

Small Public Works Roster Manual for Local Governments

Second Edition



Cover photos courtesy of John Carpita

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Municipal Research and Services Center
2601 4th Avenue, Suite 800
Seattle, WA 98121-1280
www.mrsc.org
mrsc@mrsc.org
206.625.1300



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Municipal Research and Services Center of Washington



May 2009



Shopping in Ephesus, Turkey - Year 0000

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PURCHASING, BIDDING, AND CONTRACT MANAGEMENT SOURCEBOOK (online only)

This online compendium contains sample and model documents for a wide variety of purchasing, bidding, and public works contracting scenarios.



**EPHESUS, TURKEY - YEAR 0000.
THE ROMANS USE THEIR SMALL WORKS ROSTER
PROCESS TO BUILD WIDE, PAVED STREETS ...**

Introduction and Quick Tips for Small Public Works Roster Success

Chapter 138, Laws of 2000, significantly changed small public works roster provisions for awarding public works contracts. The legislature also directed the Department of Community, Trade, and Economic Development (CTED) and the Municipal Research Council to prepare and distribute a small works roster manual. MRSC fulfilled this original obligation in 2000 with the original *Small Works Roster Manual for Local Governments* in paper form. Subsequent to that effort, the *Manual* was published and updated online on MRSC's web site in html format. This present edition is intended to provide interested users with the best of all worlds: a basic *Manual* in paper form and in Adobe PDF format that can be viewed online and/or be printed by the user; and an online Sourcebook that will be updated as new and better sample documents come to our attention.

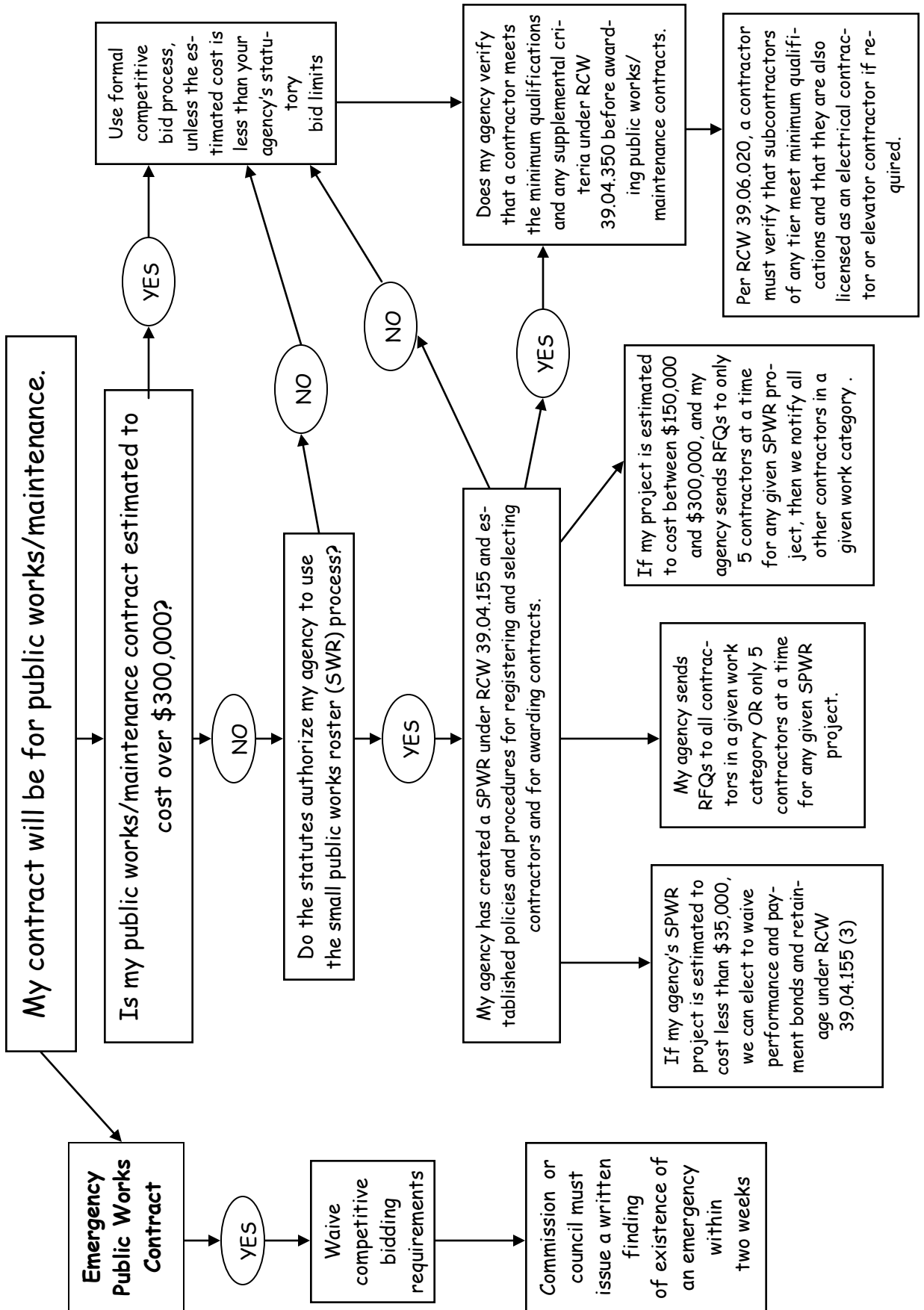
So – you think your agency needs to do a small public works roster (SPWR) contract? Follow these quick tips for getting started:

- ✓ Does your projected need *feel* like a public works project?
Check out the **Definitions**, and the Contracted Maintenance or Service Examples under **Maintenance vs. Public Works**.
- ✓ If it is indeed a public work project, is it an emergency?
Check out **Public Works Contracting in an Emergency**.
- ✓ If it is indeed a public work project, then what is the estimated cost?
Check out **Cost Estimates**, and then use the **Public Works Contracting Flow Chart**. If the estimated cost exceeds \$300,000, you cannot use the SPWR process. If the estimated cost is less than your agency's **Bid Limits**, then you do not need to use the SPWR process.
- ✓ Use the **Size Chart** to compare procedures for various types and sizes of contracts.
- ✓ Is your agency authorized to use the SPWR process?
Check out **Eligible Agencies** (Appendix B).
- ✓ If your agency is indeed authorized to use the SPWR process:
Does your agency have its own SPWR and/or or has it considered a shared SPWR with other nearby agencies or contracting with MRSC Rosters?
Has your agency adopted a **SPWR Resolution**? See the **SPWR Adoption and Implementation Checklist** and the **Model Resolutions** in **Appendices C and D**.
Does your SPWR Resolution establish policies and procedures for registering and selecting contractors?
Does your SPWR Resolution establish policies and procedures for requesting quotes and for awarding contracts?
- ✓ Does your agency have policies and procedures in place for administering SPWR projects?
Use the **SPWR Contract Administration Checklist** and look at the sample procedure/policy documents online in the Sourcebook.
- ✓ If your contract is for on-call (task order) maintenance activities, check out the practice tips under **On- Call (Task Order) Maintenance Contracts**.

Small Public Works Roster Statute Legislative History

As shown in Appendix A, which is a table titled *Summary of Small Public Works Roster Statutes*, small works procedures began modestly in 1981, with a limit of \$25,000. Only four specific state agencies were authorized to use the SPWR. In 1991, counties were authorized, with a limit of \$100,000. In 1993, the statute was changed to read "all authorized municipalities," with cities being specifically authorized, in addition to counties. In 2000, the limit was raised to \$200,000, uniformly for all authorized State agencies and municipalities. **HB 1196 (Chapter 79, 2009 Laws), raised the limit to \$300,000 and changed corresponding notice requirements in Section 2(c), effective on July 26, 2009.**

Small Public Works Roster Contracting Flow Chart



Small Public Works Roster (SPWR) Adoption and Implementation Checklist

(Note A: Use Not Applicable – NA – to mark those items that do not pertain to a given item.)

(Note B: Be sure your agency is authorized to use SPWRs.)

<u>Date</u>	<u>By</u>		<u>Procedure or Document</u>
Roster Adoption Checklist			
_____	_____	A1	We will use our own roster
_____	_____	A2	We will share a roster with _____
_____	_____	A3	We will contract with MRSC Rosters
_____	_____	B1	Council/Commission has adopted a SPWR for our agency
_____	_____	B2	Council/Commission has adopted a shared SPWR with _____
_____	_____	B3	Council/Commission has approved a contract with MRSC Rosters
Roster Implementation Checklist			
_____	_____	C	Application Form (paper or electronic) Contact information (email, telephone, fax, address, and contact person(s)) Mandatory responsibility criteria per RCW 39.04.350(1) Supplemental responsibility criteria per RCW 39.04.3502(2) Experience, Claims History, Safety History, Etc. Insurance Requirements Bonding Requirements
_____	_____	D	Policy & Procedures
_____	_____	_____	RFQ documents are to be available electronically on _____ Agency website _____ Builder's Exchange website _____ Other _____
_____	_____	_____	RFQ documents are to be available in paper form at _____
_____	_____	_____	RFQ Notifications will be via email _____, fax _____, telephone _____ other _____
_____	_____	_____	For projects less than \$100,000, RFQs are sent to all contractors in a given work category OR RFQs are sent to only 5 contractors in a given work category
_____	_____	_____	For projects greater than \$100,000, RFQs are sent to all contractors in a given work category OR RFQs are sent to only 5 contractors in a given work category and we notify all other contractors in a given work category via email and/or fax.
_____	_____	_____	For projects less than \$35,000, RFQs are sent to at least three (3) contractors in a given work category, and our Agency will waive payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW
_____	_____	_____	RFQ Responses will be accepted via email _____, fax _____, telephone _____ other _____
_____	_____	_____	Before a SPWR contract is awarded, our _____ will check to be sure that the contractor meets all mandatory and supplemental responsibility criteria

