

## Preparing for the Future: Changes to the Small Works Roster

### Questions and Answers Summary

#### And

#### Key Takeaways

*This document answers many questions asked at MRSC’s “Preparing for the Future” rosters workshops held in Spokane (May 2, 2024) and Tacoma (May 15, 2024), as well as additional questions received outside of the workshops.*

#### General

- Small works roster provisions, in effect on July 1, 2024, are found under [RCW 39.04.151-154](#).
- **Does the mention of “electronic quotations” in RCW 39.04.152(4)(a)(1) mean that agencies are outright allowed to use electronic bidding?**

Subject to interpretation by an agency’s own legal counsel, **yes**, MRSC believes that electronic bidding is allowed under RCW 39.04.152(4)(a)(i) under the small works roster process. DES addressed this topic in their rulemaking under [WAC 200-330](#).

#### Internal Controls: resolutions, policies, processes, and procedures

- **Are agencies required to have a resolution?**

**Yes**, RCW 39.04.151(4) requires each state agency and or authorized local agency to adopt an ordinance or resolution establishing your agency’s authority to use a small works roster and solicit for small public works using the small works roster process. Agencies should use the mechanism consistent with your other similar legislative and “internal control” approaches.

- **Do agencies have to have policies, processes, or procedures even if using MRSC Rosters and the statewide roster?**

**Yes**, MRSC Rosters and the statewide small works roster is a facilitator and administrator of a central repository of information, established to be a statewide data tracking means. It is not a procurement or contracting substitute and should not be relied upon as an “authority having jurisdiction.”

- **If my agency already has a resolution that includes MRSC Rosters, do we need to update or revise?**

**Most likely.** You will want to review to ensure that RCW references are updated, and new small works thresholds and processes are consistent (e.g., no more limited works) with RCW 39.04.151-154.

- **Do agencies need to have a new resolution, policies, etc. updated by July 1, 2024, to use a small works roster and process, or can we use the old process until we the new internal controls in place?**

MRSC encourages agencies to consult your legal counsel. The provisions of RCW 39.04.155, thresholds, limited public works, etc. are no longer in effect after July 1, 2024, therefore any invitation sent and/or any award made after July 1, 2024, must follow the provisions of RCW 39.04.151-154. ***There is no grace or transition period noted in statute.***

#### **MRSC Roster “transition” to the “statewide small works roster”**

- **If our agency is currently signed up as any agency member of the MRSC Rosters, do we need to do anything to “changeover” to the statewide roster?**

**No**, current agency members do not have to do anything. You are automatically moved to the statewide small works roster until your renewal date. MRSC does encourage agency members to regularly visit your registration to ensure contact information is correct and up to date.

- **How will MRSC outreach to contractors currently on the MRSC roster regarding the “changeover” to the statewide roster? Should agencies be doing outreach?**

Like agency members, contractors that are currently part of the MRSC small works roster will automatically be moved to the statewide small works roster. MRSC encourages agencies to actively send notifications or perform outreach to your vendors, consultants, and contractors even if there is no immediate action needed. MRSC encourages contractors to review their accounts, agency selection and (work) categories after July 1, 2024, to ensure information “migrated” correctly.

- **Is there a charge to contractors for registering on the statewide small works roster?**

**No**, as of July 1, 2024, there will be no charge for contractors to register on the statewide small works roster for any number of agencies selected.

- **What are the specific “statewide small works roster” changes?**

As of July 1, 2024, there will be no visible changes to the vendor or consultant roster sections of MRSC Rosters. The small works roster will include the following changes:

- A. Contractor registration or annual renewal. Contractors will be verified through L&I for an active contractor’s license and will be screened through OMWBE’s database for any current small, minority, or women-owned business certifications. Contractors will also be required to identify their preferred “**project types**” and (work) **category(ies)** in a more intentional way.
- B. The small works category hierarchy include a “*project type*” required selection and then a (work) category selection most like the project being solicited. Small works

roster categories have been reorganized and cleaned up from the previous MRSC small works roster to reflect the modified definition of small work and industry practices for contracting construction projects.

