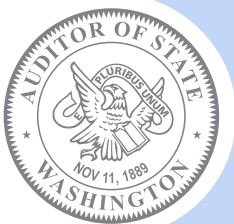


Buying and Bidding

Ensuring your government follows Washington purchasing laws



Brought to you by the Center for Government Innovation,
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Center for
Government
Innovation

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About this Summer 2024 edition

This edition of the *Buying and Bidding Guide* contains updated guidance based on changes to state law that came into effect on July 1, 2024. Please discard any earlier versions of this booklet you may have downloaded to ensure you're using our most up-to-date advice!

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\(5\)](#)) 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.

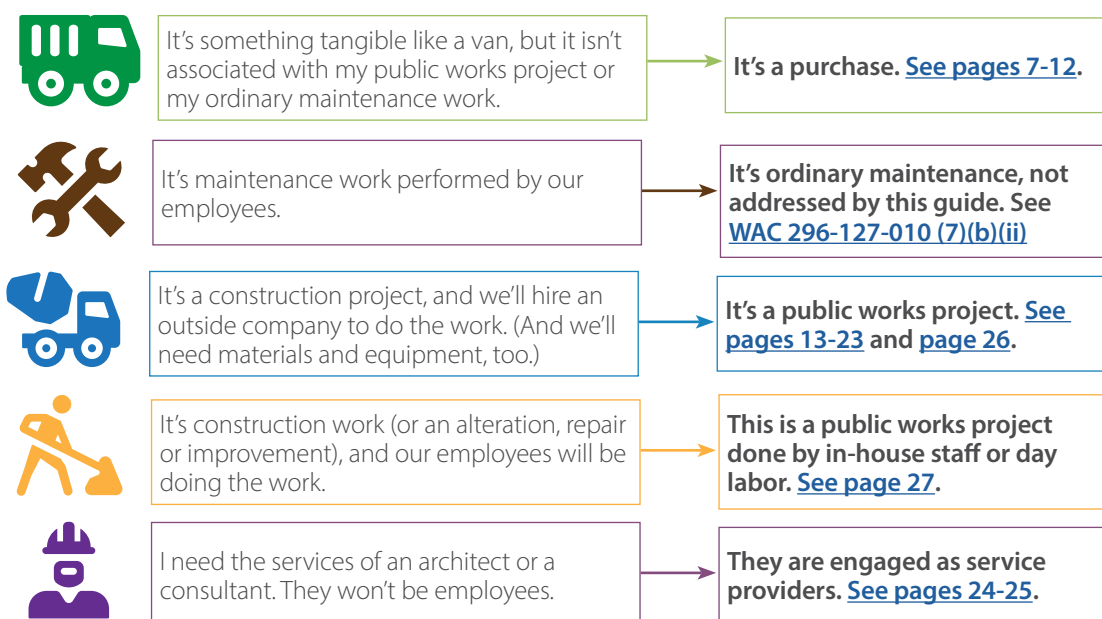
State law defines “ordinary maintenance” this way:

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.

- **Federal award moneys are paying for all or part of a construction contract.** A county is constructing a new public health building. Part-way through, the county decides to use federal award funds to pay for some of the construction contract costs.

How to proceed: When using federal funding, you must apply the most restrictive of state, federal or local requirements. To apply federal funds partially through this construction contract, the county would have needed to consider and apply the *most restrictive* requirements when it first procured the goods and services. While the contract's size means it would have been publicly bid, the county would have also needed to include federal prevailing wage requirements in the bidding and contract documents.

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 or anticipate that you might. Try to establish your controls so that procurement procedures always comply with the most restrictive of local, state or federal requirements relevant to the project. By doing so, if you receive federal funding after awarding the contract, you can still use federal money to pay those contract costs.

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](#) through [§200.327](#).

For local governments, see [2 CFR §200.318](#) through [§200.327](#).

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 unless the statute specifically instructs you to exclude it.** Note there might be exceptions for some government types, such as Public Utility Districts (PUDs) and housing authorities (see sidebar). Additionally, the revised small works roster threshold will exclude sales tax as of July 1, 2024 (see pages 21-23).
- **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](#).

