

RESOLUTION NO. 503

A RESOLUTION OF THE TOWN OF RUSTON, WASHINGTON, RELATING TO PROCEDURES FOR PROCUREMENT OF MATERIALS, EQUIPMENT AND SUPPLIES, PUBLIC WORKS CONTRACTING, EXCEPTIONS TO FORMAL COMPETITIVE BIDDING PROCEDURES, INCLUDING THE SMALL WORKS ROSTER, LIMITED PUBLIC WORKS, EMERGENCY CONTRACTING AND SOLE SOURCE CONTRACTING, CONTEMPLATED BY RCW 35.27.362, RCW 35.23.352, RCW 39.04.155, RCW 39.04.190 AND OTHER RELATED STATUTES.

WHEREAS, the Town of Ruston has not adopted procedures for the procurement of goods and services, or for public works contracting; and

WHEREAS, while the Town may implement the statutes relating to the procurement of goods, services and public works contracting, some require that the Town adopt an ordinance or resolution for this purpose (*i.e.*, RCW 39.04.155(2)(b)) in order to take advantage of procedures other than formal competitive bidding; Now, therefore,

THE TOWN COUNCIL OF THE TOWN OF RUSTON HEREBY RESOLVES AS FOLLOWS:

Section 1. The Town hereby adopts the following procedures for procurement of materials, goods, supplies and services, as well as public works contracting:

PUBLIC WORKS CONTRACTING PROCUREMENT OF MATERIALS, SUPPLIES AND EQUIPMENT

1. **Policy.** All employees must follow established policies and procedures for procurement of equipment, materials, services and public works contracting. Adherence to policies and procedures will ensure that public purchases and contracts

are open, fair and at the best value to the public.¹ Procedures are divided into four major areas: (1) procurement of goods and services; (2) bidding requirements; (3) reimbursement of expenses; and (4) exceptions to competitive bidding.

2. Procurement of Goods and Services

Ruston purchases are subject to authorization and quote/bid requirements as follows:

General Purchases:²

< \$7,500.00	No competitive bids required, department selection
\$7,501.00 >	Competitive bidding or alternative (below)
\$15,000.00 >	Alternative to competitive bidding (3 written quotes) ³

Public Works Projects:⁴

One Craft or Trade or street signalization or street lighting

< \$40,000⁵ By contract without competitive bids

Two or More Crafts or Trades

< \$60,000⁶ By contract without competitive bids

Public Works Projects: (Small Works Roster)⁷

< \$300,000 By contract under small works roster process

Public Works Projects (Limited Public Works Process)

< \$35,000 By contract under limited public works process⁸

Professional and Personal Services Contracts

No competitive bid required, Mayor approves, Council awards contract

¹ See, RCW 39.30.020 describing penalties for competitive bidding violations.

² Towns, RCW 35.27.362; RCW 35.23.352(7)

³ RCW 35.23.352(8) See, Purchasing of Materials, Supplies and Equipment in Section g) on page 8.

⁴ Towns, RCW 35.27.362; RCW 35.23.352(1).

⁵ This is the estimated cost of the improvement or work, including the cost of materials, supplies and equipment.

⁶ This is the estimated cost of the improvement or work, including the cost of materials, supplies and equipment.

⁷ RCW 39.04.155(1), (2).

⁸ RCW 39.04.155(3)

Architectural and Engineering Services (chapter 39.80 RCW)

Advertise, Request for Qualifications Required, Mayor approves, Council awards contract

3. Bid Procedures.

a) Authorization Request. The Mayor authorizes a call for bids.

b) Publication of Notice. The department director (or designee) will publish the Call for Bids in the official newspaper or a newspaper of general circulation most likely to bring responsive bids. Notice shall be posted on the Ruston webpage, at least 13 days prior to bid submittal deadline.

c) Notice Contents. The Call for Bids or advertisement for bids should contain definite specifications and procedures for bidders to use to estimate their bids. At a minimum, the bid notice for public works must include:⁹

- (1) project title;
- (2) nature and scope of work;
- (3) where contract documents (plans and specifications) can be reviewed or obtained;
- (4) cost to obtain a set of contract documents;
- (5) place, date and time that bids are due;
- (6) statement that a bid bond must accompany the bid;
- (7) statement that Ruston retains the right to reject any and all bids and to waive minor irregularities in the bidding process;
- (8) statement that the contract involves "public work" and that workers shall receive the prevailing rate of wage pursuant to the Prevailing Wages on Public Works Act (chapter 39.12 RCW);
- (9) list of applicable prevailing wage rates; and
- (10) statement that Ruston is an equal opportunity employer and invites responsible bids from all qualified responsible bidders.