C. Data collection and notification. Agency statewide roster users are to return to the MRSC Small Works platform after procurement and award is complete to input bidding and award data. The data will then be publicly available. (See also RCW 39.04.200)

- **Are agencies required to use MRSC Rosters for consultant and vendor rosters to use the statewide small works roster?**

**No**, agencies can elect to only use the small works roster and *are not required* to use all three MRSC roster types. **However**, MRSC encourages agencies to use all three rosters for consistency of administration and ease of use for all your potential businesses. One of the underlying themes to updating the small works roster statute and naming MRSC a statewide support is “one-stop-shopping” for small businesses. We believe using MRSC for all roster types furthers that goal.

- **Are “services” categories being removed from the statewide small works roster?**

**No**, all project types and (work) categories that fit within the definition of small works are included in the statewide small works roster. *Changes* to small works roster provisions include a revised definition of small works (RCW 39.04.152(1)) as [contracts] for *building, renovation, remodeling, alteration, repair, or improvement*. **Maintenance categories are found on the vendor roster.**

### **Contractor Registration and Administration**

- **If we are new to MRSC Rosters and want to sign up to use the statewide small works roster, can we send you a list of our current roster to “load into” the statewide roster?**

No, unfortunately, each of your current contractors will need to register individually for the statewide small works roster.

- **How fast can a contractor become registered to the statewide small works roster?**

**Within minutes.** All the verification is done through electronic data exchanges with L&I and OMWBE, so it only takes a couple of minutes for the contractor to fill out their information and be verified and a contractor to be “active.” Any project specific roster generated will have active contractors within project types and (work) categories.

- **How will the statewide roster verify contractor licensing before they are allowed onto the roster?**

MRSC Rosters is electronically accessing L&I records upon contractor registration or re-registration. Contractor’s that do not have an active contractor’s license or are debarred in L&I’s system will not be allowed to register on the roster.

- **Under the new statewide roster, will businesses be allowed to select “all” agencies and “all” categories?**

**Yes**, contractors are *not prohibited* from selecting any agency or category. **However**, contractors will have to individually select each, there is no “select all” capabilities anymore. Also, there is a prompt after a significant number of selections to help curb contractors selecting agencies and categories they truly cannot work for or be awarded.

- **Is there a way to search all contractors and the categories they selected prior to starting a new solicitation?**

**No**. Initially, on July 1, 2024, an agency will need to *start a new solicitation*, select a “project type” and (work) category to see which contractors have *registered with your agency in a specific category*. However, if upon seeing the list of contractors, the project specific roster does not have enough contractors or appears to have the “wrong” types of contractors (e.g., painters when there should be roofers), an agency will be able to “go back” and reset or modify the list before saving and continuing to download the project specific roster.

There is a *general search* where any one can review all contractors registered on the statewide small works roster, there is just no way to filter by project types, work categories, or agencies.

- **Does MRSC and the statewide roster continuously check contractor “bidder responsibility” criteria?**

**No**, contractors are verified as “*bid ready*” during registration and annual renewal. Agencies must verify bidder responsibility during the procurement and/or prior to award per RCW 39.04.350 as with any public works procurement.

- **Will MRSC remove “bad actor” contractors from the statewide roster?**

**No**, MRSC will not remove “bad actors.” A contractor that is debarred or does not have an active contractor’s license will not be able to register or renew. Agencies can use other project specific mandatory bidder responsibility criteria and/or *supplemental bidder* to further vet contractors to your agency.

- **Are prime contractors only allowed to subcontract to contractors that are also on the small works roster?**

**No**. The small works roster and process does not address subcontracting, primes are free and expected to subcontract to whoever they wish.

## Project Types and (work) categories

- **Will agencies be able to request to add new Project Types and/or (work) Categories if there aren't the categories that "we" need on the statewide small works roster?**

**Yes, for (work) categories.** Agencies can contact MRSC Rosters to request new (work) categories. **However**, adding a new (work) category also means that contractors will need to reregister or register to that category. Administratively there is a quite a bit of work to "launching" new categories. MRSC reserves the right to scrutinize new category requests for such things as applicability to the whole state and evidence of bidder pools. New (work) category requests are not automatically processed.

