

RESOLUTION NO. 2019-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELLensburg, WASHINGTON, on the subject of establishing a small works roster process to award public works contracts and repealing Resolution No. 2014-02.

WHEREAS, the Washington State Legislature in Chapter 434, Laws of 2019 amended RCW 39.04.155 and other laws regarding contracting for public works by municipalities allowing certain contracts to be awarded by a small works roster process; and

WHEREAS, the Washington State Legislature from time to time amends the laws regarding public contracting and indebtedness by municipalities; and

WHEREAS, the City Council is required by the Revised Code of Washington 39.04.155(b) to adopt a resolution implementing the small works roster contract rules and procedures; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ellensburg, Washington, as follows:

Section 1. This Resolution supersedes and replaces City Council Resolution No. 2014-02, which is hereby repealed.

Section 2. The following small works roster procedures are established for use by the City of Ellensburg pursuant to RCW 35.23.352 and Ch. 39.04 RCW.

1. Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Fifty Thousand Dollars (\$350,000.00), or any amount as hereafter amended by the legislature, which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the City may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

2. Number of Rosters. The City may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.

3. Contractors on Small Works Roster(s). The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any

applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the City as a condition of being placed on a roster or rosters.

The City may use the limited public works process in this section to solicit and award small works roster contracts to minibusinesses and microbusinesses as defined under RCW 39.26.010 that are registered contractors

4. Publication. At least once a year, the City shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between the City and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

5. Shared Rosters. In addition to paper and/or electronic rosters kept on file in the appropriate department, the City may also use shared rosters established thru interlocal agreements or roster service providers.

The City may serve as the lead entity for administration of a shared roster for use by other Washington local governments and state agencies.

6. Telephone or Written Quotations. The City shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.350, as follows:

- a. A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.
- b. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from two hundred fifty thousand dollars (\$250,000) to three hundred thousand dollars (\$350,000), or any amount as

hereafter amended by the legislature, the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought.

The City has the sole option of determining whether this notice to the remaining contractors is made by:

- i. publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- ii. mailing a notice to these contractors; or
- iii. sending a notice to these contractors by facsimile or other electronic means.

- c. For purposes of this resolution, "equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;
- d. A written record shall be made by the City representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone and/or electronic inquiry.
- e. For projects awarded under the small works roster process, the City may waive the retainage requirements of RCW 60.28.011(1) (a), thereby assuming liability for contractor's nonpayment of: (i) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (ii) taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. However, City has the right of recovery against the contractor for any payments made on the contractor's behalf. Recovery of unpaid wages and benefits are the first priority for actions filed against the contract.

7. Limited Public Works Process. If a work, construction, alteration, repair, or improvement project is estimated to cost less than fifty thousand dollars (\$50,000), or any amount as hereafter amended by the legislature, the City may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the City will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the City may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project. However, the City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The City must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work. The City shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

8. Determining Lowest Responsible Bidder. The City shall award the contract for the public works project to the lowest responsible bidder as set forth on RCW 39.04.350 and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350(2); provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City may call for new bids.

ADOPTED by the City Council of the City of Ellensburg this 3rd day of September, 2019.

2/2/11
Mayor
Beth Baden
City Clerk