SPWR Contract Administration Checklist

Project: _____ Contract Amount: \$ _____

Contractor: _____

	Performed By	Number	Date/Verified
RFQ			
RFQ Sent to All Contractors in the _____ Subcategory		See RFQ Email and Email/Fax/ List	
Contract Documents Posted at _____		See Attached Webpage Printout	
Addendums ____ & ____ Sent and Posted on ____ & ____		See Email and Email/Fax/ List	
Quote Opening Date			
Quotes Reviewed and Award of Contract Recommended			
Commission/Council Approval			
Verification of Low Bidder Minimum Qualifications			
Contractor Registration Number as of Quote Opening Date			
Contractor Unified Business Identifier (UBI #)			
Contractor Industrial Insurance Coverage		Current?	
Contractor Employment Security Department Number			
Contractor State Excise Tax Registration Number			
Contractor Debarred		Yes No	
Supplemental Criteria Met (If applicable)			
Pre-Construction			
Notice of Award			
Insurance Certificates and Endorsements			
Performance and Payment Bond			
Intents to Pay Prevailing Wages (Contractor and All Subs)			
Options for Retainage Stated or Retainage Bond Posted			
Contract Signed by Contractor			
Contract Signed by Agency			
Contract Effective Date			
Notice to Proceed Issued			
Construction			
Pay Estimate No. 1			
Pay Estimate No. 2			
Pay Estimate No. 3			
Change Orders _____, _____, _____			
Final Pay Estimate			
Punch List Prepared			
Punch List Items Completed			
Contract Closeout			
Affidavits of Prevailing Wages Paid (Contractor and All Subs)			
General _____, Sub. 1 _____, Sub. 2 _____, Sub. 3 _____			
Notice of Completion of Public Works to Dept. of Revenue (>\$35k)			
Dept. of Revenue Certificate of Payment of Excise Taxes (>\$35k)			
Employment Securities Dept. Payroll Tax Liability Release			
Dept. of L&I Industrial Insurance Web Page Check			
Engineer's Certificate of Completion			
Legal Notice of Acceptance of Work (Optional)			
Commissioner Acceptance			
Completion of 45-Day Lien Filing Period from Acceptance			
Release of Liens Filed During 45-Day Acceptance Period (If Any)			
Retainage Released (must have all previous items verified)			
Archive Files and As-Built Drawings			

Acknowledgments

John Carpita, MRSC Public Works Consultant, is the principal author of this SPWR Manual.
Bob Meinig, MRSC Legal Consultant, provided content, legal review, and proofreading skills extraordinaire.

Disclaimers

These small public work roster (SPWR) contracting guidelines are permissive and discretionary and are applicable to all municipal corporations/agencies that have authority to use SPWRs through their enabling statutes. Where the *Manual* recommends particular practices using such terms as “should” or “may” the recommendation is permissive and not mandatory. In addition, agencies must also consider their own commission /council resolutions, policies, and procedures to determine what requirements are truly mandatory for a given contracting scenario. Case law, new regulations, or audit findings for one type of municipal corporation will not necessarily apply to all municipal corporations since enabling statutes may differ. In addition to your agency’s counsel, MRSC provides resources and individual consultation to assist you.

Definitions

Statutory Definitions

RCW 39.04.010 contains these basic public works definitions:

Award -

Means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

Contract -

Means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

Municipality -

Means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

Responsible Bidder -

A contractor who meets the criteria in [RCW 39.04.350](#).

Public Works -

Means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter [39.12](#) RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW [36.102.060](#)(4) or under development agreements entered into under RCW [36.102.060](#)(7) or leases entered into under RCW [36.102.060](#)(8).



... LIBRARIES ...

RCW 39.04.280 (3) defines *Emergency* -

For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Other Definitions

Bid Limits –

Dollar amounts below which neither competitive bids nor the small works roster process are required for the purchase of equipment, supplies, or materials or for public works projects.

Competitive Bids (CB) –

A competitive process following advertisement in designated legal newspapers and other media for equipment, supplies, material, and public works contracts open to all suppliers, vendors, and contractors, and in which price is the primary basis for consideration and contract award.

Small Public Works Roster (SPWR) –

A process through which there is competition for public works contracts following notification, normally through a request for quotes (RFQ), to some or all public works contractors who have requested placement on a roster kept by the local government agency.



... THEATERS AND STADIUMS ...

Request for Quotes (RFQ) –

A process through which written or electronic quotes are solicited from contractors an agency's small public works roster for public works contracts in which price is the primary basis for consideration and contract award.

Small Public Works Contracts (SPWC) –

A process through which written or electronic quotes are solicited from contractors for public works contracts with total estimated costs below the bid limits following notification as established by local agency policies, if any, and in which price is the primary basis for consideration and contract award.

On-Call (Task Order) Contract -

An on-call (task order) contract, normally for maintenance or repair work, that does not specify a firm quantity of work to be performed (other than minimum or maximum quantities) and that provides for the issuance of orders for the performance of tasks (work orders) during the period of the contract.

Public Agency Work or Day Labor Limits –

Limits set by the legislature on the amount of public works that can be accomplished using the agency's own work force or by hiring day laborers. Limits are expressed as specific dollar amounts for single or multiple craft projects and/or as percentages of the public works or road fund budgets. The county road fund statutes have specific county forces road construction limits separate from a county's general public work construction limits (Chapter 36.77 RCW).

Maintenance vs. Public Works

There has been, in years past, confusion over whether maintenance activities are considered public works, in relation to public works bidding and prevailing wage statutes. In addition there has been confusion over the term “ordinary maintenance” as used in the definition of public works in RCW39.04.010:

public works means all work, construction, alteration, repair, or improvement other than *ordinary maintenance*, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including *maintenance* when performed by contract shall comply with chapter 39.12 RCW.

Ordinary maintenance (work performed by agency forces) is not a public work and is not subject to either bid laws or prevailing wages. Maintenance performed by contract is subject to prevailing wages, but is it a public work and subject to bid laws and other public work regulations?

Neither of the terms “maintenance” or “ordinary maintenance” are defined in the statutes. A common dictionary entry reads “maintain means to keep in a condition of good repair or efficiency, to preserve or retain.” Maintenance is the act of maintaining.

In the context of prevailing wages, L & I has these definitions in the WACs:

WAC 296-127-010 (7)(a)(iv) says:

The term "public work" shall include:
Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition.

WAC 296-127-010(7)(b)(iii) defines ordinary maintenance as:

work not performed by contract that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

By these WAC definitions, again, ordinary maintenance is maintenance work not performed by contract. Work done by agency forces is not a public work and is not subject to either bid laws or prevailing wages.

Maintenance and repair contracts (see **On- Call (Task Order) Maintenance Contracts**) seldom fit the statutory mold of public works projects of a fixed scope that are completed and closed out within a single time frame. Monthly contracts for routine maintenance or contracts for repairs that - while expected - cannot be predicted accurately do not conform readily to performance and payment bond and retainage requirements or bid limits. The typically small size of maintenance contracts is also an issue, as bonding and retainage requirements are not practical in many instances for small businesses.

Should maintenance when performed by contract be considered a public work?

- RCW 39.04.010 states: “All public works, including *maintenance* when performed by contract shall comply with chapter 39.12 RCW (prevailing wage statutes).”



... public RESTROOMS ...

- In the context of regulations enforcing chapter 39.12 RCW, WAC 296-127-010 (7)(a)(iv) states that a public work includes “maintenance...when performed by contract.”
- So clearly, both public works and maintenance by contract are subject to payment of prevailing wages.
- But, should all the other “baggage” [bid bonds, performance and payment bonds, retainage, bid limits, etc.] of public works contracts apply to maintenance by contract?
- Did Labor & Industries exceed their authority in developing the WAC definition of a public work?
- An oft-quoted court case (*City of Spokane v. Department of Labor and Industries*, 100 Wn. App. 805 (2000)) states:
 - Upon certification of the case to the Court of Appeals for direct review, the court affirms the Director's decision, holding that the maintenance work was "public work" within the meaning of the prevailing wage law and that it did not fall within the statutory exception for "ordinary maintenance."
- This statement seems to support the supposition that maintenance is subject to prevailing wages, but not necessarily to other public works requirements, except that a subsequent passage says:
 - We hold that the Director did not err in deciding that AMS work [maintenance] is "public work" subject to prevailing wage law.
- So what is the safest bet for agencies:
 - Treat any maintenance performed by contract (even though it is work that an agency may traditionally do), as a public work subject to both bid laws and prevailing wages.

It should be noted that there is a fine line sometimes between things that are considered maintenance and things that are considered services (not subject to public works or prevailing wage statutes). Note the following table:

Contracted Maintenance or Service Examples	
Snowplowing	Service
Street/Road Striping	Maintenance
Cleaning Storm Sewer Catch Basins	Maintenance
Tree Trimming and Removal	Maintenance
Janitorial (but prevailing wages apply)	Service
Painting	Maintenance
Street Sweeping	Maintenance

Authorized Agencies and Bid Limits

As noted above, SPWRs may be used “by state agencies and by any local government that is expressly authorized.” [RCW 39.04.155\(1\)](#). Appendix A2 lists those local governments that are authorized to use SPWRs. If a project is estimated to cost over \$300,000, a formal competitive bid process is required. If a project is estimated to cost under \$300,000, an authorized local government may use the SPWR process. If the estimated project cost is below the agency’s bid limits, the agency may construct the project (subject to individual agency purchasing policies):

- by use of agency crews (counties have different restrictions for road projects)
- by interlocal agreement with another agency
- by contract with private contractor

Public Works Bid Limit Summary for Authorized Agencies			
	Bid Advertisement Required	Formal Public Bid Opening Required	Bidding Open To:
Bids: \$300,000 and Over	Yes	Yes	All Licensed Contractors
Quotes: Bid Limits to \$300,000 (if SPWR is Used)	No	No	Licensed Contractors on SPWR
Quotes: Below Bid Limits	No	No	Selected Licensed Contractors

Bid limits for selected agencies are shown below:

Bid Limits for Selected Authorized Agencies (Includes ESHB 1847 Changes, Effective July 26, 2009)		
	Bid Limits	
	Single Craft	Multiple Crafts
Cities and Towns		
First Class City	\$45,000 (1)	\$90,000 (1)
Code City	\$40,000	\$65,000
2nd Class City & Towns	\$40,000	\$65,000
Counties		
Over 400 K w/ Purchasing Department (RCW 36.32.235)	\$45,000 (2,3)	\$90,000 (2,3)
Over 400 K w/o Purchasing Department (RCW 36.32.240,250)	\$40,000 (3,4)	\$40,000 (3,4)
Under 400 K w/ Purchasing Department (RCW 36.32.240,250)	\$40,000 (3,4)	\$40,000 (3,4)
Under 400 K w/o Purchasing Department (RCW 36.32.250)	\$40,000 (3,4)	\$40,000 (3,4)
Water & Sewer Districts (Title 57 RCW)	\$20,000	\$20,000
Metropolitan Park Districts (Ch. 35.61 RCW)	\$20,000	\$20,000
Fire Districts (Title 52 RCW)	\$20,000	\$20,000
Port Districts (Title 53 RCW)	\$200,000, except note RCW 53.08.135	
Public Utility Districts (Title 54 RCW)	See RCW 54.04.070 & 54.04.082	
Public Hospital Districts (Ch. 70.44 RCW)	\$75,000	\$75,000
Housing Authorities (Ch. 35.82 RCW)	??	??
School Districts (RCW 28A.335.190)	\$40,000	\$40,000
<p>1) RCW 35.22.620(2) further limits the dollar value of public works performed by city employees or day labor to ten (10) percent of the total public works construction budget in a given budget period. Work performed within a city by county employees under an interlocal agreement is to be included in this limit.</p> <p>2) Also subject to annual limit of 10% of public works construction budget (RCW 36.32.235).</p> <p>3) Also subject to county road force limitations for road funds under RCW 36.77.065.</p> <p>4) Not a bid limit, per se, but is a limit below which informal contracting procedures may be used.</p>		

Small Public Works Rosters

The following section, except for the practice tips, is based on language in RCW 39.04.155. For the purposes of this section, “agency” means either a state agency or an authorized local government.

