

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: Action A 5

DATE: July 23, 2009

SUBJECT: Resolution 09-12 - Small Works and Consultant Roster

CONTACT PERSON: Laura Koenig, City Clerk

ISSUE:

The issue before the Council is the adoption of Resolution 09-12 (Attachment A) which increases the allowed amounts for use of the Small Works Roster under the MRSC (Municipal Research Service Center) Shared Roster program.

SUMMARY:

Effective July 26, 2009, Governor Gregoire signed HB 1196 raising the maximum dollar amount allowed for use of a small works roster process from \$200,00 to \$300,000. In addition the dollar amount requiring notification of all contractors on the roster was changed from between \$100,000 and \$200,000 to between \$150,000 and \$200,000.

Resolution 09-12 has been revised to incorporate the revised amounts in accordance with HB 1196.

In 1998, the City of Lynnwood created and offered to other jurisdictions a mutual reciprocal interlocal agreement which allowed the jurisdictions to “piggy back” on each others competitively bid contracts for purchases of supplies, materials and other items and to select and use nearly 1,000 contractors and consultants from Lynnwood’s Shared Small Works and Shared Architects & Engineers Rosters.

In December 2007, MRSC took over the operation of the Small Works Roster and the Architects & Engineers Roster. Agencies are required to advertise and update their Small Works and Architect & Engineering Rosters annually. The Resolution and Agency Registration with MRSC allowed the City to use the MRSC rosters.

STAFF RECOMMENDATION:

Staff recommends the adoption of Resolution 09-12 which allow the City to use the MRSC Small Works and Consultant Rosters with the increased amounts.

MOTION:

Move to authorize the Mayor to sign Resolution 09-12 to participate in the MRSC Small Works and Consultant Roster program.

ATTACHMENTS: A. Resolution 09-12 Small Works and Consultant Roster
B. MRSC Information
C. RCW 39.04.155

**CITY OF SULTAN
SMALL WORKS AND CONSULTANT
ROSTERS RESOLUTION**

Resolution No. 09-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, ON THE SUBJECTS OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS AND A CONSULTING SERVICES ROSTER FOR ARCHITECTIURAL, ENGINEERING AND OTHER PROFESSIONAL SERVICES.

WHEREAS, RCW 39.04.155 and other laws regarding contracting for public works by municipalities, allow certain contracts to be awarded by a small works roster process; and

WHEREAS, effective July 26, 2009, HB 1196 raised the maximum amounts allowed for use of a small works roster process from \$200,00 to \$300,000. In addition the dollar amount requiring notification of all contractors on the roster was changed from between \$100,000 and \$200,000 to between \$150,000 and \$200,000, and;

WHEREAS, in order to be able to implement small works roster processes, the city is required by law to adopt a resolution establishing specific procedures;

WHEREAS, RCW 39.80.030 requires that an agency publish in advance that agency's requirement for professional services and that one of the ways to accomplish that notification is to announce generally to the public its projected requirements for any category or type of professional services and request qualification statements to be kept on file with the agency,.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Resolution No.07-28 is hereby repealed.

Section 2. MRSC Rosters. The city has contracted with the Municipal Research and Services Center of Washington (MRSC) to adopt for the city use those state wide electronic databases for small works roster and consulting services developed and maintained by MRSC and authorizes city Staff to sign that contract. In addition, paper and/or electronic rosters may be kept on file by appropriate city departments.

Section 3. Small Works Rosters

The following small works roster procedures are established for use by the city pursuant to RCW 39.04.155:

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 ~~Two~~ Hundred Thousand Dollars (\$300,000) (~~\$200,000.00~~), which includes the costs of labor,

2. 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.
3. **Publication.** At least once a year ,on behalf of the city, MRSC 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 appropriate MRSC 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.
4. **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 a contractor who meets the mandatory bidder responsibility criteria in RCW 39.04.350(1) and may establish supplementary bidder criteria under RCW 39.04.350 (2)

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.

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. "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.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) (~~\$100,000~~) to three ~~two~~ hundred thousand dollars (\$300,000) (~~\$200,000~~), the city may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must 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 email.

- c) 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 inquiry.
4. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars(\$35,000), the city may award such a contract using the limited public works process provided under RCW 39.04.155 (3). For a 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 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 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 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 shall maintain a list of the contractors contacted and the contracts awarded during the previous 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.

- 5 **Determining Lowest Responsible Bidder.** The Council shall award the contract for the public works project to the lowest responsible bidder 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 [governing body] may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by Chapter 133, Laws of 2007 (SHB 2010) and who meets any supplementary bidder responsibility criteria established by the city.