- **When preparing a solicitation in the statewide small works roster platform, will you be able to select more than one project type and category? What do you do if there is more than one work scope involved in a project?**

The statewide small works roster is set up to target **prime contractors** who can be awarded a single contract with multiple work scopes involved; and therefore, will work best if agencies select the "**primary**" project type and a "**primary**" (work) category. It is not recommended to select multiple. Selecting multiple categories may result in businesses listed that cannot be awarded the whole project because they can only perform a portion of the work.

"Primary" is used here as the portion of the work that is estimated to cost the most.

- **What if your project has multiple "scopes" and/or multiple project types, how do you suggest selecting types and categories for your project specific roster?**

**Use the primary scope or the scope that has the most budget allocated to it;** chances are you will get general contractors that will subcontract smaller scopes.

**Example:** *Your project is remodeling a park bathroom and will also include relandscaping around the structure. Select "Park, Grounds and Landscaping" and then "facilities and structures." The prime contractor may then subcontract the smaller landscaping portion.*

## Small Works Roster "Process"

RCW 39.04.152 states that "the provisions to award" using the small works roster process may be used "in lieu" (instead of) of other procedures to award contracts for such work. *A simple interpretation is that small works roster process is used to award public works without "public" advertisement. The small works process is a way to focus bid pools.*

- **Is the MRSC statewide roster process different from the (general) small works roster process?**

**No**, there is no separate statewide small works process. MRSC Roster's small works roster "platform" partially automates and prompts agency users how to use the small works process for purposes of data collection.

- **Are agencies only allowed to award to contractors registered on [the] small works roster?**

**Yes**, agencies *should not be awarding* small works projects to contractors not *registered* on [the] small works roster and listed on the project specific roster. The small works roster and process are a way to “focus” bidder pools. Only contractors who are registered on the roster are to receive small works invitation and subsequently be awarded small works contracts.

**Advertising publicly or posting open small works roster invitations on a public bidding website, is not consistent with the intent and or provisions of RCW 39.04.151-154.**

- **When you post a bid via the small works roster are other contractors able to register and then be able to bid on that project, or will only the previously registered contractors be able to bid?**

**Only contractors registered prior** to when the *project specific roster* (list of businesses) is established should be invited to bid. There should be no “public posting” of small works roster projects for bid. All invitations are sent directly to the project specific roster businesses via email or “private solicitation” in your agency procurement portal.

Contractors that are interested in seeing what types of projects are awarded using the statewide roster, can see the data publicly posted *after it is collected*.

Agency members are encouraged to send separate notifications to your “typical” contractors to let them know when a small works project may be coming out, the project type and (work) category you will be seeking and perform an intermittent call to register so target bidders appear on your project specific roster.

- **Are agencies required to have an *engineer’s estimate* under the “new” small works process?**

**Yes.** Invitations to Bid or to Direct Contract must include a scope of work and an “estimate” for that scope. As stated in RCW 39.04.152(3) an agency must include a budget or some sort of expectation for how much money is available for the project. The statute does not specify an “engineers estimate.” It is clear, that under the “new” small works provisions, it is not allowed to use the small works roster process to set a budget or find out how much a project might cost.

- **How close does a “bid” have to be to the \$350,000 or \$150,000 threshold? Is there a tolerance or a percent overage that is allowed, or would an agency have to reject and go out to bid after public advertisement?**

There is no definition or requirement in statute for any “tolerance level” after which an agency would then need to publicly advertise or switch contracting methods.

The thresholds listed are to be used to determine the use of small works roster contracting process(es). However, since sales taxes is specifically excluded from the estimated cost “description,” it is reasonable to assume the legislature was comfortable with award amounts being above the determinate use threshold. For instance, say that there is an agency project that is estimated to be \$340,000 without sales tax, which is clearly within the threshold and intent to use small works roster process. If bids are at the estimate, the award amount is likely around \$374,000 once 10% sales tax is added.

If an agency estimate is \$340,000 and a single bid comes in at \$500,000; this is most likely a “blown bid” or a “wrong estimate” and the project should not be awarded/recorded under small works roster data. This is too egregious, and the project should be re-scoped, or the agency should consider using a different contracting method.

It is advisable to address various scenarios within the agency policies and procedures for small works and discuss agency adopted “tolerances.” DES suggests a tolerance of 10% in [WAC-330-040](#).