Exemption from Advertisement Requirements

- Public works projects awarded under SPWR and Limited Public Works Projects (LPWP) processes are exempt from the requirement that contracts be awarded after advertisement as provided under RCW [39.04.010](#).

Bid Splitting

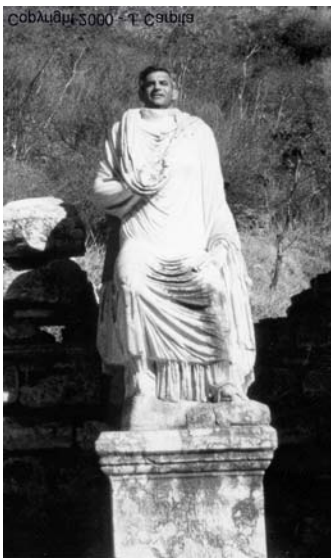
- The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the SPWR and LPWP processes.

Creation of a Small Public Works Roster and Annual Advertisements

- RCW 39.04.155 presents uniform provisions for the award of contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by any local government that is expressly authorized to use these provisions (see **Authorized Agencies and Bid Limits** above). These provisions may be used in lieu of other procedures (i.e. competitive bids) to award contracts for such work with an estimated cost of \$300,000 or less.



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... SIDE STREETS,
WITH SANITARY AND STORM
SEWERS UNDERNEATH ...



... public ART ...

- In addition, any local government authorized to award contracts using the SPWR process may award contracts with an estimated cost of less than \$35,000 using the limited public works process under RCW 39.04.155(3) of this section.
- A local government may create a single general small works roster, or may create small works rosters for different specialties or categories of anticipated work. Rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
- Small works rosters are to consist of all responsible contractors who have requested to be on the list, and - where required by law - are properly licensed or registered to do work in Washington State.
- A local government may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters.
- At least once a year, a local government is to publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors must be added to an appropriate roster or rosters at any time they submit a written request and necessary records.

Practice Tips

- ✓ After contractors submit an initial application, an agency should require them to update their information yearly. The agency also may want to “purge” contractors that do not respond within a given time frame (say 30-60 days) after the updated information is requested. To avoid undue paperwork, the agency can limit the number of times a year that it sends out the request for updated information to every quarter or semiannually, for those contractors whose anniversary date falls within the past 3 or 6 months.
- ✓ In any event, an agency should do a check just before awarding the contract to see if the contractors still meet the minimum requirements of RCW 39.04.350 (1):
 - (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
 - (a) At the time of bid submittal, have a certificate of registration in compliance with chapter [18.27](#) RCW;
 - (b) Have a current state unified business identifier number;
 - (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title [51](#) RCW; an employment security department number as required in Title [50](#) RCW; and a state excise tax registration number as required in Title [82](#) RCW; and
 - (d) Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#)(3).
- ✓ RCW 39.04.350(2) allows an agency to establish relevant supplemental bidder responsibility criteria if warranted. Most small public works roster projects do not warrant development and use of supplemental criteria. For more information and sample criteria contact the MRSC Public Works Consultant and/or go to [Suggested Guidelines to Bidder Responsibility/Approved by CPARB 10/11/07](#).
- RCW 39.04.155(2)(a) allows agencies to establish “master” or “on-call” contracts with one or many contractors that become effective when a specific award is made using a small works roster. These contracts are usually for maintenance or smaller repair projects.



... AND WATER SYSTEMS,
COMPLETE WITH CLAY TILE PIPE, ...

Solicitations under Small Public Works Roster Contract Procedures

- A local government is to establish procedures for securing telephone, written, or electronic quotations from contractors on an appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW [39.04.010](#).
- Requests for quotations (RFQs) shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished.
- However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

Practice Tips

- ✓ An ideal scenario using the flexibility granted by the SPWR statutes is to post the bidding/contract documents on the agency's website or on a service provider's (such as Builders Exchange) website and send a short email to all contractors in the appropriate SPWR category asking them to look at the online documents and submit an electronic, written, or faxed quote by a given date and time.
 - ✓ Sealed quotes are not required. Most agencies do not accept electronic quotes, however, because there is no formal signature on the quote unless an (expensive) digital signature is required. One way around that issue is to have the contractor create a PDF file using fairly inexpensive Adobe software and include a signature. If the contractor has the apparent low quote, the agency can then ask hi/her to submit signed paper copy prior to its notice of award.
 - ✓ All of the quotations should be collected and presented at the same time to the municipality for consideration, determination of the lowest responsible bidder, and award of the contract.
 - ✓ The governing body may delegate authority to award bids of certain amount(s) to an officer of the agency. Most often, there is a requirement that the municipality ratify the officer's approval at the next scheduled governing body meeting.
 - ✓ Statutory requirements for advertising for a public works project in formal bid processes (typically 13 days in advance of bid opening) do not apply to a small works roster or limited public works process. Advertising is not required. However, depending on the complexity of the project, 7 to 14 days (or longer) should be allowed for contractors to submit a proposal so that they have adequate time to properly research the specifications.
-
- RFQs should be sent to all contractors in the appropriate small works roster category. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. "Equitably distribute" means that an agency soliciting quotes may not favor certain contractors over other contractors who perform similar services.
 - However, if the estimated cost of the work is from \$150,000 to \$300,000 an agency that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on that roster that quotations on the work are being sought. At the agency's sole option, it can accomplish this notice by: publishing notice in a legal newspaper in general circulation in the area where the work is to be done; mailing a notice to these contractors; or sending a notice to these contractors by fax or other electronic means.
 - Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

Limited Public Works Projects (RCW 39.04.155(3))

- An authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than \$35,000 using the limited public works project (LPWP) process provided under this statute.
- For LPWPs, an agency is to solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and must award the contract to the lowest responsible bidder as defined under RCW [39.04.010](#).
- An agency is to attempt to distribute opportunities for LPWPs equitably among contractors willing to perform in the geographic area of the work.
- After an award is made, the quotations must be open to public inspection and available by electronic request.
- An agency is to maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the LPWP 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 LPWPs, an agency 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 LPWP.
- However, the agency has the right of recovery against the contractor for any payments made on the contractor's behalf.

Small Business Incentives (RCW 39.04.155(5))

- An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.
- A agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under \$250,000 annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

Practice Tips

- ✓ If an agency contacts five firms on its small works roster, but receives less than five quotes, it is acceptable to award to the contractor with the lowest of those quotes received.
- ✓ Bid (quote) bonds are not required, but may be desirable for larger projects as the firm with the low quote may just refuse the work after the bids of the other contractors are known, or fail to put reasonable effort into the bid preparation. Performance and payment bonds are required in any event.
- ✓ A small works roster does not eliminate the need for contract documents, performance and payment bond, contract, specifications, retainage, etc., unless the agency is using the LPWP process provided under RCW 39.04.155(3).



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THE STREETS ...

Shared Small Public Works Rosters

The statutes allow agencies to share rosters between multiple agencies. The small works roster process applies to shared roster the same as for individual rosters, but agencies may choose to share a roster in order to reduce the operational costs of maintaining a roster and have access to a broader pool of contractors.

There are two ways to share a small public works roster – entering into an interlocal contract or using a roster service provider.

Interlocal Contract

A large city or county may make its SPWR available to other nearby agencies. Note that RCW 39.04.155(2)(b) requires that agencies entering into an interlocal contract must “clearly identify the lead entity that is responsible for implementing the provisions of this subsection”. In other words, the lead entity is the agency that will be posting the annual legal notice and maintaining the roster. For example, Vancouver is the lead agency for an interlocal shared roster with Clark County and a number of agencies in Clark County.

Roster Service Provider

An agency also has an option of joining a roster service provider who will maintain their roster. For example, MRSC Rosters is a shared small public works and consultant roster online database for Washington agencies to join. MRSC Rosters posts the annual legal notice on behalf of all participating agencies and maintains the roster.

In the above approaches, either the lead agency or service provider takes the initial responsibility for ensuring that contractors on the roster meet the minimum qualifications of RCW 39.04.350(1) and any supplemental criteria. When a partnering or subscribing agency selects a contractor from a shared roster, it should verify that a contractor is indeed qualified before awarding the contract.

Bonds, Retainage, Sales Taxes, and Prevailing Wages

Bid Bonds

Unlike performance and payment bonds (below), which are required uniformly of all agencies for all public works contracts, bid bond requirements are set in an agency’s enabling statutes, many of which do not require a bid bond. For cities and counties, for example:

RCW 35.23.352 (1) says (for code cities and second class cities and towns): “Each bid shall be accompanied by a bid proposal deposit in the form of a cashier’s check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit.”

RCW 36.32.250 says (for counties): “No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier’s check, or certified check in an amount equal to five percent of the amount of the bid proposed.”

First class cities do not have a direct requirement for bid bonds in their statutes (RCW 35.22.620), but almost all cities require them. Port districts, in RCW 53.08.130, are required to request a five percent bid bond, as are water/sewer districts in RCW 57.08.050. School districts and fire districts have no apparent bid bond requirement. MRSC has opined that bid bonds are not required for SPWR contracts by either cities or counties, but has not done a similar analysis for other types of agencies.