In addition, provide evaluation criteria, warranty, minimum qualifications, date, time and location of pre-bid conference (if applicable), name, address and telephone number of the project contact; and number of required copies will help bidders prepare responsive submittals.

d) Bid opening. Bids are submitted to the City Clerk, where they are time and date stamped and processed. Bid opening will be announced to the Mayor and department heads.

⁹ For bids on public works that are expected to cost one million dollars or more, see, RCW 39.30.060.

e) Report on bids. The responsible department head will prepare a report and recommendation on all bids received.

f) Bid award. Ruston may select the qualified vendor whose proposal is most advantageous to Ruston, with price and other factors considered.

g) Rejection of bids. Ruston reserves the right to reject any bid not in substantial compliance with the bid documents, or all prescribed public bidding procedures and requirements, and may reject all bids.

The following shall apply to bid solicitations:

- Selection of a winning offer is based primarily on the lowest responsive bid. This is defined in RCW 39.04.010(5) and RCW 39.04.350. Quality and expertise, however, must also be a consideration. Under RCW 39.04.350, before awarding a public works contract, the bidder must meet the following criteria:
 - At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
 - Have a current state unified business identifier number;
 - If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW and a state excise registration number as required in Title 82 RCW;
 - Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
 - If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, meet the requirements of RCW 39.04.350(1)(e);
 - Until 12-1-13, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries.
- If the bidder fails to provide the information requested concerning responsibility within the time and manner specified in the bid documents, then Ruston may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.
- If Ruston determines the lowest bidder not responsible, Ruston must provide the reasons for the determination in writing. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to Ruston. Then, Ruston must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, Ruston may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

4. Exemptions to Competitive Bidding Requirements.

a) Sole Source Vendor.¹⁰ If Ruston determines that a purchase is clearly and legitimately limited to a single source of supply, then the competitive bidding requirements may be waived. However, if Ruston decides to waive competitive bidding requirements based on a sole source, Ruston shall, immediately after the award of any contract, adopt a resolution which describes the factual basis for the exception. This resolution and the contract shall be recorded and open for public inspection.

b) Emergencies. In the event of an emergency, the person(s) designated by Ruston to act in the emergency may declare that an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of Ruston to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of the emergency must be made by the Council or its designee and duly entered into the record, no later than two weeks following the award of the contract. For purposes of this section, "emergency" means unforeseen circumstances beyond the control of Ruston that either: present a real, immediate threat to the proper performance of essential functions; or will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. For procedures relating to emergency public works, see, RCW 39.04.020.

c) Purchases involving special facilities or market conditions; auctions. The Mayor may waive established bidding requirements if an opportunity arises to purchase favorably-priced equipment at an auction,¹¹ or supplies or used goods that will be sold before Ruston can conduct the bid process.

d) Surplus property. Ruston may acquire surplus property from another governmental agency without the use of bids.¹²

e) Interlocal Agreements. Pursuant to chapter 39.34, bidding is not required when purchases of materials, supplies or equipment are made under State standard contracts or similar contracts executed by and through other local governments which have complied with state bidding requirements. The government's bid process must have been conducted within the previous 12 month period to be valid for use by Ruston. In addition, Ruston must conduct a screening process whereby it can justify the purchase through an Interlocal Agreement. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

d) Competitive Negotiations for Electronic data processing, Telecommunications equipment/systems, Software and Services.¹³ In order to

¹⁰ RCW 39.04.280(1)(a).

¹¹ RCW 39.30.045.

¹² RCW 39.33.010.

purchase electronic data processing equipment, telecommunications equipment/systems, software and services, Ruston shall first prepare a request for proposal, and submit it to an adequate number of qualified sources, as determined by Ruston, in its discretion. Notice of the request for the proposal must be published in a newspaper of general circulation in Ruston at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors (including price) and their relative importance. Ruston shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources and selection for awarding the contract. The award shall be made to the qualified bidder whose proposal is most advantageous to Ruston, with price and other factors considered. Ruston may reject any and all proposals for good cause and request new proposals.

e) Small Works Roster. The Small Works Roster may be used for public works projects valued **below \$300,000.00**.¹⁴ The Small Works Roster maintained by the Municipal Research and Services Center (www.mrscrosters.org) allows Ruston to evaluate the professional qualifications on file when a proposed project is scheduled. Use of the Small Works Roster allows Ruston to preclude the advertisement requirements of the formal competitive bid process. Other public works contracting procedures apply such as the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW.

