

Buying and Bidding

Ensuring your government follows Washington purchasing laws



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a service of the Office of the Washington State Auditor

September 2020

Center for
Government
Innovation

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Disclaimer

This guidance is intended to supplement information management should consider when establishing internal controls. The guidance might not include all information that should be considered and is not intended to supersede management's judgement in establishing internal controls, including regularly monitoring risks and ensuring internal controls are in place to address potential areas of concern.

Buying and Bidding: An introduction

Procurement laws address how local governments solicit bids and award contracts, and purchase materials or services. They are on the books for three key reasons:

- To prevent fraud, collusion and favoritism in the awarding of public contracts
- To enable governments to obtain the best work or supplies at the most reasonable prices
- To promote openness in government

It's important to Washingtonians that local governments comply with these laws, because they want assurance their tax dollars are spent wisely. It's also important to the contracting community, which would like a fair and equal opportunity to participate in government contracts. Competitively bid contracts help governments ensure they pay reasonable prices since contractors compete with each other to win the work. For these reasons, our Office regularly reviews whether governments are following procurement laws during our audits.

The laws concerning bidding and purchasing are complex, and it is an area of frequent questions and audit recommendations. This guide sets out the basics of purchasing and bidding to help you comply with state law, no matter your government type, size or complexity. It also includes some information about procuring services and purchasing with federal funds. However, this guide does not cover federal procurement laws comprehensively, so you should refer to additional guidance when using federal money.

To keep this guide to a reasonable length, we haven't included the full text of any laws. Instead, look for a clickable link to the source in the Revised Code of Washington (RCW) or Washington Administrative Code (WAC). If you have any doubts about which procedure to follow for your project or purchase, you can submit questions to our Help Desk or reach out to your legal counsel.

If you are reading this handbook while connected to the internet, clicking a link like this

[RCW XX.YY](#) or [RCW XX.YY](#)

will take you right to the source.

Defining our terms

What's the difference between spending on purchases vs. public works or maintenance projects?

Purchases usually refer to the procurement of equipment, materials or supplies not connected to a public works project. “Public works” are defined in law ([RCW 39.04.010\(4\)](#)) this way:

Public works includes 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.

Any equipment, materials or supplies needed for a public works project are bid along with the rest of the project and follow public works bid guidance.

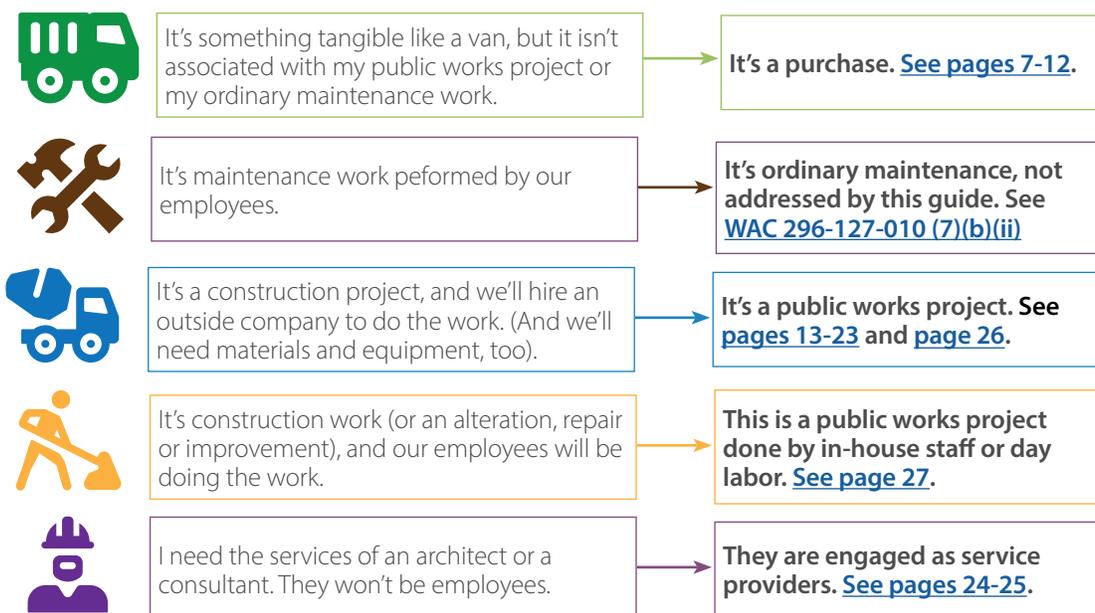
State law defines “ordinary maintenance” this way:

Maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

As you can see, any work, construction, alteration, repair or improvement that does not qualify as ordinary maintenance would be considered a public work. Some public works can be contracted out, and others might be performed by in-house labor when the law allows it.

Finally, you might need to procure professional services such as those provided by architects, or personal services such as those provided by a consultant. You also might need a purchased service such as those of a plant operator for an electric plant. These are handled differently than conducting a public works project or a purchase.

I'm about to spend money! How do I know which laws apply?



Important points before you get started

Procurements come in two basic types: Those which are just one government's project or purchase and one conducted with a partner, whether public or private.

When you pay for the project with only your funds, your procurement will be guided by state law and your own policies. If your policy is more limiting than state law, then you'll need to follow it over state law requirements. But when other parties become involved in either the project or the funding, you'll want to proceed with caution. Consider these examples:

- **A government and a private company finance a project together.** As part of granting permission for a new housing development, a city has required the developer to make improvements to a segment of an adjoining road. The city decides to contribute additional funds so the entire road is improved at the same time.

