



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-650

File ID:	AB2021-650	Version:	1	Status:	Adopted
File Created:	10/29/2021	Entered by:	THelms@co.whatcom.wa.us		
Department:	County Executive's Office	File Type:	Ordinance		
Assigned to:	Council Finance and Administrative Services Committee	Final Action:	11/23/2021		
Agenda Date:	11/23/2021	Enactment #:	ORD 2021-083		

Primary Contact Email: Bbennett@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code (WCC) 3.08.060 (Purchasing System) to update the small public works roster process to award public works contracts under WCC 3.08.095 and to establish consulting services roster award process for architectural, engineering, and other professional services

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
11/09/2021	Council	INTRODUCED	Council Finance and Administrative Services Committee
		Aye: 6	Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey
		Nay: 0	
		Absent: 1	Kershner
11/23/2021	Council Finance and Administrative Services Committee	RECOMMENDED FOR ADOPTION	
		Aye: 3	Browne, Byrd, and Frazey
		Nay: 0	
		Absent: 0	

11/23/2021 Council

ADOPTED

Aye: 7 Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
Nay: 0
Absent: 0

Attachments: Proposed Ordinance, Exh A 3.08.060 strikethrough, Exh B 3.08.95 strikethrough, Exh C 3.08.096 new redline

PROPOSED BY: Brad Bennett

INTRODUCED: November 9, 2021

ORDINANCE NO. 2021-083

AN ORDINANCE AMENDING WCC 3.08 (PURCHASING SYSTEM) TO UPDATE THE SMALL PUBLIC WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS UNDER WCC 3.08.095 AND TO ESTABLISH CONSULTING SERVICES ROSTER AWARD PROCESS 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, Whatcom County Code sections 3.08.060 and 3.08.095 provide for awards of contracts from a small works roster pursuant to RCW 39.04.155; and

WHEREAS, WCC 3.08.095 should be updated to ensure compliance with the current requirements of state law as to allow for continued use of the small works roster contract awards process; and

WHEREAS, Ch. 39.80 RCW and other laws regarding contracting for consulting services by municipalities allow certain contracts to be awarded by a consultant roster process; and

WHEREAS, WCC 3.08.060 currently requires all awards of contracts for professional services exceeding \$40,000.00 be based upon bids or proposals in response to specifications and invitations to bid subject to the provisions of WCC 3.08.090; and

WHEREAS, the Whatcom County Council seeks to establish procedures for the use of consultant rosters as an alternative means of procuring professional services contracts consistent with the requirements of state law; and

WHEREAS, the availability and use of a consultant roster contract award process will help achieve greater administrative efficiencies related to the procurement of professional services; and

WHEREAS, the Whatcom County Council wishes to update the purchasing code, WCC 3.08, to include a new section that provides for a consultant roster contract award process as an alternative to existing purchasing code requirements.

NOW, THEREFORE, BE IT ORDAINED, that the County Code shall hereby be amended as detailed in the attached Exhibit(s) A, B, and C.

ADOPTED this 23rd day of November, 2021

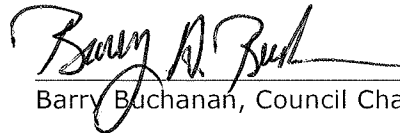
ATTEST:


Dana Brown-Davis, Clerk of the Council

APPROVED AS TO FORM:

Christopher Quinn per email 10/27/2021
Civil Deputy Prosecutor

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**


Barry Buchanan, Council Chair

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**


Satpal Sidhu, County Executive

Approved () Denied

Date Signed: November 29, 2021

EXHIBIT A
3.08.060

3.08.060 Bids and proposals required.

Awards of contracts for the acquisition of materials, supplies, services, tools, equipment or rental of personal property and professional services exceeding \$40,000 will be based upon bids or proposals received in response to specifications and invitations to bid, except as follows provided below:

A. Sole source purchases shall not be required to go through competitive bidding. A purchase may be determined to be sole source by the county executive or designee when the bidding process would be futile because only one bidder could respond to the invitation.

B. In the event of an emergency when the public interest or property of the county would suffer material injury or damage by delay, upon an order of the county executive declaring the existence of such emergency and reciting the facts constituting same, the requirements governing competitive bids with reference to any purchase or contract may be waived pursuant to RCW 36.32.270.

C. Public works projects involving funds not exceeding the amount allowed in under RCW 39.04.155, ~~Small works roster contract procedures~~—~~Limited public works process~~, or any successor statute, may be completed utilizing the small works roster contract award process pursuant to WCC 3.08.095.

D. Acquisition is from another public entity.

E. Contract does not require use of county funds.

F. The procurement of professional services may be completed utilizing the Consultant Roster Award Process pursuant to WCC 3.08.096.

Proposals from architects and engineers are subject to the requirements of Chapter 39.80 RCW. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

EXHIBIT B
3.08.095

3.08.095 Small works roster contract award process.

This section may be utilized in the acquisition of contractual services necessary to complete public works projects as allowed under RCW 36.32.250, and consistent with RCW 39.04.155. ~~In order to use a small works roster contract award process in lieu of formal sealed bidding, the county shall~~ To use the small works roster contract award process provided for by this section the following procedures shall be followed:

~~A. Publish at least twice each year in the official county newspaper a notice of the existence of the roster and solicit the names of contractors that are qualified for the requested categories of work. Notice shall be published at least once in each week for two consecutive weeks prior to the last date upon which response to the notice will be received, and may be published for as many additional publications as shall be considered in the county's interest.~~ **Publication.** At least once a year, the County or its designee, shall publish in a newspaper of general circulation within the County's jurisdiction a notice of the existence of a small works roster and solicit the names of contractors for the small works roster. Responsible contractors shall be added to the small works roster at any time that a contractor completes an online application provided by the County or its designee, and meets the minimum State requirements for roster listing.