Small works roster laws now exclude sales tax for its thresholds, [RCW 39.04.152](#)

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, many local government statutes allow the government to use the purchase contract process as outlined in [RCW 39.04.190](#). Or the government's statute might provide for a different process, such as three quotes. For purchases more than 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 or follow the alternative process outlined in its statute, if applicable, then they must formally competitively bid any purchases more than 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 (AAA)	Must be established by policy		1	74.38
City, First Class	Set by charter or ordinance		2	35.22.620
City, Code, Population greater than 20,000	Set by charter or ordinance		2	35A.40.210
City, Code, Population less than 20,000	\$40,000	\$50,000	3, 4	35A.40.210
City, Second Class, and Towns	\$40,00	\$50,000	3, 4	35.23.352
Conservation District	None; established by policy			89.08
County	\$10,000	\$50,000	3, 4	36.32.245
Educational Service District (ESD)	No specific requirements, unless contracting on behalf of a school district, see note		5	28A.310
Fire District	\$75,500	\$150,000	3	52.14.110
Flood/Diking/Drainage District	None; established by policy			85.38
Health District	None; established by policy		6	70.46
Hospital District	None; established by policy		3, 4, 6	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	3, 7	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	3, 4	35.61.135
Port District	None; established by policy			53.08.120
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)	\$30,000	\$120,000	3, 4, 8	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	4, 9	28A.335.190
Self-Insurance Risk Pool	See footnote		10	48.62 , WAC 200-100-220 , WAC 200-100-0208
State College or University	\$10,000	\$100,000	3	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	3	57.08.050

Table 1 notes

1. AAAs must establish written competitive procurement processes as required by the current [DSHS Policy and Procedure Manual for AAA Operations](#).
2. 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.
3. 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.
4. Must award to lowest responsible bidder.
5. If the ESD is contracting on behalf of a school district, then school district bid laws apply.
6. If the entity is created by multiple entities via an interlocal agreement, the most restrictive laws of the creating entities apply.
7. [RCW 87.03.437](#) states the board may, by resolution, adopt a policy to waive formal sealed bidding procedures for purchases under \$50,000.
8. [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.
9. 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 for purchases between \$40,000–\$75,000. Schools would use this option in lieu of the purchase contract process provided for other government types.
10. A risk pool should follow [WAC 200-100-220](#) and [WAC 200-100-020\(8\)](#) 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: Publish a notice in the local newspaper at least once; typically no less than 13 days before the due date for bids.
Specifications	Make specifications available to all interested parties. Governments must also obtain governing body approval of specifications if required by policy.
Negotiation	Provide no opportunity for negotiation (between the local government and responding vendors).
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 use one of these four 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
- Using contracts offered by Washington State Department of Enterprise Services (DES)

Purchase contract process (vendor list)

In some cases, local governments may use a roster (vendor list) if their governing statutes permit it. This is referred to as the purchase contract process, when a government advertises with the intent to compile a list of interested vendors, who they then contact to request 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 in a newspaper of general circulation within the local government's jurisdiction
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 [Piggybacking under Washington State Law](#).

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 in 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
School district, certain purchases	Books 28A.335.190(2) School buses 28A.160.195 From class II inmate work programs operated by Department 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

Using contracts offered by DES

Local governments can purchase using contracts offered by DES as authorized by RCWs [39.26.050](#) and [39.26.060](#), but they must first enter into a master usage contract agreement with DES. Local governments are responsible for complying with DES's requirements when using a DES contract for purchasing. Local governments do not need to comply with the requirements of the Interlocal Agreement Act ([RCW 39.04.030](#)) for these transactions. For more information, see [How to Use Statewide Contracts](#) on the DES website.

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 non-monetary items or labor. Unless the authorizing statute specifically excludes it, include sales tax and all materials, supplies, equipment or labor (at the prevailing wage rate; see pages 16-17). Note there are exceptions for Public Utility Districts (PUDs), housing authorities, small works roster projects 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. Each government must approve plans, specifications and a cost estimate before it takes any further procurement action.

Required steps

State: [RCW 39.04.020](#)

Federally funded projects: [2 CFR §200.324](#) and all federal procurement standards [200.317-200.327](#)