How to proceed: If a government funds part of a project involving a private company, the government's bid laws apply to the entire project. Prevailing wage requirements might also apply.

- **One government contributes funding to another's project.** A sewer district is preparing to install new lines, and the county engineer recommends the county install new sidewalks while the pavement is already dug up. The county decides to contribute to the sewer district's project.

How to proceed: When multiple government types collaborate financially on a project, the *most restrictive* bid requirement applies for all participants in the project.

- **Grant funding – which may be from federal sources – is paying for all or part of the project.** A county is constructing a new public health building. Part-way through, the county decides to use federal grant funds on part of the project.

How to proceed: When using federal funding, the most restrictive of state, federal or local requirements apply *for the entire project*. For this county to apply federal funds part-way through, it would have had to consider and apply the most restrictive requirements from the start of its project. While the project's size means it would have been publicly bid under state and federal law, the county would have also needed to include federal prevailing wage requirements in the bidding and contract documents. If it didn't follow the most restrictive requirements, the county cannot use federal money for this project.

Essentially, under any of these three circumstances, the most restrictive requirements apply to you and your project or procurement. This is especially important if you receive federal funding for any purchase or project, or anticipate you might. Try to establish your controls so that procurement procedures always comply with the most restrictive of state or federal requirements relevant to the project. By doing so, if federal funding is received after the project has been bid, the federal money can still be used on the project or purchase.

Federal grants

You can find procurement requirements for these in Subpart D of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* – [2 CFR 200](#) (Uniform Guidance).

For state agencies, see [2 CFR §200.317](#).

For local governments, see [2 CFR §200.318](#) through [§200.326](#).

Good project management can help you comply with the law

Don't forget to use sound project management practices to ensure you comply fully with all applicable requirements from start to finish. These might include:

- A tool such as a compliance checklist, to help you double-check that no steps are missed
- A well-organized project filing system and records management practices, to help ensure you have the records you need to demonstrate compliance
- Staff training, to help your staff stay abreast of changing requirements

We offer training on federal award requirements through the Washington Finance Officers Association (WFOA). In addition, the Municipal Research & Services Center (MRSC) offers its own trainings. For more about these and other procurement-related educational opportunities, visit their websites for more information.

- WFOA has links to information about non-conference and annual conference training from its home page at www.wfoa.org
- MRSC also provides procurement training at various locations around the state. Visit its website at mrsc.org/Home/Training.aspx

Essentials for making a purchase

First step: Develop a cost estimate

Begin by estimating the cost of the purchase to determine whether it exceeds your local government's bid threshold. Consider the following when developing an estimate:

- **Include sales tax when deciding whether a purchase exceeds your bid limits.** Note there might be exceptions for some government types, such as Public Utility Districts (PUDs) and housing authorities (see sidebar).
- **Evaluate whether it is a one-time procurement or if you will purchase similar items throughout the year.** Typical "like-kind" items include tires, bulk fuel (as opposed to individual purchases of gasoline bought with a credit or purchase card), uniforms and furniture. For like-kind items, estimate how much you expect to purchase during the year to determine if you will exceed the bid threshold.
- **Watch your bid threshold compared to actual costs.** If your estimate was under the bid threshold, but the actual purchase cost turns out to exceed that threshold, then you need to go out for bid. In addition, before putting it out to bid you need to re-evaluate and revise your original estimate.

Exceptions

PUDs exclude sales tax from the purchase under [RCW 54.04.070\(1\)](#).

Housing authorities are exempt from sales and use tax on purchases under [WAC 458-20-189](#).

Next, find your bidding thresholds

The thresholds for purchasing vary based on government type, what is being purchased, and the value of the procurement. You can find your requirements by using the MRSC tool, "[Find your contracting requirements.](#)"

You can also look up your requirements in **Table 1** on the following page.

To use Table 1: The lower threshold is the amount below which a local government may use any internally acceptable method of making purchases. For contracts between the lower threshold and the purchase contract threshold, local governments can use the process as outlined in [RCW 39.04.190](#). For purchases above the purchase contract threshold, a local government must use the formal competitive bidding process. If a local government does not choose to use the purchase contract method, they are required to formally competitively bid any purchases over the lowest bid threshold.

Table 1 – Bid thresholds for purchases

Notes are on the next page

Government type	Bid threshold	Purchase contract threshold	Notes	RCW reference
Area Agency on Aging	Most restrictive law of creating entities			74.38.050
City, First Class	Set by charter or ordinance		1	35.22.620
City, Code, Population greater than 20,000	Set by charter or ordinance		1	35A.40.210
City, Code, Population less than 20,000	\$7,500	\$15,000	2, 3	35A.40.210
City, Second Class, and Towns	\$7,500	\$15,000	2, 3	35.23.352
Conservation District	None; established by policy			89.08
County	\$10,000	\$50,000	2, 3	36.32.245
Educational Service District (ESD)	No specific requirements, unless contracting on behalf of a school district see note		4	28A.310
Fire District	\$40,000	\$75,000	2	52.14.110
Flood/Diking/Drainage District	None; established by policy			85.38
Health District	None; established by policy		5	70.46
Hospital District	\$0	\$15,000	2, 3, 5	70.44.140
Housing Authority	None; established by policy			35.82
Interlocal agreement agencies	Most restrictive law of creating entities			39.34.080
Irrigation District	\$0	\$50,000	2, 6	87.03.437
Library District	None; established by policy			27.12
Mosquito Control District	None; established by policy			17.28
Park & Recreation District	None; established by policy			36.69
Parks District, Metropolitan	\$40,000	\$50,000	2, 3	35.61.135
Port District	None; established by policy			53.08.120
Public Development Authority (PDA)	Laws of creating city or county		5	35.21.730
Public Facilities District (PFD)	None; established by policy		5	36.100.030 , 35.57.020
Public Utility Districts (PUD)	\$30,000	\$120,000	2, 3, 7	54.04.082 , 54.04.070
Reclamation District	None; established by policy			89.30.154
Regional Support Network (RSN)	Laws of creating county			71.24.300
School District	\$40,000	\$75,000	2, 3, 8	28A.335.190
Self-Insurance Risk Pool	See footnote		9	48.62 , WAC 200-100-220 , WAC 200-100-020(8)
State College or University	\$10,000	\$100,000	2	28B.10.029
Transportation Authority established under 36.57 or 36.57A	None; established by policy			36.57 or 36.57A
Transportation Authority established under 35.21.225 or 36.73	Most restrictive law of creating entities			35.21.225 or 36.73
Water-Sewer District	\$50,000	\$50,000	2	57.08.050