Invitations for quotation shall include an estimate of the scope and nature of the work to be performed as well as the materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This does not eliminate the 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 \$150,000 to \$300,000**¹⁵, and if Ruston chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster, Ruston must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. Ruston 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 fax or other electronic means. For purposes of this section "equitably distribute" means that Ruston may not favor certain contractors on

¹³ RCW 39.04.270.

¹⁴ RCW 39.04.155. For estimating the cost of the work, see RCW 39.04.020.

¹⁵ For estimating the cost of the work, see, RCW 39.04.020.

the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

Once a contractor has been invited to submit a proposal, that contractor will not be offered another opportunity until all other appropriate contractors on the Roster have been given the opportunity to submit a proposal on a project.

Contractors selected from the Small Works Roster are not relieved from observing applicable legal requirements such as a performance bond, prevailing wage, material bonding, etc.

The contract must be awarded to the contractor submitting the lowest responsible quote. (This is described in the bid procedures section and in RCW 43.19.1911.) A contract awarded from the Small Works Roster need not be advertised.

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

All contracts awarded under the Small Works Roster must be posted at least once every two months.¹⁶ The list of contracts awarded under this process must be made available at least once every year. The list shall contain the name of the contractor awarded the contract, the amount of the contract, a brief description of the type of work performed and the date it was awarded. The list shall also state the location where the bid quotations for the contracts are available for public inspection.

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.¹⁷

f) Limited Public Works Process. In lieu of the Small Works Roster process, Ruston may award a contract for work, construction, alteration, repair or improvement projects estimated to cost **less than \$35,000**¹⁸ using the Limited Public Works Process. Limited public works projects awarded under this section are exempt from the other requirements of the Small Works Roster process and are exempt from the requirement that contracts be awarded after advertisement.¹⁹

For limited public works projects, Ruston shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster maintained by the Municipal Research and Services Center (www.mrscrosters.org) and shall award the contract to the lowest responsible bidder as defined in RCW 39.04.010 and this Resolution.

¹⁶ RCW 39.04.200.

¹⁷ RCW 39.04.155(4).

¹⁸ For estimating, see RCW 39.04.020.

¹⁹ RCW 39.04.155(3).

After an award is made, the quotations shall be open to public inspection and available by electronic request. Ruston shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographical area of the work. Ruston shall maintain a list of the contractors contacted and the contracts awarded 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. Ruston 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, Ruston shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

Ruston shall make available a list of the contracts awarded under this Limited Public Works Process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed and the date it was awarded. It shall also list the location where the bid quotations for these contracts are available for public inspection.²⁰

The breaking of any project into units or accomplishing any project 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 or the Limited Public Works Process.

g) Purchasing of Supplies, Materials or Equipment. The Purchasing Contract Process may be used for purchasing supplies, materials or equipment, without following the formal competitive bidding process, when the cost thereof is \$15,000.00 or less. The Purchasing Roster maintained by the Municipal Research and Services Center (www.mrscrosters.org) allows Ruston to evaluate the supplies, materials and equipment and prices on file when the need for same arises. Use of this process allows Ruston to avoid the advertisement requirements of the formal competitive bid process. *All other bidding requirements are the same.*²¹

For each purchase, Ruston will secure telephone or written quotations from (whenever possible), at least three appropriate vendors on the Roster to ensure that a competitive price is obtained and to ensure that the contract is awarded to the lowest responsible bidder under RCW 43.19.1911. Ruston may invite proposals from more than three or all appropriate vendors on the Roster.

Ruston may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies,

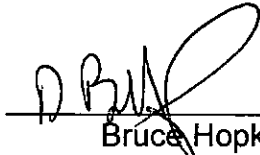
²⁰ RCW 39.04.200.

²¹ RCW 39.04.155.

materials, or equipment from a supplier located within its boundaries. Ruston must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, Ruston may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused.²²

Ruston shall post a list of the contracts awarded under this process at least once every two months. Ruston shall make available a list of the contracts awarded under that process at least once a year. The list shall contain the name of the vendor awarded the contract, the amount of the contract, a brief description of the items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.²³

PASSED by the Town Council of the Town of Ruston, signed by the Mayor and attested by the Town Clerk in authentication of such passage on this 2nd day of April, 2012.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:


_____, Town Clerk

APPROVED AS TO FORM:

Carol Morris, Town Attorney

²² For more information on the tax revenues that may be considered, see, RCW 39.30.040.

²³ RCW 39.04.155.