- **When pulling a project specific roster (business list, applicable roster) in the statewide small works roster will an agency member be able to filter “local” contractors or contractors that serve our county? Is there a geographic filter for contractors?**

**No**, at the launch of the statewide small works roster, **contractors** will continue to be responsible for selecting the agencies and geographic areas where they typically “bid” or do work. Any project specific roster pulled in the statewide small works roster platform, *will only include contractors that have specifically selected your agency to receive invitations* for small works opportunities from.

- **What are the specific changes to the bonding and retainage requirements under the “new” small works process?**

The biggest change to bonding and retainage will be limited public works process no longer being an option. For small roster projects under \$50,000, RCW 39.04.155(3) establishes an alternative limited public works process that agencies may use. With this limited public works process, retainage and performance and payment bonds may be waived. This limited public works process will no longer exist starting July 1, 2024.

Other than this change, small works roster provisions *do not require* any “changes” to payment/performance bonding or retainage but do provide options for small works contracts estimated to cost less than \$150,000. Agencies may elect to reduce or waive retainage and take on the liabilities of the contractor if the project is estimated to cost between \$5,000 and \$150,000. Project that cost less than \$5,000 retainage is not required and a combined L&I form can be submitted. (RCW 39.04.152(5))

RCW 39.04.151-154 does not address **bid bonds** or **bid security**, agencies using the small works roster process should follow your specific public works policies and procedures regarding bid security.

- **Our agency has a policy that specifically states payment and performance bonds are not required for any contract that is \$50,000 or less. So which controls, the small works, or our policy?**

MRSC recommends you seek legal counsel in this matter. MRSC further recommends that when using the small works roster and process your agency follows the provisions outlined in RCW 39.04.151-154 which will replace RCW 39.04.155 effective July 1, 2024. RCW 39.04.152(5) (small works provisions) says that any contract valued at more than \$5,000 is subject to payment and performance bonding requirements under RCW 39.08 which in turn uses the words “good and sufficient bond with a surety.”

- **Can an authorized agency use both “on-call” (unit priced) public works contracting (RCW 39.04.235) and the small works roster process if we meet the requirements of both statutes?**

MRSC does not find in either statute a preclusion or mutual exclusion, so in theory it may be possible to procure a unit-priced contract using the small works roster process. Provided that the unit price contract is competitively bid (not direct contracted), the agency’s award does not exceed \$350,000 (over multiple years if applicable), and the invitation and scope of work meets the definition found under RCW 39.04.152(1).

Agencies might consider tracking each public works contracting method separate, write policies and contracting type assessments, internal controls and reporting requirements distinctly for each. Co-mingling methods leads to tracking and reporting confusion. (e.g., which contracting method do you choose in L&I’s public works intents and affidavits portal? How do you tell the contractor to track prevailing wage which is different in unit-price contracting method?)

### **Small Works Data Collection**

**Procurement of small works projects occurs outside the statewide small works roster platform** and MRSC rosters. Agency members must **manually enter the bidding and award** data for each project using the statewide small works roster and platform.

All project data entered into the statewide small works roster platform will be **publicly available** as required under RCW 39.04.152(6).

- **When entering bidding and award data into the small works roster, will you be able to select a common status such as “no response.”**

**Yes**, the default setting for entering bidding and award data into the statewide small works roster platform is “no response.”



- **If using the MRSC version of Bonfire, will the responses captured in Bonfire revert into to the statewide small works roster platform?**

**No**, all bidding and award data needs to be ***manually entered*** by the agency members once the procurement and award process completes.

**Note:** agencies are still required to comply with the public records act (RCW 42.56) and must not rely exclusively on MRSC to meet recording keeping requirements or provide public records requests.

### **Direct Contracting**

***When direct contracting, an agency will only contact one contractor at a time.*** When direct contracting, there is no competition between contractors on a project specific roster.

To use the option to direct contract, an agency must first have a [small] Business Utilization Plan along with a resolution, policies, and procedures to help manage and guide each directly contracted project award.

- **Is “direct contracting” required for any small works project estimated to cost \$150,000 or less?**

**No, *direct contracting is only an option.*** If an agency does not want to direct contract, you may send an invitation to bid to all contractors on a project specific roster and compete a small public works project.