Table 1 notes

1. There are no statutory requirements for the purchase of materials, supplies and equipment. The city's charter provisions or ordinances govern such purchases. In non-charter cities, the competitive bid process should be set by ordinance.
2. Use the secondary threshold (in the third column) if the local government adopted the purchase contract process detailed in [RCW 39.04.190](#) by resolution. Otherwise, all purchases over the primary threshold (in the second column) must be formally bid.
3. Must award to lowest responsible bidder.
4. If the ESD is contracting on behalf of a school district, then school district bid laws apply.
5. If the entity is created by multiple entities via an interlocal agreement, the most restrictive laws of the creating entities apply.
6. [RCW 87.03.437](#) states the board may, by resolution, adopt a policy to waive formal sealed bidding procedures for purchases under \$50,000.
7. [RCW 54.04.070](#) allows the purchase of up to \$12,000 of the same kind of materials each month without a contract. Any purchase in excess must be made by contract and bid accordingly. The district should define "same kind" by resolution.
8. In accordance with [RCW 28A.335.190](#), the board of directors should establish procedures for securing phone or written quotes. The procedures must require quotes from at least three different sources.
9. A risk pool should follow [WAC 200-100-220](#) and [WAC 200-100-0208](#) if it is on the Department of Enterprise Services' (DES) list of approved programs at either of these two links:

- des.wa.gov/services/Risk/Self-Insurance/Pages/healthWelfarePrograms.aspx
- des.wa.gov/services/Risk/Self-Insurance/Pages/jointPropertyLiability.aspx

This means it should obtain three quotes for purchases between \$5,000 and \$50,000, and formally bid for purchases greater than \$50,000.

If a risk pool is *not* on one of the DES lists, it should use the bidding requirements following the most restrictive law of creating entities.

Next, consider the requirements for your procurement

Table 2 summarizes the basic or minimum requirements for purchases that must be publicly bid.

Table 2 – Bidding requirements for purchases subject to competitive bidding

Requirement	How it applies
Advertisement	Varies by government type but commonly: Published notice in the local newspaper at least once; typically no less than 13 days before the due date for bids.
Bid opening	Depends on government type; laws might require bids to be read publicly at a fixed time and place. It's best to properly secure the bids to avoid bid tampering before they are made public.
Bid award	Most government types must award to the lowest responsible bidder. Otherwise they may award based on best value. If the latter, keep records showing what criteria was used to decide "best value" and an analysis of how the bids were evaluated.

Alternatives to formal sealed bidding on purchases

Sometimes alternatives to formal bidding can be used, but make sure they are allowable in your situation. Depending on your circumstances, you may be able to make use of one of three alternatives to a formally bid a contract for purchases. They are:

- Using the purchase contract process
- Piggybacking on another government's bid
- Claim an exception to bid law

Purchase contract process (vendor list)

In some cases, there might be an alternative to formal sealed bidding and a roster (vendor list) might be used. This is referred to as the purchase contract process. This involves advertising to compile a list of interested vendors, who are then contacted and asked to provide a quote as purchases arise throughout the year. Table 3 outlines the requirements for the purchase contract process.

Table 3 – Using a roster or purchase contract process

Requirement	How it applies
To authorize	By resolution, establish procedures for obtaining telephone and/or written quotes
Advertisement	At least twice a year
Adding contractors to the roster	State law does not specify a process, so governments should develop a process in policy
Threshold at which you can use the roster	Varies by government type. See Table 1: Bid thresholds for purchases
Statutory reference	39.04.190
Process for obtaining quotes	Should be obtained from at least three different vendors
Awarding contracts	To the lowest responsible bidder
Records	The bid quotations obtained must be recorded, open to public inspection, and available for inquiries

If you lack resources to develop your own roster, consider using one from another government. Just make sure there is an interlocal agreement that clearly identifies which entity is responsible for implementing the purchase contract process provisions. MRSC developed a roster other governments can contract to use. For more information: mrscrosters.org/mrsc-rosters/

Piggybacking onto another entity’s bid

An alternative to conducting your own procurement might be to rely on the contract award of another. Benefits of doing so could include obtaining better pricing and saving the time and resources it takes to conduct the bidding process. In a piggybacking arrangement, one entity takes the lead to procure goods or services in a competitive environment, then extends the pricing to other participating governments.

For information about piggybacking, answers to frequently asked questions, and an optional checklist to help you ensure you are following the requirements, see our publication [Using Others’ Awards \(‘Piggybacking’\)](#).

