the conclusion of the Award process, after notification to small businesses on the project specific roster has been issued, direct contracting and award data must be manually entered into the **small works roster data collection portal**. This includes all contractors on the project specific roster and the rotation order.

4.0 Definitions

- 4.1 **Small Works Roster** has the same meaning as RCW 39.04.151-154.
- 4.2 **Direct Contracting** means the ability to select one contractor and negotiate a price for a public works project that is estimated to cost \$150,000 or less in accordance with RCW 39.04.152(4)(b) applicable policies.
- 4.3 **Negotiation** means the process in direct contracting used to establish the award amount with a single contractor.
- 4.4 **Small Business** means the same as RCW 39.04.010(7).
- 4.5 **Small Business Utilization Plan** means the same as described in RCW 39.04.152(4)(b)(iv).
- 4.6 **Project Specific Roster** means the same as “appropriate roster” or “applicable roster” and is the specific list of businesses generated for an individual solicitation.
- 4.7 **Rotation** means identifying a contractor not previously awarded in in the same project type and (work) category.
- 4.8 **Rotation Documentation** means the documented process procurement staff used to ensure compliance with rotation policy and/or procedures.

5.0 Related Documents

[insert titles, links, or similar other relevant documents such as the agency’s resolution and Business Utilization Plan.]