- **When an agency selects “direct contracting” in the statewide small works roster platform, will the project specific roster (business listing) only include small, certified firms?**

**No**, the generated project specific roster (business listing) will display **all** contractors that registered for the project type and category selected with that agency. The statewide small works platform will visibly separate the certified firms and non-certified firms for ease of determining if there are 6 or more, 5 or fewer, or none.

- **If direct contracting, how do you know if you are getting the “lowest bid”, or the “lowest price” as required by RCW 39.04.152(4)(a)(i)?**

RCW 39.04.152(4)(a)(i) clarifies a “competitive price” vs. a “lowest bid.” “Competitive price” is not defined by statute. There is no way of knowing in a direct contracting scenario if another contractor may give you a different price. The next contractor on a similar type of project could give you a higher price. Direct contracting may require an agency to be confident in your estimates and be comfortable with a price that is within your budget. If this is not comfortable and you feel this is not a good use of taxpayer dollars, ***direct contracting is just an option***, and you may compete each project to every business listed on your project specific roster at any estimate.

- **Can I still call for 3 bids on projects that cost \$50,000 or less?**

**No**, limited works will no longer be an option after July 1, 2024.

- **RCW 39.04.152(4)(iii) states that an agency must notify small, minority, or veteran-owned businesses on an applicable (project specific) roster when direct contracting is utilized. How do we do that, or does MRSC do that?**

MRSC, as the administrator of the statewide small works roster, cannot be involved in any specific procurement on behalf of an agency member. Agency members need to address in their policies and procedures how each procurement will be managed and if specific notifications, addenda, determination of non-responsiveness or bidder's being not responsible, or similar will be handled. Bidding and award data will be available to the (general) public as soon as an agency member enters it into the platform.

### **Rotation**

As described in RCW 39.04.152(4)(iv), when direct contracting an agency may not favor certain contractors by repeatedly awarding contracts [to the same contractor(s)] without documented attempt to contract with different contractors.

- **Is there a simple or minimum definition of rotation?**

**Yes**, in the context and spirit of the small works roster provisions rotation can be defined as using a different contractor each time an agency direct contracts for similar project types. (e.g., using 3 different roofing contractors for 3 separate roof replacement projects.)

- **If there are 6 or more “small/certified” contractors on a project specific roster, do you have to rotate through just the 6 or more small contractors or do you rotate through all the contractors on the project specific roster?**

In the event a project specific roster (list of businesses) contains 6, or more than 6, small businesses an agency would rotate, and direct contract, with just the small businesses.

- **What if there is only one contractor on a project specific roster and therefore no way to rotate?**

**You can directly contract with the only contractor on a project specific roster.** MRSC provided a *sample rotation policy* that includes multiple different scenarios and provides some guidance on how to document your attempts to meet the intent of “rotation” in RCW 39.04.152(4).

- **Are agencies required to have a rotation policy?**

Under RCW 39.04.152(1) (last sentence) authorized local governments (agencies) are required to have established procedures for the entirety of small works roster provisions. It is a best practice, for consistent application and fair, transparent procurement, to have a rotation policy.

## Negotiation

- **Do I have to negotiate, or can an agency accept the first price submitted by a contractor?**

**No**, you do not have to negotiate. Under direct contracting, when you invite a contractor directly to submit a quote, bid, or offer, if the price is within your estimate you are encouraged to accept the price without negotiating.

- **Are you allowed to negotiate with more than one contractor?**

**Yes, but only one at a time.** If a “rotated” contractor declines to negotiate or submit a price, an agency may send an invitation to the “next contractor in line.” If a negotiation “fails,” and an agency and a contractor are not able to reach agreement, negotiations can be terminated, and the next contractor can be sent an invitation; a new round of negotiations can begin.

- **How do you track negotiations?**

Agencies will still receive a quote, bid, or offer from a directly contacted business. As discussed in the training, it is recommended that an agency use a **direct contracting specific bid/quote/offer/negotiation form** that includes sections for a “counteroffer” in the event of negotiation before an award amount is determined. The form will document the process and record the agreed price.