Retainage and Performance Bonds

For public works projects, a municipal government must withhold retainage and must also have a contractor's performance and payment bond on file. For public works contracts under \$35,000, these requirements may be waived completely under the limited public works process in RCW 39.04.155(3).

- [RCW 60.28.011](#) requires municipal governments to withhold five percent of money due the contractor for a public improvement or work until completion and/or acceptance of the contract. This money is to be set aside as a trust fund for the protection and payment of anyone who performs labor, provides materials, supplies, or equipment or subcontracts to the prime contractor. In addition, the state Department of Revenue (DOR), state Employment Security Department (ESD), and state Department of Labor and Industries (L&I) all have lien rights against this fund for payment of unpaid taxes under Titles 82 (excise taxes), 50 (industrial insurance), and 51 (unemployment compensation) RCW, respectively. Priority of claims against the retainage (per SHB 1555, 2009) is:
 1. Workers not paid prevailing wages
 2. Dept. of Revenue – taxes due on the public works project
 3. Dept. of Revenue – taxes due on other public works projects
 4. ESD and L&I for taxes due on the public works project
 5. Subcontractors and suppliers on the public works project
 6. Other taxes due (ESD, L&I for taxes due on other projects and/or other taxes)
 7. The agency
- RCW 60.28.011(4) describes three options for placement of retained funds until they are released to the contractor. Most agencies require the contractor to indicate his/her preference on a form at the time the contract is signed.
- RCW 60.28.011(6) allows a contractor to submit a retainage bond for all or any portion of the contract retainage in a form acceptable to the agency and from a bonding company meeting standards established by the public body.
- An agency normally withholds funds in the amount of five percent of each partial payment or monthly progress payment, which are then deposited in the designated account. Note that the maximum retainage is five percent. If it becomes obvious, during the contract, that subcontractors, materialmen, or laborers are not being paid appropriately and that liens are filed in amounts exceeding the retained amount, the agency cannot withhold additional retainage.
- At any time (RCW 60.28.011(3)), the contractor may request that the contract retainage be reduced to 100 percent of the remaining contract.

Practice Tip

- ✓ As the agency has no contractual relationship with subcontractors, etc., it cannot pay them directly either. Consultation with the agency's legal counsel at this point is essential. One thing that may work to be assured that the contractor will pay off liens and claims immediately is by having him deliver cashier's checks to the agency, to be mailed to claimants at the same time the contractor receives his progress payments.

[RCW 39.08.010](#) requires municipal governments to call for a performance and payment bond. The bond is to be issued by a surety company licensed to do business in Washington. It is to be conditioned on the contractor's performance of all the provisions of the contract and payment of all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work. State agencies (DOR, L&I, ESD) have no direct claim against the bond.

- The penalty for failure to call for a performance and payment bond (RCW 39.08.015) is that the municipal corporation is liable to the persons mentioned in RCW 39.08.010 to the full extent and for the full amount of all such debts so contracted by such contractor.
- Required performance and payment bonds are normally furnished on agency supplied forms. This form, or any proposed substitute form, should be reviewed by the agency's legal counsel before the contract is signed.
- RCW 39.08.010 states that on contracts of \$35,000 or less - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain 50 percent of the contract amount for a period of 30 days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor And Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.
- RCW 39.08.030 provides that the performance and payment bond will be in the amount of 100 percent of the contract amount, except that cities and towns may by ordinance fix and determine the amount of the bond. However, the bond set by ordinance cannot be for less than 25 percent of the contract amount.
- RCW 39.08.030 also provides that anyone who has a claim against the bond must file such a claim within 30 days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, officer, or body acting for the agency.

Sales Taxes

Sales taxes apply to every sale of tangible personal property (and some services) to all persons, including local governments. For purposes of determining whether a purchase or project exceeds an agency's bid limits, sales tax must be included when determining the cost of a public work, or when calculating the cost of materials, supplies, and equipment purchased separately from a public work. However, there are some sales and use tax exemptions for certain public works projects. The exemptions include:

- Labor and services rendered for the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle owned by a city or town which is used primarily for pedestrian or vehicle traffic. Materials used in constructing these projects are not exempt from the sales and use tax. RCW 82.04.050(8).
- Labor and services for the processing and handling of sand, gravel, and rock taken from city and/or county pits and quarries when the material is for public road projects. RCW 82.08.0275.

MRSC has prepared a table - WAC 458-20-171 Matrix (Appendix G) - that summarizes DOR regulations regarding sales and use tax applicability to public works contracts. For almost all local government public works contracts, the sales and use tax issue boils down to this:

Does the contractor include sales and use taxes, as applicable, in his/her unit prices or lump sum bid or does the agency include a line item in the contract for sales tax, either on the whole amount or on items not included in the exemptions?

Practice Tips

- ✓ When developing contract documents, it may be useful, in the bid proposal (bid item listing), to group those items that are subject to sales tax. Then, in a separate line item labeled "sales tax," reference that group, making it clear that in all other bid items, sales and use taxes, as applicable, are to be included in the unit price or lump sum bid.
- ✓ If an agency furnishes materials to a contractor for use in public works contract, it either must have paid applicable sales tax on the items furnished or must specifically instruct the contractor to pay use taxes on the items.

- ✓ Labor and services in the construction of a pedestrian pathway in a park are probably not exempt from sales and use tax. [RCW 82.04.050\(7\)](#) does exempt any "street, place, road . . . easement, right of way . . . which is used or to be used primarily for foot or vehicular traffic." However, the Department of Revenue believes that any such path or sidewalk must be in the street right-of-way to qualify for the exemption. Similarly, unless a public parking lot is used for mass transit, it is not exempt.
- ✓ The Department of Revenue has a very good online discussion of taxes due on public roads construction at http://dor.wa.gov/content/doingbusiness/businessstypes/industry/construction/construct_publicroad.aspx.

Prevailing Wages

Payment of prevailing wages under [Chapter 39.12 RCW](#) in Washington State applies to all public works contracts accomplished through competitive bidding or the small works roster AND to smaller public works contracts for which telephone quotes were secured OR for which the contractor was simply chosen for any number of good reasons, AND to maintenance contracts of any nature and for any amount.

Prevailing Wage Principles:

- Contractor must be told in advance that prevailing wages must be paid to all employees who work on the contract.
- Prevailing wages in effect for the contract must be included in the contract documents.
- Contractor must file a Statement of Intent to Pay Prevailing Wages with the Industrial Statistician of the Department of Labor and Industries (L&I). The agency must have a copy of the L&I-approved Statement of Intent before it can make payments under the contract.
- After completion of the contract, the contractor must file an Affidavit of Wages Paid with L&I's Industrial Statistician. The agency must have a copy of the L&I-approved Affidavit before it can release the contract retainage. DLIS has automated this process so that Intents and Affidavits can be filed online and an agency can be notified automatically if desired. An agency can check the contractor's filing status online at any time.
- For contracts under \$2,500, RCW 39.12.040 and WAC 296-127-050 provide that the Statement and Affidavit (no fees) may be combined and payment made by the agency without prior DLIS approval. For contracts under \$35,000 where the limited public works process under RCW [39.04.155\(3\)](#) is followed, a different combined form (for which fees are required) can be used.
- If a contract's funding includes both state and federal funds, both sets of prevailing wage rates and reporting requirements must be met. The higher of the two wage rates must be paid. Do not assume that L&I and the U.S. Department of Labor will accept each other's paperwork or that they coordinate their efforts.
- Have your field inspectors note all employees, by name and work performed, who appear on the job site. Have them ask to see apprenticeship cards and note if journeymen are present as well. Have someone meet, at least monthly, on a random basis with contractor/subcontractor employees and check payroll stubs against the prevailing wage rates.

Note the *MRSC Project Closure/Retainage Release Guidelines* in Appendix E and *Sample Retainage Release Checklist* in Appendix F.

Public Works Contracting in an Emergency

Competitive bidding is not required when an emergency exists; however, in making emergency contracts, an agency should strive for the highest level of competition that is practical under the circumstances.

Washington State Statutes

Two types of emergencies are envisioned in the statutes: declared (federal or state) disasters under [Chapter 38.52 RCW](#) and emergencies (agency declared) under [RCW 39.04.280](#). When a federal or state declaration of emergency is made, a local agency should pass a resolution acknowledging the federal or state declaration and invoking RCW 39.04.280 as well.

In 1998, [RCW 39.04.280](#) was added to chapter 39.04 RCW. This RCW provides uniform exemptions to municipal competitive bidding requirements when awarding contracts for public works and purchases. Note that statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements.

An emergency is defined, uniformly for all classes and types of municipalities, as unforeseen circumstances beyond the control of the municipality that either: (1) present a real, immediate threat to the proper performance of essential functions; or (2) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Competitive bidding procedures for public works contracts may be waived under the above circumstances by adopting either a resolution at the time of contracting or by written policies beforehand. A resolution must state the factual basis for the exception. If written policies are used to waive competitive bidding requirements, the contract and the factual basis for the exception must be recorded and open to public inspection immediately after the contract is awarded.

Note the following scenario:

Late Friday afternoon, Paul McCartney, your Sewer Superintendent, reports a serious sewer main break on Penny Lane. It needs to be fixed immediately to protect the Yellow Submarine deli and other businesses from obvious health threats. The estimated cost, including applicable sales and use taxes, is \$34,999. (What if the estimated cost is \$205,000?) Led Zeppelin Construction (LZC) and his utility subcontractor, Gary Puckett, are working nearby on a private project and are willing and able to help.

Even though LZC is close, you may want to see if there are contractors on your SWR who can mobilize almost as fast, as they may already have insurance certificates, etc. on file.

What things do not need to happen before LZC begins work?

No contract document set, no advertisement, no bid opening, no formal award, etc.

Do you need to get quotes or bids before they start?

No, although it is a good idea to get agreement as to a general plan of work before the contractor starts. Material sources and costs should be identified, so there are no surprises when the bills come due. If time allows, unit prices for completed major blocks of work should be negotiated.

If not, does Paul know how track and pay for force account work?

If force account work is the only practical way to proceed get the contractor to agree to use Section 109.6 of the current edition of the Standard Specifications (SS) for Road, Bridge and Municipal Construction (WSDOT/APWA).

