

ORDINANCE NO. 25-1703

AN ORDINANCE OF THE CITY OF LYNDEN AMENDING THE CITY'S MUNICIPAL CODE PROVISIONS REGARDING THE SMALL WORKS ROSTER.

WHEREAS, the City of Lynden is a noncharter code city operating under the mayor-council plan of government as set forth in RCW Chapter 35A.12; and

WHEREAS, the City is subject to the public works contracting requirements of RCW Chapter 39.04; and

WHEREAS, during the 2023 legislative session the Washington State Legislature passed, and the Washington State Governor subsequently signed into law, Second Substitute House Bill No. 5268 ("SSSB 5268"), which revised small works roster requirements for public works contracting; and

WHEREAS, SSSB 5268 permits the City to utilize the statewide small works roster developed by the Municipal Research and Services Center ("MRSC"); and

WHEREAS, concurrently with the adoption of this ordinance, the City Council is adopting a resolution electing to utilize the MRSC small works roster; and

WHEREAS, SSSB 5268 and the adoption of the MRSC small works roster necessitate the revision of the current provisions of the City's municipal code related to small works contracting; and

WHEREAS, the Lynden City Council has determined it is appropriate to revise Chapter 2.48, Small Works Roster, of the Lynden Municipal Code as reflected in the attached **Exhibit A**, attached hereto for reference purposes only, which identifies additions in underline and deletions in strikethrough; and

WHEREAS, the foregoing recitals are material findings and declarations of the City Council of Lynden.

NOW, THEREFORE, LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1: The current Chapter 2.48 of the Lynden Municipal Code is hereby repealed and replaced with the new Chapter 2.48 attached hereto as **Exhibit B** and fully incorporated herein by reference.

SECTION 2: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION 4: This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

AFFIRMATIVE VOTE _____ IN FAVOR, AND _____ AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF _____, 2025.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

Robert Carmichael, City Attorney

EXHIBIT A

Chapter 2.48 – SMALL WORKS ROSTER

2.48.010 – ~~Established Small Works Roster.~~

~~The small works roster shall be established as follows: At least once every year, the city shall advertise in the city's official newspaper the existence of a small works roster for the city. The city shall add to the roster those contractors who respond to the advertisement, submit the required information, and request to be included on the roster.~~

~~A. The City has adopted the small works roster(s) developed by the Municipal Research and Services Center (MRSC) for public work with an estimated cost of \$350,000 or less, excluding sales tax, or such different amount as may be authorized by future legislative amendment.~~

~~B. MRSC shall add responsible contractors to the small works roster at any time that a contractor completes the online application provided by MRSC and meets the minimum State requirements for roster listing.~~

~~C. Authority to oversee and manage the use and outcomes of the small works roster is delegated to the Public Works Director.~~

2.48.020 - ~~Contractor—Information to be supplied by questionnaire~~ Small Works Roster Estimated Cost Threshold.

~~A. In order to be included on the roster, the contractor shall supply information as follows in response to a standard form questionnaire to be developed by the public works director:~~

- ~~1. The contractor's state license or registration, where required by law;~~
- ~~2. The contractor's financial standing and responsibilities;~~
- ~~3. The contractor's experience, organization and technical qualifications necessary to perform proposed contracts;~~
- ~~4. The contractor's ability to comply with the required performance schedules taking into consideration its existing business commitments;~~
- ~~5. The contractor's satisfactory record of performance, integrity, judgment and skills;~~
- ~~6. The contractor's ready availability to perform a contract with the city.~~

~~B. The questionnaire required in subsection A of this section shall be sworn before a notary public, and shall be submitted once a year and at such other times as the city council shall require.~~

~~A. The City need not comply with formal sealed bidding procedures and may award public works contracts in conformance herewith for the construction, building, renovation, remodeling,~~

alteration, repair, or improvement of real property where the estimated cost of such work is three hundred fifty thousand dollars (\$350,000.00) or less, excluding sales tax, pursuant to RCW 39.04.152, or in such different estimated cost amount as provided in future amendment thereof. Said estimated costs shall include the costs of labor, material, equipment and use taxes as applicable.

B. All public work estimated to cost in excess of the small works roster maximum of \$350,000, excluding sales tax, or such different maximum amount as may be authorized by future legislative amendment, shall be subject to formal competitive bidding procedures required by applicable state law.

2.48.030 - Conditions and procedures for use of small works roster Publication for Contractors on Small Works Roster(s).