- **What are some best practices, if having to negotiate a direct contract, to assure a “competitive” price (RCW 39.04.152(4)(a)(i))?**

Agencies are encouraged to have a *direct contracting specific “bid form”* that outlines the expectation for a directly selected contractor to provide a price for the project within the stated estimate under the conditions of the invitation and contract. The bid form may also include the process and procedures under which the agency will “negotiate” or “accept” a bid and how many counteroffers may be entertained. Reserve your right to reject a price that is outside your estimate unless the contractor can provide evidence that the agency missed scope or had scope not priced in the estimate.

## Templates and Samples

### Department of Enterprise Services (DES)

- [Rules](#) including DES approach to many small works roster and process policies with rotation and direct contracting can be found in the Washington State Administrative Code ([WAC](#)) [200-330](#).
- [Templates and Forms](#) can be found on the DES website under services, facility leasing and management, construction. (*MRSC And DES have worked together to develop.*)

*DES rules, policies, and procedures are posted as guidance and assistance to local governments but are not binding unless formally adopted.*

## Agency Specific Bid Thresholds

- **How does the small works roster provisions, specifically direct contracting, impact, or interact with, agency-specific bidding thresholds? (e.g., cities or counties do not have to compete contracts under a certain “limit”).**

There is no specific direction given in statute. Each agency must establish their own policies around the interpretation of, and the application of, precedence, competing, or conflicting statutes. Agencies are encouraged to seek legal advice. MRSC has observed, agencies with higher contracting thresholds under which no competition is required, are planning to use those thresholds instead of direct contracting or the use of a small works roster. (See additional discussion below.)

## Emergency Public Works

- **Can an agency use the small works roster for emergency public works contracts?**

**Yes, in theory.** RCW 39.04.020 and 280 addresses *competitive bid waivers in emergency situations* and contains requirements for declarations and specific notifications. MRSC sees no exclusion that would preclude an agency from using a *small works roster* or process in an emergent situation. However, under RCW 39.04.152(3) small works invitation requirements, there may be a limitation to using the *small works roster process* to award a contract for emergency work given how specific the provisions are and how emergency work tends to be hard to define and predict the extent of. It is advisable to keep emergency contracting under a separate program for waivers of competitive bids without the contracting requirements of the “new” small works provisions.

## **SB5268 – Agency employees performing “public works” projects, thresholds, bid limits and thresholds, and the “new” small works roster provisions.**

Part of the goal of updating the small works roster and process through SB5628 was to *align thresholds and references between agency-specific statutes and the contracting statutes of RCW 39.04*. MRSC believes that the intent in mentioning agency **employee performed public work limits** was to clarify that the “new” **small works roster process may be used to contract instead of publicly advertising and “contracting out.”** There was no intent to change agency’s existing rights or procedures to use their own employees to perform public works or somehow connect small works roster process exclusively to “contracting out.”

## **First Class Cities (RCW 35.22.620) (Section 20)**

In addition to other requirements and limitations, effective July 1, 2024, a first-class city may have public works performed by contract and call for competitive bids and/or have the city’s own employees “perform” public works projects when the project “is not in excess of,” \$75,500 involving a single-trade or \$150,000 involving more than one trade. The “cost” of the project includes all the materials, labor, and equipment to perform the project but does not include any sales tax.

- **How does the small works roster and process impact first-class cities “contracting out” options? Does this mean that the city can’t use the small work roster for project that cost less than \$150,000?**

**No.** One has no bearing on the other. RCW 35.22.620(7) was updated under SB5268 simply to update the small works roster and process RCW reference. RCW 35.22.620(7) is only allowing first-class cities to use the small works roster and process “*in lieu of*” the other contracting or public works delivery methods discussed previously in the statute.

### **Second Class Cities (RCW 35.23.352) (Section 21)**

In additional to other requirements and limitations, effective July 1, 2024, any second-class city may construct any public works *by contract* or *day labor* **without calling for bids** when projects do not exceed \$150,000 with multi-trades involved or \$75,500 single-trade. Estimate thresholds include all materials, labor, and equipment, but not sales tax. The intent to include RCW 35.23.352 in SB5268 was to update the small works roster and process references replacing the “old” 39.04.155 with the “new” 39.04.151-154.