Should you have a contract in place beforehand?

Try to have a standard, short form contract readily available, but a fully executed contract is not needed before the contractor starts work.

Do you need a performance and payment bond?

Theoretically, yes. Practically, no.

How soon do you need a certificate of insurance naming the agency as additional insured?

ASAP, but practically speaking as soon as the contractor's insurance carrier can get it to you.

How much insurance do you need?

If your agency does not have standard insurance requirements, Section 1-07.18 (APWA Supplement) of the SS can be used.

Do prevailing wages apply?

YES!

When do you tell them that prevailing wages need to be paid and how much?

Before they start work. Download prevailing wages for anticipated worker classifications from L&I Web site.

Can they start work without an approved Intent to Pay prevailing wages?

Yes, but they can't be paid until your agency receives an approved Intent to Pay form from L&I.

Do you need to withhold retainage?

Yes, if the project takes longer than one of your agency's normal payment cycles. If not, and you are satisfied that all material suppliers have been paid for and an approved Affidavit of Wages Paid is on file, then you can pay the full amount due.

Do you need to notify the Department of Revenue?

At project completion, and if the contract is over \$35,000.

What action, and when, does your council/commission/boared need to take in regard to this project?

RCW 39.04.280(2)(b) says: "If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract."

Washington State's Emergency Management Department (EMD) is responsible for coordinating national disaster recovery and local government efforts in the event of a declared (federal or state) disaster under [chapter 38.52 RCW](#) and has an informative publication on its web site (www.emd.wa.gov) titled [Disaster Assistance Guide for Local Governments : April 2008](#). Note this excerpt from Section I, Chapter 1:

Local jurisdictions **must** keep accurate operations and financial records from the onset of the disaster. An accountant or bookkeeper in the local EOC is an invaluable asset in assisting with necessary fiscal records. It is strongly recommended to establish standing charge codes for emergencies before incidents occur to make it easier for local costs to be accurately documented right from the start of any incident -- even it does not become a federally-declared emergency or disaster.

Local officials, by resolution, make a local proclamation or declaration of emergency to authorize use of local resources, the expenditure of local funds, and to waive the usual bidding process for goods and services.

Cost Estimates

Before a project is advertised or quotes sought under SPWR processes, an engineer's estimate is needed. Note that RCW 39.04.020 requires that "plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency." RCW 39.04.040 requires that "work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed."

Also note these statutes:

RCW 39.04.050 Contents of original estimates.

Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion.

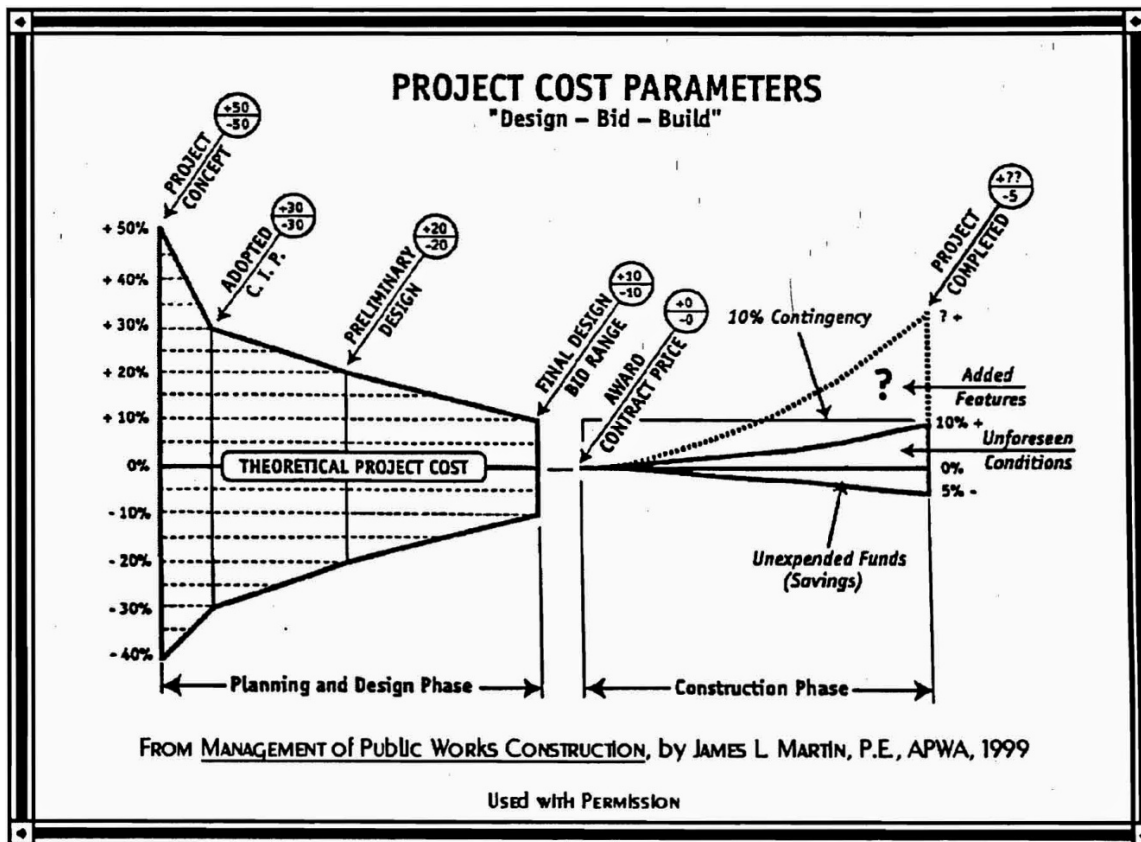
RCW 39.04.060 Supplemental estimates.

Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work.



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Following bid opening and award, the total contract price becomes the new theoretical project cost, but is itself subject to change. The final contract price paid reflects differences between estimated and actual quantities, added features, contractor claims, and unforeseen conditions. A useful graphic representation of the above points is Project Cost Parameters, provided courtesy of APWA and published in Section 7 of *Management of Public Works Construction Projects*, by James L. Martin, P.E. [APWA, 1999]. This graphic, or an adaptation thereof, can be helpful in explaining progressive changes in estimated project costs to elected officials and others. Essential also is a summary of the project scope as it may have changed from that envisioned at the *CIP/CFP* or conceptual stage and from bid award to completion.



Public Works Contracting Summaries

Competitively Bid Public Works Projects (CBPWP) – also known as “Design-Bid-Build”

- Over \$300,000 (but can be for smaller projects)
- Formal Advertisement
- Bid Bonds
- Sealed Bids
- Public Bid Opening
- Formal Award
- P/P Bonds Required
- Retainage Required
- Payment of Prevailing Wages

Small Works Roster Projects (SWRP)

- Under \$300,000
- No advertisement required, just notice to SWR
- Bid Bonds Optional
- Electronic, Faxed, or Telephone Quotes Allowed
- Informal Quote Opening(s)
- Award Can Be Delegated
- P/P Bonds Required
- Retainage Required
- Payment of Prevailing Wages

Limited Public Works Projects (LPWP)

- Under \$35,000
- No advertisement required, just notice to SWR
- Bid Bonds Optional
- Electronic, Faxed, or Telephone Quotes Allowed
- Informal Quote Opening(s)
- Award Can Be Delegated
- P/P Bonds Can Be Waived
- Retainage Can Be Waived
- Payment of Prevailing Wages

Really Small Public Works Projects (RSPWP) (less than an agency's bid limits)

- Under agency's bid limits
- No SWR Required
- No advertisement required
- Bid Bonds Optional
- Electronic, Faxed, or Telephone Quotes Allowed
- Informal Quote Opening(s)
- Award Can Be Delegated
- Payment of Prevailing Wages
- P/P Bonds and Retainage May Not Be Needed
 - If single payment will made after work is completed

Emergency Contracts

- Under RCW 39.04.280(1) (But Read Parts 2 &3)
- No Advertisement Required
- Bid Bonds Are Impractical
- Electronic, Faxed, or Telephone Quotes Allowed
- Informal Quote Opening(s)
- Award Can Be Delegated
- Payment of Prevailing Wages
- P/P Bonds May Be Waived
- Retainage May Be Waived

Size Chart (see next page for a summary of public works contracting processes for the above contract types)

On- Call (Task Order) Maintenance Contracts

RCW 39.04.155 allows agencies to establish “master” or “on-call” contracts with one or many contractors. These master contracts are usually for maintenance or repair projects and should be for one year at a time, or else provide for an annual “reconciliation” if a two or three year contract is warranted. Contracts for more than three years are not a good idea, as the ‘climate’ of competition changes.

Five areas that can trip agencies up on these contracts are:

- use of a small works roster
- prevailing wage intents and affidavits
- performance bond requirements
- retainage release
- competitive pricing for contract award purposes

		Public Works Contracting Size Chart							
Types Components	Competitively Bid (CBPWP)	Small Works Roster (SWRP)	Limited (LPWP)	Really Small PWP	Emergency PWP	Maintenance (< \$300,000)	On-Call Maintenance		
	Plans and Specifications	R	R	O	O	O	O	O	
Estimates	R	R	O	O	O	O	O		
Formal Advertisement	R	O	NR	NR	NR	O	O		
Sealed Bids	R	O	NR	NR	NR	O	O		
Public Bid Opening	R	O	NR	NR	NR	O	O		
Quotes (written, faxed, phone, electronic)	NA	O	O	O	O	O	O		
Bid Bond	R	O	NR	NR	NR	NR	NR		
Formal Award	R	O	NR	NR	O	O	O		
Delegated Award	NA	O	O	O	O	O	O		
Mandatory Bidder Responsibility Criteria	R	R	R	R	R	R	R		
Supplementary Bidder Responsibility Criteria	O	O	O	O	O	O	O		
Performance/Payment Bond	R	R	O	NR	O	O	O		
Retainage	R	R	O	O	R	R	R		
Insurance	R	R	R	R	R	R	R		
D.O.R. Release Form	R	R	NR	O,R	O,R	O,R	O,R		
Prevailing Wages (I & A)	R	R	R	R	R	R	R		
Cost Ranges	> \$300,000	< \$300,000	< \$35,000	< Bid Limits	No Limit	*	*		
R = Required NR = Not Required O = Optional NA = Not Applicable * = Follows limits for all PW projects									

For contracts less than an agency's bid limits, an agency does not need to use its SPWRs for maintenance and on-call projects. RCW 35.04.155(3) allows agencies to waive performance bonds and retainage requirements completely for maintenance and on-call maintenance contracts that are less than \$35,000 if they have a SPWR and use it to solicit bidders.