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 small works roster projects (under [RCW 39.04.152](#)) and 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, local governments have the option to use a small works roster process. 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 (AAA)	Must be established by policy			1	74.38
City, First Class	\$75,500	\$150,000	\$350,000		35.22.620
City, Second Class, and Towns City, Code	\$75,000	\$150,000	\$350,000		35.23.352, 35A.40.210
Conservation District	None; established by policy			2	89.08
County, any size, with purchasing department	\$0		\$350,000		36.32.235
County, any size, without purchasing department	\$40,000		\$350,000	3	36.32.250
Educational Service District (ESD)	None; established by policy. If contracting for school district, see notes.			2, 4	28A.310
Fire District	\$75,500	\$150,000	\$350,000	5	52.14.110
Flood/Diking/Drainage District	\$5,000		\$350,000	6	85.38.190
Health District	None; established by policy			2, 7	70.46
Hospital District	\$75,000		\$350,000		70.44.140
Housing Authority	None; established by policy			2	35.82; AGO 2009 No 2
Interlocal agreement agencies	Most restrictive law of creating entities				39.34
Irrigation District	\$0		\$350,000	8	87.03.435- 87.03.436
Library District	None; established by policy				27.12
Mosquito Control District	None; established by policy			2	17.28
Park & Recreation District	None; established by policy			2	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			7	35.21.730
Public Facilities District (PFD)	None; established by policy			7	36.100.030, 35.57.020
Public Utility Districts (PUD)	\$75,500*	\$150,000	\$350,000		54.04.070
Reclamation District over 1 million acres	\$0	\$0	\$350,000	9	89.30.154
Regional Support Network (RSN)	Laws of creating county				71.24.300
School District	\$100,000		\$350,000	10	28A.335.190
Self-Insurance Risk Pool	Most restrictive law of creating entities				48.62
State College or University	\$90,000	\$110,000	\$350,000		28B.10.350, 28B.50.330

continued on next page

*The PUD information in *Table 5* was updated on October 15, 2024, to reflect a change in state law that became effective on June 30, 2024, increasing this threshold from \$75,000 to \$75,500.

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	\$75,500	\$50,000	\$350,000		57.08.050

Table 5 notes

1. AAAs must establish written competitive procurement processes as required by the current [DSHS Policy and Procedure Manual for AAA Operations](#).
2. [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.
3. State law formerly differentiated between counties with populations under and over 400,000. In 2019, statute was changed to take out the population requirement.
4. If the ESD is contracting on behalf of a school district, then school district bid laws apply.
5. 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](#).
6. 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.
7. If the entity is created by multiple entities via an interlocal agreement, the most restrictive laws of the creating entities apply.
8. 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.
9. Many "Reclamation Districts" have actually been formed as irrigation districts under [RCW 87.03](#) and therefore should use irrigation district thresholds.
10. According to [RCW 28A.335.190](#), school district construction work does not include certain services, such as construction management services, and districts should procure them separately as a professional service.

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: Publish a notice in the local newspaper at least once; typically no less than 13 days before the due date for bids. In certain circumstances, you may want to give more notice to potential bidders. Such notice must include all statutorily required details.
Specifications	The governing body must approve plans and specifications before the government takes any action. Note that specifications must address “prevailing wages” (see below).
Bid opening	Governments must open and publicly read submitted bids at a fixed time and place (this does not have to be at an open public meeting). It’s best to properly secure the bids to avoid bid tampering before making them public.
Bid bond	Varies by government type but commonly: A deposit of at least 5 percent of the bid in the form of a surety bond, cash, cashiers check or certified check (see pages 18-19).
Bid award	Unless there is good cause to reject <i>any and all</i> bids, the local government must award the contract to the lowest bidder who also meets both of these criteria: 1) Responsive – responded to all bid items and included all required elements 2) Responsible (see page 20).

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, for example using in-house labor for public works projects (consult [RCW 39.12.020](#)). There may also be exceptions for conservation, diking, drainage, reclamation and irrigation districts.

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

Table 7 – Requirements for prevailing wages

Requirement	Description
Use required language in your contracts	Local government awarding agencies, contractors and subcontractors involved in public works projects must include prevailing wage requirements in bid documents and contracts. You have two methods for communicating this information; refer to page 5 of the Washington State Labor and Industries' (L&I) Prevailing Wage Law publication for details.
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.

State law also requires each contractor and subcontractor to submit weekly certified payroll records to L&I at least once a month ([RCW 39.12.120](#)). The agency requests local governments:

- Review the certified payroll records to ensure contractors and subcontractors report all appropriate laborers and mechanics. One significant risk is that the contractor misclassified workers, applying a lower wage rate than they were due. For example, if you have an electrical project, does the contractor report journey-level electricians?
- Notify L&I if the contractor did not submit certified payroll reports as expected

Keep in mind these are state requirements. For contracts funded with federal funds, local governments may need to comply with the federal labor standards as incorporated into [29 CFR §5](#) and referenced in the Uniform Guidance, which refers to further details in [Appendix II](#). Check your federal award terms and conditions or contact your awarding agency to verify applicability.

Many of the federal requirements require additional action on the part of the recipient to comply. For example, under federal rules, recipients must obtain certified payroll reports each week, and review them. Your review should ensure the contractor and subcontractors paid laborers and mechanics at least the wage rate and fringe benefits outlined in the contract wage determination for the classification of work they performed on the job site. For additional assistance, the U.S. Department of Labor's [website](#) offers live prevailing wage trainings and recorded webinars.