- **It appears our city could have agency crews do public works project if the total project cost does not exceed \$75,500 (single craft) and \$150,000 (multi craft) OR we could even contract *without calling for bids* whenever estimated cost of the work doesn’t exceed the limits, is this correct?**

**Yes,** this is how MRSC interprets this section.

- **Is the reference to “*without calling for bids*” the same as “direct contracting?”**

**No,** if you do not use the small works roster and process with the specific requirements called for in RCW 39.04.152(4) it would not be “direct contracting.” The contracting process “*without calling for bids*” is most often referred to as either a “direct select” or a “waiver of competitive bid.” MRSC has further discussion under Contracting and Competitive Bidding; [Minimal Competition](#). It is recommended that if your agency does exercise this contracting method, you track the awards and contracts separate from formal competitive bid, small works, etc.

In (14) of section 21 says that if any second-class city or town that awards a project to a bidder under traditional “low-bid” method must prepare an annual report to the department of commerce detailing how many awards were given to certified minority and women-owned firms and describe how notice was provided to certified firms.

- **Does the agency prepare the annual report only if we don’t award to the lowest responsible bidder and award to 2<sup>nd</sup> lowest bidder?**

**No,** the report to commerce details any bid, the award data, how many awards went to certified firms and what notice was provided to certified firms. MRSC does not interpret this report to have any bearing on lowest responsive and responsible scenarios. It is recommended this sort of a report contains *all low-bid public works contracts* with comprehensive bidding and award information, regardless of the awardee scenario or outcome.

### **Metropolitan Park Districts (RCW 35.61) (Section 22)**

There were no changes to RCW 35.61.135(1) provided through SB5268. All work over \$20,000 is to be by contract, low bid, with a bid guarantee and so on. As an alternative, a park district may use the small works roster and process (RCW 35.61.135(2)).

- **Does that mean for a park district we are to automatically use direct contracting for project estimated to cost less than \$20,000?**

No, there are no “automatics” listed in this statute. RCW 35.61.135(1) establishes a bid limit or threshold. A park district is not required to compete work that is estimated to cost less than \$20,000. If electing to use the small works roster and process as allowed under RCW 35.61.135(2) a park district is advised to follow the requirements of RCW 39.04.151-154 under the provisions and processes required.

### **Counties (RCW 36.32.235) (Section 24)**

For counties *with a purchasing department* RCW 36.32.235 remains unchanged and still specifies that counties with a population of more than 400,000 can have employees perform public works project that do not exceed \$90,000 (single trade) or \$250,000 (multiple trades), further county employees can perform ravine and stormwater projects \$45,000 (single trade) or \$125,000 (multiple trades).

- **Do counties apply the thresholds of RCW 36.32.235 when using the small works roster and process? Do we have to break up the work by multiple trades?**

**No**, the intent of the updates to RCW 36.32.235 was to align the thresholds and processes affording counties the opportunity to use the small works roster and process instead when contracting out. Describing work by multi and single trades projects apply internal to a county’s organization for work assignments and tracking, not if work is done by contract.

- **Will MRSC and the statewide roster have a project type and (work) category for stormwater and ravine projects so counties can follow our statute?**

**Yes**, under the “civil” project type there are (work) categories for stormwater and ravine projects.

### **Counties (RCW 36.32.250) (Section 25)**

For counties without a purchasing department RCW 36.32.250 remains the same except for the change in the reference from the “old” small works statute to the “new” RCW 39.04.151-154.

- **Is my county agency required to use direct contracting for project estimated to cost less than \$40,000? The statute says we can “dispense with competitive bidding” on order of the county legislative authority?**

**No**. Direct contracting is *only an option* within the context of the small works roster and process. MRSC recommends that in your county’s resolutions, policies, and procedures

you discuss under which conditions projects that are estimated to cost \$40,000 competitive bidding will be waived (dispensed with) and/or if the county will simply elect to use small works roster in all public works scenarios.

### **Fire Districts (RCW 52.14.110) (Section 30)**

As currently stated in RCW 52.14.110, for public works, involving the construction or improvement of a fire station or other buildings, where the estimated cost will not exceed the sum of \$75,500 for single trade or \$150,000 multiple trades, **formal sealed bidding shall not be required**. SB 5268 did not change any provisions of RCW 52.14.110 other than to add the “new” small works roster references.