The small works roster may be utilized by the city as follows:

~~A. Cost. The City need not comply with formal sealed bidding procedures and may award public works contracts in conformance herewith for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost of such work is three hundred thousand dollars or less, pursuant to RCW 39.04.155, or in such estimated cost amount as provided in future amendment thereof. Said estimated costs shall include the costs of labor, material, equipment and sales and/or use taxes as applicable.~~

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

~~C. Contractors on Small Works Roster(s). The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster must keep current records of any applicable licenses, certifications, registrations, bonding, insurance or other appropriate matters on file with the city, as a condition of being placed on the roster(s). Responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records.~~

~~D. Written or Electronic Quotation Process for Small Works Roster. The City shall obtain written or electronic quotations for public works projects to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350. 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. 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; provided that, if the estimated cost of work is from one hundred fifty thousand dollars to three hundred thousand dollars or such other amounts as are authorized by future amendment to state statute (RCW 39.04.155), the City shall notify the remaining contractors on the small~~

~~works roster that quotations on the work are being sought. Said notice may be provided by any means authorized by state statute (RCW 39.04.155), or as said statute is later amended. The city will attempt to equitably distribute the opportunity among the contractors on the appropriate roster by not favoring certain contractors over other contractors on the appropriate small works roster who perform similar services. Immediately after an award is made, the bid quotations obtained shall be noted in writing, open to public inspection, and available by telephone inquiry.~~

~~E. Determining Lowest Responsible Bidder. The city shall award the contract for the public works project to the lowest responsible bidder, however, the city reserves the right to reject all proposals and re-solicit the call for proposals, to waive informalities or irregularities in a proposal or in the proposal process, or to accept the proposal that is in the best interest of the city. This section shall also apply to use of the limited public works roster under Section 2.48.040.~~

~~F. Award. All bids and quotations shall be collected and presented at the same time to the city for consideration, determination of the lowest responsible bidder and award of the job. In general, all contractors must comply with the following, prior to award:~~

- ~~1. Prevailing wages be paid and documented in compliance with RCW 39.12.~~
- ~~2. A Certification of Compliance with Wage Payment Statutes Form per RCW 39.04.350.~~
- ~~3. A performance bond may be executed in compliance with RCW 39.08 prior to beginning work.~~
- ~~4. The contractor must hold a current Washington State Contractor's License.~~
- ~~5. The contractor must provide a certificate of insurance naming the city as additional insured. General liability one million dollars per occurrence/two million dollars aggregate, automobile liability one million dollars worker's compensation and employer's liability insurance in the amount required by law and paid to date.~~
- ~~6. Contractor must have a satisfactory record of performance.~~
- ~~7. Contractor must have a City of Lynden Business License.~~

At least once a year the City (or MRSC on behalf of the City) shall publish in the newspaper of general circulation within the City a notice of the existence of the small works roster or rosters and solicit statements of qualifications from firms providing contractor services. Said notice shall also be provided to the Office of Minority and Womens' Business Enterprise (OMWBE) directory of certified firms. 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 public works contractors from the small works roster. Firms or persons providing public work contracting services shall be added to appropriate MRSC roster or rosters at any time that they submit a written request and necessary records.

2.48.040 - Alternative limited small works roster process for small public works projects Bidding Process for Small Works Roster Projects.

~~A. In lieu of awarding contracts under Section 2.48.030, the city may award a contract for public work estimated to cost less than thirty five thousand dollars, or such other amount as is~~

~~authorized by future amendment of state statute (RCW 39.04.155), using the limited public works process provided under this section. Public works projects awarded under this section are exempt from the requirements of the small works roster process provided under Section 2.48.030, except for subsections C, E and F therein, and are further exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.~~

~~B. For limited public works projects, the city 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. After an award is made, the quotations shall be open to public inspection and available by telephonic or electronic request. The city shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of work. The city 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, the city may in its discretion waive the payment and performance bond requirements of chapter RCW 39.08 and the retainage requirements of chapter RCW 60.28, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under RCW Title 82 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.~~

A. A contract awarded from a small works roster need not be advertised.

B. 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.

C. Bids shall be invited from all appropriate contractors on the appropriate small works roster that have indicated an interest in performing work within the City's geographical area.

D. Bids shall be received by securing electronic bids.

E. Unless otherwise authorized by law, small works contracts will be awarded to a responsible contractor submitting the lowest responsive bid.

F. Immediately after an award is made, the bid quotations obtained shall be recorded, publicly available, and available by request.

G. The City shall annually post a list of small public works contracts awarded in accordance with RCW 39.04.200.

H. The City will enter bidding and award information into the statewide small works roster platform promptly following the conclusion of each small works roster award.

2.48.050 – Public Works Projects Direct Contract Option

A. In lieu of awarding contracts under sections 2.48.010—2.48.040, the City may award a contract for public work estimated to cost less than one hundred fifty thousand dollars

(\$150,000.00), not including sales tax, or such other amount as is authorized by future amendment of state statute (RCW 39.04.152), using the direct contract public works process provided under this section.