6. **Award.** All of the telephone bids or quotations shall be collected and presented at the same time to the Council for consideration, determination of the lowest responsible bidder, and award of the contract.

Section 4. Consulting Services Rosters

1. **Consulting Services.** Consulting services are professional services that have a primarily intellectual output or product and include architectural and engineering services as defined in RCW 39.80.020.
2. **Publication.** At least once a year, on behalf of the city, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the consulting services roster or rosters and solicit statements of qualifications from firms providing consulting services. Such advertisements will include information on how to find the address and telephone number of a representative of the city who can provide further details as to the city's projected needs for consulting services. Firms or persons providing consulting services shall be added to appropriate MRSC 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 consulting services roster.
3. **Professional Architectural and Engineering Services** The MRSC Rosters will distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services and will announce generally to the public the city's projected requirements for any category or type of professional or other consulting services. The city reserves the right to publish an announcement on each occasion when professional services or other consulting services are required by the agency and to use paper and/or other electronic rosters that may be kept on file by appropriate city departments.

PASSED this 23rd day of July, 2009.

Carolyn Eslick, Mayor

ATTEST:

Laura J. Koenig, City Clerk

APPROVED AS TO FORM:

Margaret King, City Attorney

Bidding Information

MRSC Rosters is a small works contractor roster which operates under statute [RCW 39.04.155](#) and a consultant roster which operates under the statute [Chapter 39.80 RCW](#). Although MRSC Rosters provides rosters to be utilized under the same statutes as an individual public agency roster, there are some differences so please read the following information.

Small Works Contractor Roster

Can I use MRSC Rosters for all cost levels of small works projects?

Yes. MRSC Rosters can be used to find contractors for small works (as of July 26, 2009 small works are projects under \$300,000), limited small works (under \$35,000), and really small works (under public agency bid limits).

When I search for contractors and generate a long list, am I obligated to request bids from the entire list? It is recommended to request bids from the entire list because it easily meets the equitability requirement and offers you a broader selection of bidders. The alternative is to request bids from at least five contractors and create a procedure for rotating through the list. Also, please note that as of July 26, 2009, for projects \$150,000 - \$300,000 if you contact only five contractors, you are required to notify all other contractors on the list that quotations are being sought.

Can I narrow my search to contractors physically located in my city?

No. When registering contractors select what public agencies they would like to work with, so it is possible that your generated list could include contractors based physically outside of your area but willing to work in your area.

Do I have to advertise if my search generates less than five contractors?

No, but you should try and contact eligible contractors outside of the roster and have them join the roster in order to use the small works process.

Consultant Roster

What kinds of consultants are listed on MRSC Rosters? Professional Services (architectural [RCW 39.18.08](#), engineering and land surveying [RCW 39.18.43](#), and landscape architecture [RCW 39.18.96](#)) and Personal Services (management, planning, and other consulting services as defined in [chapter 39.80 RCW](#)).

What roster process do I use for consulting services? Professional and personal services, in connection with a public works project, are procured using the qualifications-based-selection (QBS) requirements in [chapter 39.80 RCW](#).

When I search for consultants and generate a long list, am I obligated to review and request proposals from the entire list? No, you are to select either the single most qualified firm or a manageable group, of for instance six or fewer and request bids from them, however it is recommended to record your selection procedure.

Can I use MRSC Rosters to find on-call consultants, such as engineers to use throughout the year? Selection of firms for on-call professional service contracts is roughly the same as for selection of a single firm for one contract. A public agency will designate the most qualified firms in each category of work to be considered for "on-call" work. As contracts for a given work category become available the public agency will negotiate a contract for that work with one of those firms.

The Local Agency Guidelines (LAG) Manual at www.wsdot.wa.gov/LocalPrograms/LAG/ (WSDOT federal projects) require that a public agency not enter into additional contracts with any firm until that firm completes active contracts, and that no "on-call" consultant be awarded more than one contract from the roster at any one time.

If I receive a grant from WSDOT, can I use MRSC Rosters to find a consultant? Yes. The annual legal notice that MRSC posts on behalf of all participating public agencies satisfies the WSDOT advertising requirements. See enclosed WSDOT approval of MRSC Rosters.

RCW 39.04.155

Small works roster contract procedures -- Limited public works process -- Definition.

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government 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. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter [43.19](#) RCW. An interlocal contract or agreement between two or more state agencies or 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 provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations 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 [39.04.010](#). 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 subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with

building codes. 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. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government 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. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW [39.04.010](#).

For limited public works projects, a state agency or authorized local government shall 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](#). After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four 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. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter [39.08](#) RCW and the retainage requirements of chapter [60.28](#) RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title [82](#) RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) 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 or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under [RCW 28B.10.016](#), and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.