- **The bill states that formal sealed bidding is not required for construction project estimated to cost less than \$150,000 with multiple trades. Does this mean that the district must use direct contracting?**

**No.** There is no change to the current fire district bid limits or thresholds. As has been the case, construction and fire station improvement projects that are estimated to cost *less than \$75,500 (single trade) or \$150,000 (multi trades) do not require formal sealed bidding*. This provision in RCW 52.14.110(1)(b) is separate from small works roster and process (RCW 52.14.110(1)(c)). Direct contracting is only an option should the district decide to use the small works roster and process for construction or improvement of a fire station under RCW 39.04.152.

It is recommended that fire districts include in their resolutions, policies, and procedures direction/guidelines for how projects at certain thresholds will be awarded and under which conditions small works roster process and/or direct contracting will be used.

- **What does “formal sealed bidding shall not be required” mean?**

MRSC advises fire districts to seek legal counsel. There are many interpretations and applications circulating including, but not limited to, it means there can be a “waiver of competitive bidding” or “limited competition” to the allowance for electronic bidding. It is advisable that district resolutions, policies and procedures provide an adopted interpretation and internal controls for bidding and awarding public works contracts regardless of the methods or processes used.

### **Public Utility Districts (RCW 54.04.070) (Section 32)**

Thresholds for public works projects performed by PUD employees is currently \$75,500 involving a single trade and \$150,000 involving more than one trade. These thresholds are inclusive of costs for labor, materials, and equipment needed to deliver the project, but does not include sales tax.

The statutes further state that when there is a project that is best performed by PUD employees and is customarily performed by such staff as maintenance and operations, a project could be

performed by PUD staff up to \$300,000 in value. SB 5268 again attempting to align statute references and thresholds when projects are performed by contract (“contracted out”).

- **How does the “new” small works roster and process impact RCW 54.04.070 and our staff work, starting July 1, 2024?**

There is no direct impact by the “new” small works roster and process to PUD staff performing public works projects under RCW 54.04.070. The intent of modifying RCW 54.04.070 (4) was to update the small works roster and process reference to the small works provisions that will be in effect July 1, 2024. PUD policies and procedures should detail when public works projects are refused by district staff (first right of refusal) or fall outside of staff purview, the processes by which the project(s) are going to be performed under contract by a responsible contract; further, under what circumstances the district may choose the small works roster and process as the method of contracting.

### **Water and Sewer Districts (RCW 57.08.050) (Section 33)**

RCW 57.08.050(1) states that, *contracts for “work”* of which are estimated to cost \$75,500 or less involving a single trade, or \$150,000 or less involving more than one trade **do not have to be competitively bid.**

- **Which thresholds apply? Does that mean that the district must *direct contract* when projects with multiple trades are estimated to cost less than \$150,000 because that is not a competitive process? How does the district know if there are one, or more than one trade involved?**

The bid limit thresholds stated in RCW 57.08.050(1) do not have bearing on the small works roster or process or vice versa. It is recommended that the district’s resolution, policies, and procedures, outline the conditions under which “work” is to be contracted, the policies and procedures should also outline when the small works roster and process contracting method, as well as direct contracting, will be used. The district may have other methods of contracting for “work” that are not a result of a competitive bid such a “direct select” or “limited competition.” RCW 57.05.050(2) states that the small works roster and process may be used as an alternative. It is recommended that the district seek legal counsel and develop a comprehensive contracting policy that includes each of the contracting methods the district may/will use, under what circumstances, and how each will be overseen.

### **Public Hospital Districts (RCW 70.44.140) (Section 34)**

RCW 70.44.140(1) states that when “work” is ordered, estimated to cost more than \$75,000 it shall be by contract and inviting sealed proposals for such work. SB5268 amended RCW 70.44.140(2) to reference the “new” small works roster and process provisions.

- **Does this mean that hospitals now must use direct contracting under \$75,000?**



**No**, there is no connection between RCW 70.44.140(1) and direct contracting under RCW 39.04.152(4)(ii)(b). The only reason RCW 70.44.140(2) is included in SB5268 is to update the references to small works roster and process in effect July 1, 2024.