Prevailing wages are a "given"! But what about Intents and Affidavits for maintenance contracts where payment is on monthly basis for maintenance contracts and/or for each "mini-project" completed for on-call contracts? Filing an Intent at the beginning of either type of contract is not a problem and must be done before the first payment under the contract. When should Affidavits be required, however? Your agency should withhold five percent retainage on monthly payments or for each mini-project and release the retainage at the end of the contract for a one-year contract or annually for multi-year contracts.

Priority of claims against the retainage (per SHB 1555, 2009) is:

1. Workers for payment of prevailing wages (court order required)
2. State Department of Revenue and the Employment Security Department for unpaid taxes and the Department of Labor and Industries for unpaid industrial insurance premiums (no court order required)
3. Subcontractors, suppliers, and materialmen (court order required)
4. Other taxes due (no court order required)
5. The Agency (no court order required)

Items 4 and 5 are generally not an issue and 3 can be handled by requiring proof of payment before making monthly or mini-project payments. If the total contract or annual amount exceeds \$35,000, then you will need to get a Department of Revenue release at the end of a yearly contract or annually for a multi-year contract. Before you release the retainage at the end of a yearly contract or annually for a multi-year contract, the contractor should file an Affidavit of prevailing wages paid covering the period of the contract in question.

Performance bonds are the one public works contracting provision that does not make sense for either maintenance or on-call maintenance contracts. RCW 39.08.010, which requires performance and payment bonds, is geared towards projects of a fixed scope that are completed and closed out within a single time frame. An agency may waive the performance and payment bond and hold 50 percent retainage until after project completion for projects under \$35,000. (RCW 39.08.010) While there is no statutory lower limit to the performance bond requirement, there is a practical and rational argument for no performance and payment bonds for public works contracts - including maintenance - for which you will make a single payment after project completion: *You have 100 percent retainage*. Assuming you have well-written contracts and adequate contract supervision, performance bonds should not be needed for on-call maintenance contracts since you are making payments only on the basis of work satisfactorily completed for monthly work or mini-projects.

Each master or on-call contract must be only with contractors who meet the applicable minimum (mandatory) requirements of RCW 39.04.350 (1):

- Registered contractor at the time of bid submittal (RCW 18.27.020)
- Current UBI number
- Industrial insurance coverage
- Employment Security Department number
- State excise tax registration number
- Not disqualified from bidding

Practice Tips

- ✓ How does an agency establish competitive pricing for maintenance and on-call projects?
 - Identify as many tasks or bid items as possible, based on previous contracts, anticipated tasks, or just plain wishful thinking.
 - Estimate or anticipate the quantities of each task or bid item as much as is possible.
 - A force account line item that is the same dollar amount for all bidders may be needed to cover work outside the scope of the bid items.
 - The total bid, for award purposes, will be the sum of the unit prices times the item/task quantity for all the bid items/tasks identified, plus the force account line item.
 - Reserve the right to ask for a price in advance for each mini-project over a given estimated cost (say \$5,000).
- ✓ Multiple awards for on-call contracts:
 - Agency may award on-call contracts to more than one contractor (say to the lowest three bidders).
 - If the lowest bidder cannot do a given mini-project in a timely manner, the agency could rotate to the next highest bidder.
 - Or use a lottery to determine the order of rotation.
 - Another approach is to simply solicit hourly rates from several firms for general work and a markup on materials.
 - This approach provides for availability of a number of firms.
 - Individual departments can then use this list to find contractors to meet their timeframes and/or budget constraints.

Appendix A - Summary of Small Public Works Roster Statutes



Year	State	Statute	Limit	Local Governments	Statute	Limit	Comments
1981		None			None		(Note: Limits checked only for cities and counties.)
1982	Yes	39.04.150	\$ 25,000	No	None	N/A	Only General Admin., Fisheries, Game and Park and Recreation Departments.
1983	Yes	39.04.150	\$ 25,000	No	None	N/A	Same 4 agencies
1984	Yes	39.04.150	\$ 25,000	No	None	N/A	Same 4 agencies
1985	Yes	39.04.150	\$ 25,000	No	None	N/A	Same 4 agencies
1986	Yes	39.04.150	\$ 25,000	No	None	N/A	Same 4 agencies
1987	Yes	39.04.150	\$ 50,000	No	None	N/A	Same 4 agencies
1988	Yes	39.04.150	\$ 50,000	No	None	N/A	Same 4 agencies
1989	Yes	39.04.150	\$ 50,000	No	None	N/A	Same 4 agencies
1990	Yes	39.04.150	\$ 50,000	No	None	N/A	Same 4 agencies
1991	Yes	39.04.150	\$ 50,000	Counties	39.04.155	\$ 100,000	Same 4 agencies & Counties
1992	Yes	39.04.150	\$ 50,000	Counties	39.04.155	\$ 100,000	Same 4 agencies & Counties
1993	Yes	39.04.150	\$ 50,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1994	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1995	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1996	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1997	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1998	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Same 4 agencies & authorized municipalities.
1999	Yes	39.04.150	\$ 100,000	As Authorized	39.04.155	\$ 100,000	Authorized agencies & municipalities.
2000	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2001	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities. Added limited public works projects (RCW 39.04.155(3)).
2002	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2003	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2004	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2005	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2006	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2007	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities. Optional small business procedures authorized (RCW 39.04.155(5)).
2008	As Authorized	39.04.155	\$ 200,000	As Authorized	39.04.155	\$ 200,000	Authorized agencies & municipalities.
2009	As Authorized	39.04.155	\$ 300,000	As Authorized	39.04.155	\$ 300,000	Authorized agencies & municipalities. Raised limit to \$300,000.

Appendix B - Agencies (Shaded) Authorized to use Small Public Work Rosters
February 2009

District	Date Created	Enabling Statute (RCW)	NOTES
Agricultural Pest Districts	1919	Ch. 17.12 RCW	
Air Pollution Control Authorities	1957, 1967	Ch. 70.94 RCW	
Airport District, County	1945	RCW 14.08.290-.330	
Apportionment District (Community redevelopment financing Act)	1982	Ch 39.88 RCW, Ruled unconstitutional by <i>Leonard v. Spokane</i> , 127 Wn. 2nd 195(1995)	
Aquifer Protection Areas*	1985	Ch. 36.36 RCW	county creation
Boards of Joint Control (Irrigation districts and other entities)	1949	Ch. 87.80 RCW	
Cemetery Districts	1947	Ch. 68.52 RCW	
City Transportation Authority (Monorail)	2002	Ch. 35.95A RCW , Ch. 248 Laws of 2002	
Community Renewal Area*	2002	Ch. 35.81 RCW , Ch. 218 Laws of 2002	
Conservation Districts	1939	Ch. 89.08 RCW	
County Public Transportation Authority	1974	Ch. 36.57 RCW	
County Rail Districts	1983	Ch. 36.60 RCW	
County Road District *	1889	RCW 36.75.060	
Cultural Arts, Stadium, and Convention Districts	1982	Ch. 67.38 RCW	
Diking and Drainage Districts (general provisions - revised, statutes (a) A diking district; (b) a drainage district; (c) a diking, drainage, and/or sewerage improvement district; (d) an intercounty diking and drainage district; (e) a consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district; or (f) a flood control district.)	1961 Recodification	Title 85 RCW	
Diking & Drainage Districts in Two or More Counties (Intercounty Diking and Drainage Districts)	1909	Ch.. 85.24 RCW	
Diking Districts	1895	Ch. 85.05 RCW	
Diking, Drainage and Irrigation Improvement District; Drainage and Irrigation Improvement district - Improvement Districts - 1933 Act	1933	Ch. 85.22 RCW	
Diking, Drainage, Sewerage Improvement Districts Funding methods revised by Diking, Drainage, and Sewerage	1913	Ch. 85.08 RCW, Ch. 85.15 RCW	

Appendix B - Agencies (Shaded) Authorized to use Small Public Work Rosters

February 2009

Improvement Districts - 1967 Act				
Drainage District	1895	Ch. 85.06 RCW		
Drainage Improvement District; Diking Improvement District - Improvement Districts - 1917 Act (reorganization of Diking or Drainage Dist)	1917	Ch. 85.20 RCW		
Emergency Medical Service Districts	1979	36.32.480 RCW		
Emergency Service Communication Districts	1987	RCW 82.14B.070-.100		
Ferry Districts	1917, Repealed 1994	RCW 36.54.080-.100		
Ferry Districts, passenger-only (Counties of 1 million pop)	2003	Ch 36.54.110-.190 RCW, Ch. 83, Laws of 2003		
Fire Protection Districts	1933	Title 52 RCW		
Flood Control by Counties (River Improvement Fund)*	1907	Ch. 86.12 RCW		
Flood Control by Counties Jointly - 1913 Act (Intercounty)	1913	Ch. 86.13 RCW		
Flood Control Districts - 1935 Act	1935, Repealed 1965	Ch.86.05 RCW		
Flood Control Districts - 1937 Act	1937	Ch. 86.09 RCW		
Flood Control Zone Districts	1961	Ch. 86.15 RCW		
Health Districts	1945	Ch. 70.46 RCW		
Horticultural Pest and Disease Board (Horticultural Assessment)	1969	Ch. 15.09 RCW		
Industrial Development Districts (Ports)* - to develop marginal area properties	1939	Ch. 53.25 RCW		
Inter-County Regular Weed Districts	1959	Ch. 17.06 RCW		
Inter-County Rural Library Districts	1947	RCW 27.12.090		
Irrigation Districts	1890	Ch. 87.03 RCW		up to \$100,000
Irrigation and Rehabilitation Districts	1961	Ch. 87.84 RCW		
Island Library District	1982	RCW 27.12.400 - .450		
Joint City-County Housing Authorities	1980	RCW 35.82.300		
Joint Park and Recreation District	1979	RCW 36.60.420 - .460		
Joint School Districts	1897	Ch. 28A.323 RCW		
Lake Management Districts*	1986	Ch. 36.61 RCW; RCW 35.21.403		
Legal Authorities (Hydroelectric) - Irrigation Districts	1983	RCW 87.03.825 - .840		
Library Capital Facility Area*	1995	Ch 27.15 RCW		