~~B. In every case a certain category of work is to be accomplished under this section, all contractors responding to the above notice and indicating their qualification to perform the category of work proposed shall be contacted and provided an invitation to bid.~~ **Small Works Roster - Non- Limited Public Work Process. Written, or Electronic Bids.** The County shall obtain, written, or electronic bids 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). The County may establish supplementary bidder criteria under RCW 39.04.350 (2) to be considered in the process of awarding a contract.

1) An invitation to bid pursuant to a small works roster will not be advertised. Invitations for bids 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.

2) Bids will be invited from all appropriate contractors on the appropriate small works roster. As an alternative to the preceding requirement, 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 County 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 two hundred and fifty thousand dollars (\$250,000) up to the authorized threshold for use of the small works roster process in RCW 39.04 and the County elects to solicit bids from less than all the appropriate contractors on the appropriate small works roster pursuant to this sub-section, the County must notify the remaining contractors on the appropriate small works roster that bids on the work are being sought. The County has the sole option of determining whether their notice to the remaining contractors is made by:

- (a) publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (b) mailing a notice to these contractors; or
- (c) sending a notice to these contractors by facsimile or email.

3) At the time bids are solicited, the County representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

4) A written record shall be made by the County representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bids obtained shall be recorded, open to public inspection, and available by telephone inquiry.

~~C. Include in the invitation to bid the date on which bids will be received, the scope and nature of work to be performed, the materials and equipment to be furnished, and, if not provided otherwise in the invitation to bid, where the detailed plans and specifications may be seen and obtained.~~ **Small Works Roster-Limited Public Works Process.** The County may award a contract for work, construction, alteration, repair, or improvement projects using the limited public works process if the project cost is equal to or less than the amount established in RCW 39.04.155(3). For a limited public works project, the County will solicit electronic or written bids 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 bids shall be open to public inspection and available by electronic request.

For limited public works projects, the County 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, material

men, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the County shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The County 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.

D. ~~Otherwise apply the provisions of WCC 3.08.090(B), (E), (F), (G), (H), (I), (J), and (M).~~ **Determining Lowest Responsible Bidder/Award.** Public works contracts under this section shall be awarded 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 County may call for new bids. A responsible bidder shall be a registered 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 County.

E. ~~Forgo the advertisement of a contract awarded through use of the small works roster.~~ Unless otherwise addressed in this section, the provisions of WCC 3.08.090 (B), (E), (G), (H), (I), (J), and (M) shall apply. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A).

NEW SECTION UNDER WCC 3.08

3.08.096 Consultant roster contract award process for architectural, engineering, and other professional services.

As an alternative to the requirements of WCC 3.08.060 and 3.08.090, this section may be utilized to acquire consultant services. Consultant services include professional services. Professional services are those services that have a primarily intellectual output or product and include, but are not limited to, services provided by architects, engineers, surveyors, doctors, trainers, tax professionals, accountants, and management, labor and financial advisors.

To use the consultant roster contract-award process provided for by this section the following procedures shall be followed:

A. Publication. At least once a year the County or its designee shall publish in a newspaper of general circulation within the municipality's jurisdiction a notice of the existence of the consulting services roster and solicit the names of consultants for the consulting services roster. The County or its designee shall add responsible consultants to the consulting services roster at any time that a consultant completes the online application provided by the County or its designee, upload a Statement of Qualifications, and meets minimum State requirements for roster listing.

B. Review and Selection of the Statement of Qualifications Proposals for professional services. The County shall use the following process to select the most highly qualified consultant off of the Consulting Services Roster to provide the required services:

1) The department head shall have established criteria that must be consider in evaluating consultants for a given project. Consultant rate may be considered for services other than architectural, engineering, landscape architectural, and surveying. Criteria for architectural, engineering, landscape architecture, or surveying services shall include a plan to ensure that minority and women-owned firms and veteran-owned firms are afforded the maximum practicable opportunity to compete for and obtain

public contracts. The level of participation by minority and women-owned firms and veteran-owned firms shall be consistent with their general availability within the jurisdiction of the county.

2) The department head shall evaluate the written statements of qualifications and performance data on file with the county at the time that consultant services are required;

3) Such evaluations shall be based on the criteria established by the department head.

4) The department head shall conduct discussions with one or more consultant regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

5) The consultant deemed most highly qualified by the agency to do the project will be selected. The department head shall negotiate with the selected firm for a contract at a price that he/she determines is fair and reasonable, considering the estimated value of the services to be rendered as well as the scope and complexity of the project. If a satisfactory contract cannot be negotiated, the department head terminates the negotiations with that firm and attempts to negotiate a contract with the next most qualified firms. The process continues until an agreement is reached or the search is terminated.

C. In those instances where provisions of Chapter 3.08 WCC are inconsistent with the provisions of this section, the provisions of this section shall control. [CQ1].