Exceptions to competitive bidding

In some cases, you might qualify for an exception from conducting public bidding or for a more streamlined process. When choosing a bid law exception, make sure you select the appropriate one meeting your circumstances. Make sure to research and follow all related requirements for using the exception. Lastly, be prepared to support your conclusions reached with any applicable documentation. Ensure this documentation is kept for audit purposes. **Table 4** details the exceptions possible for purchases.

Table 4 – Bid law exceptions or exemptions for purchases

Exception type	Description and statute reference
Emergencies	This exemption applies to all municipalities. Emergencies are defined and requirements described by 39.04.280 .
Sole source: Purchases that are clearly and legitimately limited to a single (sole) source of supply are exempt	39.04.280(1)(a)
Special facilities and market conditions: Work with your legal counsel to determine if circumstances would qualify	39.04.280(1)(b)
Purchase of insurance or bonds	39.04.280(d)
Irrigation districts: Exchange of bonds in payment for labor and material	87.03.435(2) , 87.03.210
Irrigation districts: Contracts with the United States	87.03.435(3)(a)
Auction purchases	39.30.045 Diking and drainage districts are excluded under 39.04.010
Purchases from another local government	39.33.010

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Table 4 – Bid law exceptions or exemptions for purchases – continued

Exception type	Description and statute reference
School district, certain purchases	Books 28A.335.190(2) School buses 28A.160.195 From class II inmate work programs operated by Dept of Corrections 28A.335.190(3)
County purchase of election materials	Such as ballots or voting machine labels 36.32.245(4)
Data processing and telecommunications equipment, software and services	Special process under 39.04.270

Essentials for public works projects

First steps: Develop plans, specs and estimates

In the case of a public works project, you will need to complete additional steps before inviting bids on the work. They include developing and approving plans, project specifications, and a cost estimate. (The sidebar has links to state and federal laws.) The project cost estimate will drive which allowable procurement process you can use.

The project estimate should include all costs related to the entire project, subtracting discounts and donated items or labor. Include materials, supplies, equipment, labor (at the prevailing wage rate, see pages 16-17), and sales tax. Note there are exceptions for Public Utility Districts (PUDs), housing authorities, and certain types of city or county projects (see sidebar). If you decide you are exempt from including or paying sales or use taxes on your project, be sure to document the exclusion you believe applies.

If your local government will be collaborating with another to complete a public works project, make sure your estimate for the total cost of the project includes all costs for all parties involved.

Required steps

State: [RCW 39.04.020](#)

Federally funded projects:
[2 CFR §200.323](#)

Exceptions

PUDs exclude sales tax from the project cost under [54.04.070\(2\)](#). Housing authorities are exempt from sales and use tax ([WAC 458-20-189](#)). Certain types of projects or portions of projects may be exempt from sales and use tax, such as road projects, under [RCW 82.08.0275](#) and [WAC 458-20-171](#).

Next, find your bidding thresholds

Requirements for conducting competitive bidding on public works projects vary based on government type, the nature of the project and its cost. You can use the Municipal Research and Services Center (MRSC) tool, "[Find your contracting requirements](#)." Or you can look up your requirements in **Table 5** on the following page.

To use Table 5: The lower threshold is the amount below which a local government may use any internally acceptable method of awarding small public works contracts. For contracts between the lower threshold and \$350,000, most laws allow a local government to use a small works roster. For amounts above \$350,000, a local government must use the formal competitive bidding process.

If a local government is not using the small work roster process, it must use the formal competitive bidding process for any projects over the lowest bid threshold. Some governments have two different lower thresholds; one for a single craft (such as an electrician or a plumber) or for projects involving more than one craft (such as a general contractor overseeing subcontractors with different skill sets).

Table 5 – Bid thresholds for public works projects, by government type

Notes are on the next page

Government type	Bid threshold		Small Works Roster threshold	Notes	RCW reference
	1 craft	More than 1 craft			
Area Agency on Aging	Most restrictive law of creating entities				74.38.050
City, First Class	\$75,500	\$150,000	\$350,000		35.22.620
City, Second Class, and Towns City, Code	\$75,000	\$116,155	\$350,000		35.23.352, 35A.40.210
Conservation District	None; established by policy			1	89.08
County, any size, with purchasing department	\$0		\$350,000		36.32.235
County, any size, without purchasing department	\$40,000		\$350,000	2	36.32.250
Educational Service District (ESD)	None; established by policy. If contracting for school district, see notes.			1, 3	28A.310
Fire District	\$30,000		\$350,000	4	52.14.110
Flood/Diking/Drainage District	\$5,000		\$350,000	5	85.38.190
Health District	None; established by policy			1, 6	70.46
Hospital District	\$75,000		\$350,000		70.44.140
Housing Authority	None; established by policy			1	35.82; AGO 2009 No 2
Interlocal agreement agencies	Most restrictive law of creating entities				39.34
Irrigation District	\$0		\$350,000	7	87.03.435- 87.03.436
Library District	None; established by policy				27.12
Mosquito Control District	None; established by policy			1	17.28
Park & Recreation District	None; established by policy			1	36.69
Parks District, Metropolitan	\$20,000		\$350,000		35.61.135
Port District	\$40,000		\$350,000		53.08.120 53.08.135
Public Development Authority (PDA)	Laws of creating city or county			6	35.21.730
Public Facilities District (PFD)	None; established by policy			6	36.100.030, 35.57.020
Public Utility Districts (PUD)	\$50,000		\$350,000		54.04.070
Reclamation District over 1 million acres	All public works must be formally bid			8	89.30.154
Regional Support Network (RSN)	Laws of creating county				71.24.300
School District	\$100,000		\$350,000		28A.335.190
Self-Insurance Risk Pool	Most restrictive law of creating entities				48.62
State College or University	\$45,000	\$90,000	\$350,000		28B.10.350, 28B.50.330