B. For direct contract public works projects, if there are six or more contractors meeting the definition of small business, as defined in RCW 39.04.010, on the applicable roster, the City shall direct contract with one of those small businesses on the applicable roster that have indicated an interest in performing work in the City's geographical area.

C. For direct contract public works projects where there are five or less contractors meeting the definition of small business, as defined in RCW 39.04.010, on the applicable roster, the City may direct contract with any contractor on the applicable roster.

D. The City shall notify small, minority, women, or veteran-owned businesses on the applicable roster when direct contracting is utilized.

E. The City must equitably distribute opportunities for direct contract public works projects among contractors willing to perform in the geographic area of work. The City shall maintain a list of the contractors contracted and the contracts awarded during the previous twenty-four (24) months under the direct contract 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.

F. The City shall establish a small, minority, women, and veteran-owned business utilization plan to comply with the requirements of RCW 39.04.152(4)(b)(iv), as presently enacted or hereafter amended.

EXHIBIT B

Chapter 2.48 – SMALL WORKS ROSTER

2.48.010 – Small Works Roster.

A. The City has adopted the small works roster(s) developed by the Municipal Research and Services Center (MRSC) for public work with an estimated cost of \$350,000 or less, excluding sales tax, or such different amount as may be authorized by future legislative amendment.

B. MRSC shall add responsible contractors to the small works roster at any time that a contractor completes the online application provided by MRSC and meets the minimum State requirements for roster listing.

C. Authority to oversee and manage the use and outcomes of the small works roster is delegated to the Public Works Director.

2.48.020 – Small Works Roster Estimated Cost Threshold.

A. The City need not comply with formal sealed bidding procedures and may award public works contracts in conformance herewith for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost of such work is three hundred fifty thousand dollars (\$350,000.00) or less, excluding sales tax, pursuant to RCW 39.04.152, or in such different estimated cost amount as provided in future amendment thereof. Said estimated costs shall include the costs of labor, material, equipment and use taxes as applicable.

B. All public work estimated to cost in excess of the small works roster maximum of \$350,000, excluding sales tax, or such different maximum amount as may be authorized by future legislative amendment, shall be subject to formal competitive bidding procedures required by applicable state law.

2.48.030 – Publication for Contractors on Small Works Roster(s).

At least once a year the City (or MRSC on behalf of the City) shall publish in the newspaper of general circulation within the City a notice of the existence of the small works roster or rosters and solicit statements of qualifications from firms providing contractor services. Said notice shall also be provided to the Office of Minority and Women's Business Enterprise (OMWBE) directory of certified firms. 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 public works contractors from the small works roster.

2.48.040 - Bidding Process for Small Works Roster Projects.

- A. A contract awarded from a small works roster need not be advertised.
- B. 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.
- C. Bids shall be invited from all appropriate contractors on the appropriate small works roster that have indicated an interest in performing work within the City's geographical area.
- D. Bids shall be received by securing electronic bids.
- E. Unless otherwise authorized by law, small works contracts will be awarded to a responsible contractor submitting the lowest responsive bid,
- F. Immediately after an award is made, the bid quotations obtained shall be recorded, publicly available, and available by request.
- G. The City shall annually post a list of small public works contracts awarded in accordance with RCW 39.04.200.
- H. The City will enter bidding and award information into the statewide small works roster platform promptly following the conclusion of each small works roster award.

2.48.050 – Public Works Projects Direct Contract Option.

- A. In lieu of awarding contracts under sections 2.48.010—2.48.040, the City may award a contract for public work estimated to cost less than one hundred fifty thousand dollars (\$150,000.00), not including sales tax, or such other amount as is authorized by future amendment of state statute (RCW 39.04.152), using the direct contract public works process provided under this section.
- B. For direct contract public works projects, if there are six or more contractors meeting the definition of small business, as defined in RCW 39.04.010, on the applicable roster, the City shall direct contract with one of those small businesses on the applicable roster that have indicated an interest in performing work in the City's geographical area.
- C. For direct contract public works projects where there are five or less contractors meeting the definition of small business, as defined in RCW 39.04.010, on the applicable roster, the City may direct contract with any contractor on the applicable roster.
- D. The City shall notify small, minority, women, or veteran-owned businesses on the applicable roster when direct contracting is utilized.
- E. The City must equitably distribute opportunities for direct contract public works projects among contractors willing to perform in the geographic area of work. The City shall maintain a list of the contractors contracted and the contracts awarded during the previous twenty-four (24) months under the direct contract 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.

F. The City shall establish a small, minority, women, and veteran-owned business utilization plan to comply with the requirements of RCW 39.04.152(4)(b)(iv), as presently enacted or hereafter amended.