Appendix B - Agencies (Shaded) Authorized to use Small Public Work Rosters

February 2009

Metropolitan Municipal Corporations	1957	Ch. 35.58 RCW & Ch. 36.56 RCW
Metropolitan Park District	1907	Ch. 35.61 RCW
Mosquito Control Districts	1957	Ch. 17.28 RCW
Operating Agencies (Electricity Generation and Distribution, Cities & PUD)	1981	Ch. 43.52 RCW
Park & Recreation Districts	1957	Ch. 36.69 RCW
Park & Recreation Service Areas	1963	RCW 36.68.400 - .620
Port Districts	1911	Title 53 RCW
Public Facilities Districts	1988 - counties, 1999 - cities & towns	Ch. 36.100 RCW for counties, Ch. 35.57 RCW cities/towns
Public Hospital Districts	1945	Ch. 70.44 RCW
Public Housing Authorities	1939	Ch. 35.82 RCW
Public Stadium Authority	1997	Ch. 36.102 RCW
Public Transportation Benefit Area	1975	Ch. 36.57A RCW
Public Utility Districts	1931	Title 54 RCW
Public Waterway Districts*	1911	Ch. 91.08 RCW
Reclamation and Irrigation Districts in Reclamation Areas	1943	Ch. 89.12 RCW
Reclamation Districts of one million acres	1927	Ch. 89.30 RCW
Regional Library Districts	1935	RCW 27.12.080
Regional Fire Protection Service Authorities	2004	Ch. 52.26 RCW
Regional Transit Authorities	1992	RCW 81.112
Regional Transportation Investment District	2002	RCW 36.120
River & Harbor Improvement Districts*	1903	Ch. 88.32 RCW
Roads & Bridges Service Districts	1983	Ch. 36.83 RCW
Rural County Library Districts	1941	RCW 27.12.040 - .070
Rural Partial Library District	1993	RCW 27.12.470
Rural Public Hospital District (defined)	1992	RCW 70.44.450-.460
Sanitary Districts*	1933, Repealed 1971	Title 55 RCW
School Districts	1889	Ch. 28A.315 RCW
Sewage Improvement Districts* - Formerly under Title 85 After 1979 powers of title 85	1923	RCW 57.04.120-.130

Appendix B - Agencies (Shaded) Authorized to use Small Public Work Rosters

February 2009

Sewer Districts	1941	Title 57 RCW	
Shellfish Protection Districts - "Clean Water Districts"	1985	Ch. 90.72 RCW	
Solid Waste Collection Districts*	1971	Ch. 36.58A RCW	
Solid Waste Disposal Districts*	1982	RCW 36.58.100	
Television Reception Improvement Districts	1971	Ch. 36.95 RCW	
Transportation Benefit District	1989	Ch. 36.73 RCW, RCW 35.21.225 for city	
Unincorporated Transportation Benefit Areas (UTBA)	1975	RCW 36.57.100	
Urban Emergency Medical Service Districts	1994	RCW 35.21.762	
Water Distribution District	1921, Repealed		
Water Districts	1913	Title 57 RCW	
Water-Sewer Districts (water-sewer district, water district, sewer district)	Sewer Dist 1941; water dist 1913; water-sewer consolidation 1971	Title 57 RCW (districts reclassified, formerly Sewer Title 56, Water Title 57), reclassification 1997	
Weed Districts	1921	Ch. 17.04 RCW	

Appendix C

MODEL SMALL WORKS ROSTER RESOLUTION

[governing body] = council, board, commission, etc.
[name of agency] = name of city, county, district, authority
[type of agency] = city , county, district, authority
[executive officer] = mayor, chairman, manager, etc.

Agency	RCW Cites
Counties and County Roads	RCW 36.32.235 RCW 36.32.250 RCW 36.77.075
First Class Cities	RCW 35.22.620
Code Cities , Second Class Cities and Towns	RCW 35.23.352
Community and Technical Colleges	RCW 28B.50.330
Fire Protection Districts	RCW 52.14.110
Higher Education	RCW 28B.10.350
Housing Authorities	RCW 35.82.076
Port Districts	RCW 53.08.120 RCW 53.08.135
Public Hospital Districts	RCW 70.44.140
Public Utility Districts	RCW 54.04.070 & RCW 54.04.082
School Districts	RCW 28A.335.190
Water-Sewer Districts	RCW 57.08.050

A RESOLUTION OF THE [governing body] OF [name of agency], WASHINGTON, ON THE SUBJECT OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

WHEREAS, in order to be able to implement small works roster processes of RCW 39.04.155, the [type of agency] is required by law to adopt a resolution establishing specific procedures;

NOW, THEREFORE, THE [governing body] OF [name of agency], WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Resolution No. _____ is hereby repealed.

Section 2. The following small works roster procedures are established for use by the [type of agency] pursuant to [RCW cite-see table] and RCW 39.04.155.

1. **Cost.** The [type of agency] need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), or the current statutory limit in RCW 39.04.155, which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the [type of agency] may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The [type of agency] 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.
3. **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 or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the [type of agency] as a condition of being placed on a roster or rosters.
4. **Publication.** At least once a year, the [type of agency] shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The [type of agency] may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between [name of agency] and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the [type of agency] may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The [type of agency] shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:
 - a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other

requirements for architectural or engineering approvals as to quality and compliance with building codes.

b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the [type of agency] may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The [type of agency] has the sole option of determining whether this notice to the remaining contractors is made by:

- (i) publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (ii) mailing a notice to these contractors; or
- (iii) sending a notice to these contractors by facsimile or other electronic means.

c) For purposes of this resolution, "equitably distribute" means that the [type of agency] may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the [type of agency] representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

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

7. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the [type of agency] may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the [type of agency] will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the [type of agency] may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the [type of agency] shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The [type of agency] shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (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.

8. **Small Business Incentives** (RCW 39.04.155(5))

An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return. An agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars (\$250,000) annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

9. **Determining Lowest Responsible Bidder.** The [governing body] shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the [governing body] may call for new bids. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350 (2).

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

OR [If the governing body delegates the authority to award bids of certain amount(s) to an officer of the agency.]

10. **Award.** The [executive officer] or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the [governing body]. However, for public works projects under \$ _____, the [executive officer] shall have the authority to award public works contracts without [governing body] approval, provided that the [governing body] shall ratify the [executive officer]'s approval at the next scheduled [governing body] meeting by means of the consent agenda. For public works projects over \$ _____, the [governing body] shall award all public works contracts by resolution.

PASSED this ____ day of _____, 20__ and signed in authentication of its passage this ____ day of _____, 20__.

[executive officer]

ATTEST:

APPROVED AS TO FORM:

[type of agency]

CLERK

ATTORNEY

Appendix D
MODEL VENDOR LIST
AND
SMALL WORKS ROSTER RESOLUTION
Resolution No. _____

<p>[governing body] = council, board, commission, etc.</p> <p>[name of agency] = name of city, county, district, authority</p> <p>[type of agency] = city , county, district, authority</p> <p>[executive officer] = mayor, chairman, manager, etc.</p>

Agency	RCW Cites
Counties and County Roads	RCW 36.32.235 RCW 36.32.240 RCW 36.32.245 RCW 36.32.250 RCW 36.77.075
First Class Cities	RCW 35.22.620
Code Cities, Second Class Cities, and Towns	RCW 35.23.352
Community and Technical Colleges	RCW 28B.50.330
Fire Protection Districts	RCW 52.14.110
Higher Education	RCW 28B.10.350
Housing Authorities	RCW 35.82.076
Port Districts	RCW 53.08.120 RCW 53.08.135
Public Hospital Districts	RCW 70.44.140
Public Utility Districts	RCW 54.04.070 & RCW 54.04.082
School Districts	RCW 28A.335.190
Water-Sewer Districts	RCW 57.08.050

A RESOLUTION OF THE [governing body] OF [name of agency], WASHINGTON, repealing Resolution No. _____ and establishing new procedures relating to purchasing and public works contracting; establishing a vendor list process for the purchasing of supplies, materials, and equipment and a small works roster process to award public works contracts.

WHEREAS, RCW 39.04.190, regarding purchase of materials, supplies or equipment not connected to a public works project, allows certain purchasing contracts to be awarded by a vendor list process; and

WHEREAS, the RCW 39.04.155, allows certain public works contracts to be awarded by a small works roster process; and

WHEREAS, in order to be able to implement vendor list and small public works roster processes, the [type of agency] is required by law to adopt a resolution establishing specific procedures;

NOW, THEREFORE, THE [governing body] OF [name of agency], WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Purchase of materials, supplies or equipment not connected to a public works project in an amount of \$____ or less. The [type of agency] is not required to use informal or formal sealed bidding procedures or the procedures set forth in this resolution to purchase materials, supplies, or equipment for the purchase of any materials, supplies of equipment where the cost of same will not exceed _____. The [type of agency] will attempt to obtain the lowest practical price for such goods and services.

Section 2. The following vendor list procedures are established for use by the [type of agency] pursuant to [RCW cite-see table] and RCW 39.04.190. Purchase of materials, supplies or equipment not connected to a public works project in an amount between \$_____ and \$_____.

1. **Publication Of Notice.** At least twice a year, the [type of agency] shall publish, in the [type of agency]'s official newspaper, notice of the existence of a roster(s) of vendors for materials, supplies, and equipment, and shall solicit names of vendors for the roster.
2. **Electronic Rosters.** In addition to paper and/or electronic vendor lists kept on file in the appropriate department, the [type of agency] may also use that state wide electronic database developed and maintained jointly by the Daily Journal of Commerce and the Municipal Research and Services Center of Washington (MRSC Rosters).
3. **Telephone Quotations.** The [type of agency] shall use the following process to obtain telephone quotations from vendors for the purchase of materials, supplies, or equipment:
 - a. A written description shall be drafted of the specific materials, supplies, or equipment to be purchased, including the number, quantity, quality, and type desired, the proposed delivery date, and any other significant terms of purchase;
 - b. A [type of agency] representative shall make a good faith effort to contact at least three (3) of the vendors on the roster to obtain telephone solicitation quotations from the vendors for the required materials, supplies, or equipment;
 - c. The [type of agency] representative shall not share telephone quotation from one vendor with other vendors solicited for the bid on the materials, supplies, or equipment;
 - d. A written record shall be made by the [type of agency] representative of each vendor's bid on the material, supplies, or equipment, and of any conditions imposed on the bid by such vendor;

e. The [type of agency] representative shall present to the [governing body] all telephone quotations and a recommendation for award of the contract to the lowest responsible bidder.