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Table 5 – Bid thresholds for public works projects, by government type – continued

Notes below

Government type	Bid threshold		Small Works Roster threshold	Notes	RCW reference
	1 craft	More than 1 craft			
Transportation Authority established under 36.57 or 36.57A	None; established by policy			1	36.57A
Transportation Authority established under 35.21.225 or 36.73	Laws of creating city or county				35.21.225 , 36.73
Water-Sewer District	\$50,000		\$350,000		57.08.050

Table 5 notes

1. [RCW 39.04](#) directs that most public works projects be competitively bid, but does not specify the process or thresholds that must be used to do so. When the local government's enacting laws also do not specify the thresholds or process, the local government should establish its own policy regarding competitive bidding.
2. State law formerly differentiated between counties with populations under and over 400,000. In 2019, statute was changed to take out the population requirement.
3. If the ESD is contracting on behalf of a school district, then school district bid laws apply.
4. When fire district public works projects require three or more specialty contractors, the district must retain the services of a general contractor, [RCW 52.14.120](#).
5. This reference is for districts formed under [RCW 85.38](#). Districts formed under [85.05](#), [85.06](#), [85.08](#) and [85.15](#) have no statutory requirement for competitive bidding.
6. If the entity is created by multiple entities via an interlocal agreement, the most restrictive laws of the creating entities apply.
7. The bid limits for irrigation districts are on a per-contract basis, not a per-project basis. This means even if the entire project exceeds the threshold, bidding is not required unless *an individual contract* exceeds the threshold. A district can also split projects such that some work would be done using district personnel.
8. Many "Reclamation Districts" have actually been formed as irrigation districts under [RCW 87.03](#) and therefore should use irrigation district thresholds.

Next, consider the requirements for your procurement

If you must use a formal competitive bidding process, **Table 6** summarizes the basic or minimum requirements.

Table 6 – Bidding requirements for public works projects

Requirement	How it applies
Advertisement	Varies by government type but commonly: Published notice in the local newspaper at least once; typically no less than 13 days before the due date for bids. It might make sense to give more notice to potential bidders in certain circumstances.
Specifications	Plans and specifications must be approved by the governing body before any action is taken. Note that specs must address “prevailing wages” (see below).
Bid opening	Should be opened and read publicly at a fixed time and place (does not have to be at an open public meeting). It’s best to properly secure the bids to avoid bid tampering before they are made public.
Bid bond	Varies by government type but commonly: A deposit of at least 5 percent in the form of a surety bond, cash, cashiers or certified check (see pages 17-19).
Bid award	The contract must be awarded to the lowest bidder who also meets both these criteria: 1) Responsive – responded to all bid items and included all required elements 2) Responsible (see page 19).

Terms used in planning and bidding steps for public works projects

Prevailing wages

All public works (and maintenance, for that matter) performed by contract are subject to the prevailing wage laws, including:

- Public building service maintenance contracts, such as janitorial contracts covering janitors, waxers, shampooers and window cleaners (addressed by [RCW 39.12.020](#) and [WAC 296-127-023](#))
- Private construction performed under a contract for rental, lease or purchase by the local government (addressed by [RCW 39.04.260](#))

The law provides certain exceptions, such as if you are performing public works projects using in-house labor. Also, exceptions might exist for conservation, diking, drainage, reclamation and irrigation districts (consult [RCW 39.12.020](#)).

There is no dollar threshold for payment of prevailing wages; it applies to all contracts regardless of size. **Table 7**, on the following page, sets out the basic requirements.

Table 7 – Requirements for prevailing wages

Requirement	Description
Use required language in your contracts	Bid specifications and contracts for all public works must include a provision stating the hourly prevailing wage rate, as well as a stipulation that laborers, workers, or mechanics will not be paid less than the specified hourly wage rate. Note that reference to the Department of Labor & Industries website is not considered sufficient to meet this requirement.
Obtain required forms, titled Statement of Intent to Pay Prevailing Wages, from contractors	You must obtain these forms from the contractor prior to paying them, including those for any subcontractors who have begun work on the project. Make sure you have controls to monitor the subcontractors working on the project to ensure you receive all forms from the general contractor in a timely manner.
Obtain assurance from the contractor with each invoice	Each invoice the contractor submits for payment must state that prevailing wages have been paid in accordance with the Statement of Intent form you have on file.
Obtain required Affidavit of Wages Paid forms	These forms must be obtained from the contractor and all subcontractors before retainage can be released. Typically, the general contractor provides the forms for itself and all of its subcontractors.

Keep in mind these are state requirements. For projects funded with federal funds, local governments must pay the higher of state or federal prevailing wages and comply with other additional federal requirements such as obtaining a weekly certified payroll. See page 5 for some additional information about federally funded projects.

Note that state law ([WAC 296-127-026](#)) provides some exceptions to rules regarding payment of prevailing wages for sole proprietors (who perform the actual work themselves), partners and officers/owners.

These resources have additional information on prevailing wages:

- mrsc.org/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local/Purchasing-and-Bidding-Public-Works-Contracts/Purchasing-and-Bidding-Prevailing-Wage-Issues.aspx
- lni.wa.gov/licensing-permits/public-works-projects/awarding-agencies/

Bid bonds or deposits

A bid bond or deposit provides some assurance to and protection for the local government that the winning bidder will enter into the contract as bid upon. Although typically required for public works projects, these requirements vary by government type. Bid bonds are a good business practice. If you do not have a legal requirement, we would expect bid bond or deposit requirements to be defined by policy.

If you use the small works roster process ([RCW 39.04.155](#) and described on page 21), bid bonds are not required. In such cases, auditors would expect to see bid bond or deposit requirements defined in government policy.

Table 8, on the following page, details the requirements by government type for bid bonds. “N/A” means the requirement does not apply.

Table 8 – Bid bond requirements

Notes are on the next page

Government type	Bid bond required	Notes	RCW reference
Area Agency on Aging	Maybe		74.38.050 (refers to 43.19)
City, First Class	No	1, 2	N/A
City, Code	Yes		35A.40.210 (refers to 35.23.352)
City, Second Class and Towns	Yes		35.23.352
Conservation District	No	1	N/A
County, Population more than 400,000	Yes	1, 3	36.32.235(5)
County, Population less than 400,000	Yes		36.32.250
Educational Service District (ESD)	No	1	N/A
Fire District	No	1	N/A
Flood/Diking/Drainage District	No	1	N/A
Health District	No	1	70.46
Hospital District	Yes		70.44.140(1)
Housing Authority	No	1	N/A
Interlocal agreement agencies	Maybe	<i>Most restrictive laws of creating entities</i>	For entity to evaluate
Irrigation District	Maybe	4	87.03.435(1)
Library District	No	1	N/A
Mosquito Control District	No	1	N/A
Park & Recreation District	No	1	N/A
Parks District, Metropolitan	Yes		35.61.135(1)
Port District	Yes		53.08.130
Public Development Authority (PDA)	Maybe	<i>Laws of creating city or county</i>	For entity to evaluate
Public Facilities District (PFD)	Maybe	<i>Established by policy</i>	For entity to evaluate
Public Utility Districts (PUD)	Yes		54.04.080
Reclamation District	Yes		89.30.154
Regional Support Network (RSN)	Maybe	<i>Laws of creating county</i>	71.24.300
School District	No	1	N/A
Self-Insurance Risk Pool	Maybe	<i>Most restrictive laws of creating entities</i>	For entity to evaluate
State College or University	No	1	N/A
Transportation Authority established under 36.57 or 36.57A	No	1	N/A
Transportation Authority established under 35.21.225 or 36.73	Maybe	<i>Laws of creating city or county</i>	For entity to evaluate
Water-Sewer District	Yes		57.08.050

Table 8 notes

1. Bid bonds are a good business practice. Auditors would expect to see bid bond or deposit requirements defined in a local government's policies. If they are not present, we would recommend that you address this area in a policy.
2. The city's charter provisions or ordinances govern bid bonds. Several city charters, as well as some ordinances, require bid bonds.
3. Applicable to counties with population of 400,000 or more that have a purchasing department.
4. The board "may" and not "shall" require bid bonds. This is only required if stated in the bid documents.

Responsible bidder determination

A responsible bidder is one who meets a set of "responsibility criteria" as defined in state law ([RCW 39.04.350](#)). The criteria typically include being properly licensed, registered and insured. You must also check that the vendor is not prohibited from doing work in Washington due to past issues. You must complete the responsible bidder evaluation before awarding a public works contract. There is a checklist to help you execute and document the evaluation in our online resource, "[Is This Bidder Responsible?](#)".

Performance bonds

A performance bond ([RCW 39.08.010](#)) is issued by a bank or other financial institution to help protect you from situations in which the contractor stops work unexpectedly, forcing you to make alternative arrangements to complete the project.

State law says that, in general, state and local governments must require a performance bond whenever they enter into a contract for public works. However, there are exceptions and "fine print" to consider, several of which are listed below and on the next page.

- For projects under \$150,000, [RCW 39.08.010](#) states a local government may retain 10 percent of the contract amount in lieu of a performance bond at the option of the contractor. However, the local government assumes some liability in doing so under [RCW 39.08.015](#).
- Performance bonds may be waived for limited public works projects (described on page 22).
- State law allows cities, towns, transit authorities and PUDs (see sidebar) to set an amount less than the contract price, but it cannot be lower than 25 percent of the contract price.

City, town, transit authority and PUD options

City, town, transit authorities: [39.08.030\(1\)](#)

PUDs: [54.04.080](#)

- Diking and drainage districts are broadly excluded from the definition of public works, but certain districts are still subject to performance bond requirements depending upon their statutory authority (see [RCW 85.06.180](#)).

Retainage

Retainage ([RCW 60.28](#)) is an amount withheld from contractor payments that serves as protection if the contractor fails to perform obligations or remedy defects. For most government types, the amount retained may not exceed 5 percent and is typically withheld from every progress payment. It is released to the contractor at the end of the project, once all contract items are resolved satisfactorily.

Here are additional items to note.

- At the option of the contractor, money reserved as retainage may be retained in a fund by the local government, deposited in an interest bearing bank account, or placed in escrow with a bank or trust company. Any interest earnings must be paid to the contractor.
- A contractor may submit a retainage bond in lieu of the withholding of retainage, and this might be required in some situations (for example, road projects funded with federal dollars).
- Retainage requirements may be waived when using the small works roster process, but the government assumes some liability in doing so.
- Certain government types might have different retainage requirements due to their statutory authority. They include diking and drainage districts (described in [RCW 85.06.180, 85.06.200](#)), which must withhold a higher percentage.
- Before releasing retainage for projects over \$50,000, local governments must notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries to make sure all taxes, increases and penalties due from the contractor have been paid in full.