4. **Determining the Lowest Responsible Bidder.** The [type of agency] shall purchase the materials, supplies or equipment from the lowest responsible bidder (RCW 43.19.1911(9)), provided that whenever there is reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the [type of agency] may call for new bids. The [type of agency], in determining the lowest responsible bidder may take the following factors, to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the [governing body] may call for new bids. RCW 43.19.1911(9) states:

“ In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (c) Whether the bidder can perform the contract within the time specified;
- (d) The quality of performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws relating to the contract or services;
- (f) Such other information as may be secured having a bearing on the decision to award the contract:

PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

5. **Award.** [governing body] shall review quotations and recommendation by city staff and award the contract to the lowest responsible bidder. A written record of each vendor's quotations shall be made open to public inspection or telephone inquiry after the award of the contract. Any contract awarded under this subsection need not be advertised.
6. **Posting.** A list of all contracts awarded under these procedures shall be posted at [type of agency] main administrative offices once every two months. The list shall contain the name of the vendor awarded the contract, the amount of the contract, a brief description of the items purchased, and the date it was awarded.

Section 3. The following small works roster procedures are established for use by the [type of agency] pursuant to [RCW cite-see table] and RCW 39.04.155.

1. **Cost.** The [type of agency] need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), or the current statutory limit in RCW 39.04.155, which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the [type of agency] may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The [type of agency] 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.
3. **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 or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the [type of agency] as a condition of being placed on a roster or rosters.
4. **Publication.** At least once a year, the [type of agency] shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The [type of agency] may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between [name of agency] and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the [type of agency] may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The [type of agency] shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:
 - a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other

requirements for architectural or engineering approvals as to quality and compliance with building codes.

b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the [type of agency] may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The [type of agency] has the sole option of determining whether this notice to the remaining contractors is made by:

- (i) publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (ii) mailing a notice to these contractors; or
- (iii) sending a notice to these contractors by facsimile or other electronic means.

c) For purposes of this resolution, "equitably distribute" means that the [type of agency] may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the [type of agency] representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

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

7. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the [type of agency] may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the [type of agency] will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the [type of agency] may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the [type of agency] shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The [type of agency] shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (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.

8. **Small Business Incentives (RCW 39.04.155(5))**
An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return. An agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars (\$250,000) annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.
9. **Determining Lowest Responsible Bidder.** The [governing body] shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the [governing body] may call for new bids. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350 (2).
10. **Award.** All of the telephone bids or quotations shall be collected and presented at the same time to the [governing body] for consideration, determination of the lowest responsible bidder, and award of the contract.

OR [If the governing body delegates the authority to award bids of certain amount(s) to an officer of the agency.]

10. **Award.** The [executive officer] or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the [governing body]. However, for public works projects under \$_____, the [executive officer] shall have the authority to award public works contracts without [governing body] approval, provided that the [governing body] shall ratify the [executive officer]'s approval at the next scheduled [governing body] meeting by means of the consent agenda. For public works projects over \$_____, the [governing body] shall award all public works contracts by resolution.

PASSED this ____ day of _____, 20__ and signed in authentication of its passage this ____ day of _____, 20__.

[executive officer]

ATTEST:

APPROVED AS TO FORM:

[type of agency] CLERK

ATTORNEY

MRSC Project Closure/Retainage Release Guidelines (Effective 07/26/09)

Contract Amount	Require in Contract (also See Note 1)		Needed for Project Closeout Files (Before Releasing Retainage) (Also See Note 9)			
	Performance and Payment Bonds	Retainage	Sales and/or Use Taxes	Prevailing Wages	Industrial Insurance	Employment Security Taxes
Over \$ 35,000	Yes	Yes	Notice of Completion (NOC) and DOR Release (See Note 4)	Intent and Affidavit (See Note 5)	NOC and Ind. Ins. Certification (See Note 6)	NOC and Certificate of Payment (See Note 8)
\$35,000 or less Limited PW Process	Can Waive (See Notes 2 & 7)	Can Waive (See Notes 2 & 7)	Not Required (See Note 4)	Intent and Affidavit (See Note 5 & 7)	Not Required (See Note 6)	Not Required (See Note 4)
\$35,000 or less	Can Waive (See Note 3)	50% Retainage (See Note 3)	Not Required	Intent and Affidavit (See Note 5)	Not Required	Not Required
\$ 2,500 or less	May Not Be Needed (10)	May Not Be Needed (10)	Not Required	Small Works Form (7)	Not Required	Not Required
<p>Note 1: Contract documents must require that prevailing wages must be paid and must contain the prevailing wages applicable to the project, regardless of contract amount.</p> <p>Note 2: RCW 39.04.155 (3) allows a local government to waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW. To use this limited public works process an authorized local government must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. A SWR process is required.</p> <p>Note 3: RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less (Chapter 210, 2007 Laws) - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from DOR and L&I and settlement of any liens filed under chapter 60.28 RCW, whichever is later.</p> <p>Note 4: City files Notice of Completion of Project with DOR and will receive Certificate of Payment of Excise Taxes from DOR for the project. DOR may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws. NOC and Certificate not required for projects under \$35,000.</p> <p>Note 5: Contractor files Intent to Pay Prevailing Wages and Affidavit of Wages Paid with L & I. The public agency will receive approved Intent and Affidavit forms from the Contractor. L & I sends the forms to the Contractor who in turn sends them to the public agency. Or the agency can view them online.</p> <p>Note 6: City files Notice of Completion of Project with L&I, which issues 'Release' from liability for industrial insurance premiums for the project. L&I may also demand payment for unpaid premiums on other projects per Chapter 423, 2009 Session Laws. NOC and Release not required for projects under \$35,000.</p> <p>Note 7: RCW 39.12.040 (2) allows the local government agency to process combined Intent and Affidavit short forms and forward them to L & I monthly. If the agency chooses not to use this process, see Notes 5 & 6. Chapter 210, 2007 Laws allows use of this form for contracts up to \$35,000 if RCW 39.04.155 (3) is followed.</p> <p>Note 8: DOR forwards Notice of Completion to ESD. ESD issues Certificate of Payment of employment security contributions, penalties and interest. ESD may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws. NOC and Certificate not required for projects under \$35,000.</p> <p>Note 9: RCW 60.28.011(3)(b) states that "Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW." (But not chapter 50.24 RCW.) Therefore, an agency should release retained funds, less the amount of any claims by laborers, suppliers and subcontractors, at the end of sixty (60) days to avoid possible ramifications under the Prompt Pay Act (RCW 39.76). If Certificate from DOR and approved Affidavits from L&I per notes 4-6 are not available at that time, contact your agency attorney. An agency should also try to have the ESD Certificate in its files as well. See MRSC Contract Closeout Paperwork and Deadline Summary also.</p> <p>Note 10: Unless an agency waives bonding and/or retainage (B/R) under the Notes 2 and 3 scenarios, both are theoretically required, even for very small projects. However, as a practical matter, payment for small projects is usually well after completion and - in effect - there is a 100% retainage for 2-4 weeks, so there is very little risk if an agency does not require B/R. Be sure, as much as practical, that suppliers have been paid and that an approved Affidavit of Wages Paid from the contractor is on file.</p>						

RETAINAGE RELEASE

CHECKLIST

Basic Information

Project Name:		Project #:
Contractor's Name:		
Retainage Status		
<input type="checkbox"/> Escrow Agreement	<input type="checkbox"/> Agency Holding Retainage	<input type="checkbox"/> Retainage Bond
Dates		
Substantial Completion Date	Final Acceptance Date	45 Days from Final Acceptance

Documentation Required

Description:	Responsible Party:	Date Recvd or Compltd:	
Acceptance Notices			
<input type="checkbox"/> Final Acceptance Letter (to Contractor)	CPO Contracts		
<input type="checkbox"/> Notice of Completion of Public Works Contract to DOR	CPO Accounting		
<input type="checkbox"/> Notice of Completion of Public Works Contract to ESD	CPO Accounting		
<input type="checkbox"/> Notice of Completion of Public Works Contract to L&I	CPO Accounting		
Releases from State Agencies			
<input type="checkbox"/> Department of Revenue <small>Certificate of Payment of State Excise Taxes by Public Works Contractor</small>	Revenue		
<input type="checkbox"/> Employment Security Department <small>Certificate of Payment of Contribution, Penalties & Interest on Public Works Contract</small>	Employment Security		
<input type="checkbox"/> Department of Labor and Industries <small>Release</small>	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
Prevailing Wages			
<input type="checkbox"/> Statements of Intent to Pay Prevailing Wages	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
<input type="checkbox"/> Affidavits of Wages Paid	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
Other			
<input type="checkbox"/> Certificate of Payment of Labor and Materials	Contractor		
Claims and Liens Against the Retainage and Payment Bond			
<input type="checkbox"/> Type of Action*	Claimant	Amount	Date Received

*Claim, Renewal, Release

Appendix G - WAC 458-20-170 & 171 Matrix (September 2004)

Applicable B&O, Use Taxes and Sales Taxes Are to be Included in (Unit) Bid Prices for: (Rule 171)	Sales Tax Added to (Unit) Bid Prices for: (Rule 170)
<p>building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)</p> <p>The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry.</p>	<p>railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields;</p>
<p>docks used primarily by ferry boats operated in connection with a street, road or highway, (and which is owned by a municipal corporation or political subdivision of the state or by the United States)</p>	<p>ferry boats purchased by the state or municipal corporations are exempt from retail sales taxes (WAC 458-20-189(6)(f))</p>
<p>roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.</p>	<p>constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid</p>
<p>constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting;</p>	
<p>constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.</p>	<p>constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.</p>
<p>includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.</p>	

WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

- (a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or
- (b) Placed on the street, road, or highway by the county or city itself using its own employees, or
- (c) Sold by the county or city at actual cost to another county or city for road use.

Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

Use Tax

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

[Order ET 71-1, § 458-20-171, filed 7/22/71; Order ET 70-3, § 458-20-171 (Rule 171), filed 5/29/70, effective 7/1/70.]