Alternatives to formal sealed bidding on public works contracts

Sometimes alternatives to formal bidding can be used, but make sure they are allowable in your situation. Depending on your public works project, you may be able to make use of one of four alternatives to a formally bid contract. They are:

- Using small works rosters (also called vendor lists)
- Applying the limited public works process
- Piggybacking on another government's bid
- Claiming an exception to bid law

Small works rosters (vendor lists)

The small works roster procedure can be used by most local governments as an alternative to formal sealed bidding for public works projects, up to the small works roster threshold. This procedure involves advertising the option to sign up to be on a government's list of potential contractors interested in work. As governments have projects throughout the year, they notify contractors on their list and invite them to submit quotations for the work. **Table 9** outlines the requirements.

Table 9 – Using a small works roster for smaller public works projects

Requirement	How it applies
To authorize	Resolution or ordinance authorizing its use; procedures must be adopted for obtaining quotes and contracts
Advertisement	At least once a year by publishing notice in a newspaper of general circulation
Adding contractors	Responsible contractors can be added at any time if they submit a written request or verbal request and necessary records
Threshold at which you can use the roster	Typically up to \$350,000; See Table 5: Bid thresholds for public works projects
Statutory reference	39.04.155
Process for obtaining quotes	Should be obtained from at least five contractors for projects under \$250,000 and from all over this amount. It might be best to request them from all vendors on the list for a category of work no matter the size of project. This is because all invited quotes must be equitably distributed (no contractor is shown favor over others). For projects over \$250,000, all remaining contractors must be notified that quotes are being sought.
Bonds	Bid bonds are not required, but a good practice. Performance bonds are typically required.
Awarding contracts	To the lowest responsible bidder. All bids should be collected and presented at the same time; the governing body can delegate authority to an officer of the agency. Often, there is a requirement that the municipality ratify the officer's approval at the next scheduled meeting of the governing body.
Records	Immediately after an award is made, the bid quotes obtained must be recorded, open to public inspection, and available for inquiries. At least once a year, make available a list of the contracts awarded under this process. The published list of awarded contracts should include the name of the contractor or vendor, the amount of the contract, a brief description of the type of work performed or items purchased, and the date it was awarded. The list must also state the location where the bid quotations are available for public inspection.

If you lack resources to develop your own roster, consider using one from another government. Just make sure there is an interlocal agreement that clearly identifies the lead entity that is responsible for implementing the small works roster provisions. For example, MRSC provides a roster service, mrscrosters.org/mrsc-rosters.

MRSC also publishes a Small Works Roster Guide for local governments. To see this and other MRSC publications, go to mrsc.org/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local.aspx.

Limited public works process

Smaller public works projects might qualify to use the “limited public works projects” process, outlined in [RCW 39.04.155\(3\)](#). The process can be used for contracts with an estimated cost of less than \$50,000.

To take advantage of it, your governing body must have already approved use of a small works roster. You must solicit quotes from at least three contractors, but the process is less structured than the small works roster requirements. It is also possible to waive performance bond and retainage requirements, but your local government assumes some liability in doing so.

Piggybacking onto another government’s bid

Although not commonly done, local governments are allowed by state law to use another’s bid award for public works projects, provided the applicable requirements are met. These include making sure the project plans and specifications are the same; only quantities may differ. For example, this might work with a roofing project as long as no additions such as a gutter system were needed.

We have assembled information about piggybacking on a public works project award in our publication [Using Others’ Awards \(‘Piggybacking’\)](#). It includes answers to frequently asked questions and an optional checklist to help you ensure you are following the requirements.

Exceptions to competitive bidding

In some cases, you might qualify for an exception from conducting public bidding or for a more streamlined process. When choosing a bid law exception, make sure you select the appropriate one meeting your circumstances. Make sure to research and follow all related requirements for using the exception. Lastly, be prepared to support your conclusions reached with any applicable documentation. Ensure this documentation is kept for audit purposes.

Table 10, on the following page, details the possible exceptions for a public works project. Note that, unlike purchases, no sole source exceptions are possible.

Table 10 – Bid law exceptions for public works projects

Exception type	Description and statute reference
Emergencies	This exemption applies to all municipalities. Emergencies are defined and requirements described by 39.04.280 .
City, county or port district pollution control facilities	Exempt under 70.95A.090
Water pollution facilities	Must be procured using the process described in 70.150.040
First-class city electrical distribution and generating systems on public rights of way or on municipal property	35.22.640
Irrigation districts: Exchange of bonds in payment for labor and material	87.03.435(2)
Irrigation districts: Contracts with the United States	87.03.435(3)(a)
Contracts with qualified community service organizations	For some types of public improvements and applies to certain government types: 35.21.278
Projects covered by insurance	If the contract is between the vendor and the insurance carrier, further analysis is required.
Developer projects	Typically, if a project is completed on private property, there is no statutory requirement to bid the project. However, if more than 50 percent of the total project costs are paid for by the local government, prevailing wages apply. See 39.04.260

Essentials for procuring services

Certain services are subject to competitive procurement requirements. You'll need to identify what type of service you are procuring in order to determine whether state requirements apply. For service procurements that are not covered by specific legal requirements, we urge you to establish your own written policies and procedures. Remember, the public expects governments to make a reasonable effort to hire service providers that are qualified to do the work, at reasonable prices. Documenting how you intend to handle these procurements is the best way to ensure you will accomplish those objectives.

Architecture and engineering services

This encompasses professional services for architecture and engineering provided by architects, landscape architects, engineers and land surveyors. State law ([RCW 39.80](#)) requires you undertake competitive negotiations for these services but does not specify a dollar threshold.

The following requirements apply to all governments.

- You must establish your own criteria for evaluating firms, and keep records of the evaluation and selection process to demonstrate you awarded the contract to the most highly qualified firm.
- Architecture and engineering services are not subject to prevailing wage or day labor requirements (use of in-house labor).
- If you are using federal funds, note that the requirements are similar to those of the state but with some additional responsibilities. You must publicize your evaluation factors and have a written method for conducting technical evaluations of the proposals received and for selecting recipients.

Consultant services

This includes personal services for professional or technical expertise from a consultant, for example to accomplish a specific study, task or scope of work. Most of the time you are not required to competitively solicit personal services, with the following exceptions.

- Using federal funds triggers competitive procurement requirements.
- Ports must establish policies to competitively procure these types of service contracts if the value is greater than \$50,000.
- Public Facility Districts must also establish policies for these procurements. Check your district's resolutions and statutes, as rules vary.

Exceptions

Ports: [53.19.090](#)

Public Facility District created by city or town: [35.57.070](#)

Public Facility District created by county: [36.100.180](#), [36.100.180\(2\)](#)

Purchased services

Purchased services are those provided by a vendor to accomplish routine, continuing and necessary functions, such as:

- Operating a physical plant, like a hydroelectric dam, when you contract with a private company to manage it
- Contracting out routine equipment maintenance and repair, such as for computer hardware or maintenance

Be careful that your purchased service is not actually a public works project. For example, if the plant operator does more than operate the dam but also performs repairs, the repairs are considered public works. Similarly, painting a building might seem like a service but it is actually considered repair or improvement to a building. Furthermore, there is a risk your purchased service could be subject to prevailing wage requirements. A good practice is to check with the Department of Labor and Industries.

Most of the time you are not required to competitively solicit purchased services. However, if you are using federal funds, you must follow federal procurement requirements.

For additional resources on this topic, see MRSC's *Contracting for Services* manual: [mrsc.org/getmedia/A79CAAA4-F96F-4F2B-8A5F-5E0F4AFE3BDE/cfsg13.aspx](https://www.mrsc.org/getmedia/A79CAAA4-F96F-4F2B-8A5F-5E0F4AFE3BDE/cfsg13.aspx)

Additional considerations related to procurements

These two areas are not necessarily part of your bidding process, but they should be considered as you purchase goods or services or hire contractors.

Change orders

After project designs are finalized and construction contracts are executed, any changes to contract terms are documented through change orders. Change orders are contractual requirements used to manage new or unforeseen circumstances or make necessary changes to complete the project. They usually authorize more money, and sometimes more time, to complete additional or unanticipated work. The change requested can be as modest as adjusting the angle of a loading ramp or as significant as revising in-progress construction to correct a design fault.

Change orders can be expensive because they happen after the contract is awarded and therefore are not competitively bid. Change order prices are not negotiated in a competitive environment since they occur after contracts are executed.

A couple of important items to note about change orders:

- You should ensure any change order is within the scope of the original contract. Any new projects must be separately let, rather than added onto an existing contract.
- You should ensure your procurement policy addresses the processes for requesting and approving change orders.

You can find more information about best practices to help control change-order pricing and to improve procurement policies concerning change orders in our online resource, [*“Best practices for change orders.”*](#)

Employee labor for public works projects

Almost all local governments are authorized to use their own employees on public work projects up to their bid thresholds or other statutory limitations, often referred to in law as using day labor. The exception is fire districts, which may not use employee labor. You must include the materials, sales tax and labor costs when determining the total cost of a public works project. **Table 11** describes the government types and their specific statutory authority.

Table 11 – Employee labor limitations

Government type	Summary of requirements	RCW reference
First class cities	Per-project limits, and totals cannot exceed 10% of public works budget. Any public works that a county performs for a city under 35.77.020 are considered day labor and should be included in the limits.	35.22.620
Second class cities or towns or code cities	Per-project limits but no total limit.	35.23.352
Counties of any size without a purchasing department	No statutory or project limits, with two exceptions: certain types of electrical work, which have project limits, and road construction, which is limited based on a calculation.	36.32.250 , 36.77.065 (road construction)
Counties with a purchasing department	Work with your legal counsel to evaluate how the statutory requirements apply to you; changes made in 2019 may apply. There are two exceptions: certain types of electrical work, which have project limits, and road construction, which is limited based on a calculation..	36.32.235 , 36.32.240 , 36.32.250 , 36.77.065 (road construction)
Fire Districts	No statutory authority	
Irrigation Districts	No dollar limits	87.03.435
Port Districts	There may be per-project limits; consult the statutes and legal counsel in evaluating the limitations that apply to your port.	53.08.120 , 53.08.135
Public Utility Districts (PUD)	Per-project limits	54.04.070
School Districts	Per-project limits	28A.335.190

Additional online resources

Publications from MRSC

The Municipal Research & Services Center (MRSC) offers local governments a variety of helpful publications around procurement and contracting.

- *The City Bidding Book* and *The County Bidding Book*. All government types might benefit from some of the information contained in these guides, but apply the guidance cautiously if yours is not a city or county government.
- *Small Works Roster Guide* for local governments.

For a list of all MRSC resources, visit [mrsc.org/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local.aspx](https://www.mrsc.org/Home/Explore-Topics/Public-Works/Purchasing-and-Bidding/Purchasing-and-Bidding-for-Washington-State-Local.aspx).



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