Additional resources on state requirements:

- MRSC prevailing wages webpage: mrsc.org/explore-topics/procurement/public-works/prevailing-wages
- Washington State Prevailing Wage Law: lni.wa.gov/forms-publications/f700-032-000.pdf

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.

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 39.04.151](#) and [RCW 39.04.152](#), 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. The notes below apply to Table 8.

Table 8 notes

1. AAAs must establish written competitive procurement processes as required by the current [DSHS Policy and Procedure Manual for AAA Operations](#).
2. 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.
3. The city’s charter provisions or ordinances govern bid bonds. Several city charters, as well as some ordinances, require bid bonds.
4. Applies to counties with population of 400,000 or more that have a purchasing department.
5. The board “may,” and not “shall,” require bid bonds. This is only required if stated in the bid documents.

Table 8 – Bid bond requirements*Notes are on the preceding page*

Government type	Bid bond required	Notes	RCW reference
Area Agency on Aging (AAA)	Maybe	1	74.38
City, First Class	No	2, 3	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	2	N/A
County, Population more than 400,000	Yes	2, 4	36.32.235(5)
County, Population less than 400,000	Yes		36.32.250
Educational Service District (ESD)	No	2	N/A
Fire District	No	2	N/A
Flood/Diking/Drainage District	No	2	N/A
Health District	No	2	70.46
Hospital District	Yes		70.44.140(1)
Housing Authority	No	2	N/A
Interlocal agreement agencies	Maybe	<i>Most restrictive laws of creating entities</i>	For entity to evaluate
Irrigation District	Maybe	5	87.03.435(1)
Library District	No	2	N/A
Mosquito Control District	No	2	N/A
Park & Recreation District	No	2	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	2	N/A
Self-Insurance Risk Pool	Maybe	<i>Most restrictive laws of creating entities</i>	For entity to evaluate
State College or University	No	2	N/A
Transportation Authority established under 36.57 or 36.57A	No	2	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

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](#).
- For small public works contracts valued at less than \$5,000, performance bonds are not required as part of the new small works roster provisions (as of July 1, 2024, refer to [RCW 39.04.152\(5\)](#)).
- State law allows cities, towns, transit authorities, passenger-only ferry districts 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.
- 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 85.05.180](#) and [RCW 85.06.180](#)).

City, town, transit authority and PUD options

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

PUDs: [54.04.080](#)

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 of the money earned by the contractor, 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. However, state law does not require retainage for small public works projects of less than \$5,000 (as of July 1, 2024, see [RCW 39.04.152\(5\)](#)).

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 more than \$35,000, local governments must notify the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries to ensure the contractor fully paid all taxes, increases and penalties due.

Alternatives to formal sealed bidding on public works contracts

Governments can sometimes use alternatives to formal bidding, but make sure the alternatives are allowable in your situation. Depending on your public works project, you may be able to make use of one of these three alternatives to a formally bid contract:

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

Small works rosters (vendor lists)

Local governments may use the small works roster procedure instead of 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. A government may maintain one roster list, or several such as for different specialties, work categories or geographic areas. As governments proceed to have projects throughout the year, they notify contractors on their list and invite them to submit quotes for the work.

Governments may use the statewide MRSC roster, or that of another government (if they enter into an interlocal agreement and clearly identify the lead entity). State law for small works rosters changed significantly as of July 1, 2024; we noted changes in **Table 9** on the next page, which 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
Advertisement	At least once a year, publish a notice in a newspaper of general circulation and solicit contractors for the roster. You must also, at least once a year, provide the Office of Minority and Women's Business Enterprises' directory of certified firms a notice of the existence of the roster and solicit contractors for the roster.
Adding contractors	At any point in the year, when responsible contractors request you to add them and provide necessary records. Contractors must also agree to receive email communications, and indicate if they meet the definition of a small business or one that is minority-, women- or veteran-owned.
Project threshold	Up to \$350,000; as of July 1, 2024, this threshold excludes sales tax. See Table 5: Bid thresholds for public works projects
Statutory reference	RCW 39.04.151 and 39.04.152 . Local governments may also refer to model procedures outlined at WAC 200-330-010 through 200-330-060 , although the use for local governments is discretionary. However, the statewide (MRSC) roster must comply with the WACs.
Process for obtaining quotes	Governments must invite bids from all contractors on the applicable roster that are interested in working in the applicable geographic area. If project is under \$150,000 (not including sales tax), the government may opt to use the direct contracting method described in the next row.
Optional direct contracting method (projects under \$150,000)	<p>Governments may use direct contracting for projects under \$150,000 (excluding sales tax), but they must first have in place a "utilization plan" covering small and minority-, women- and veteran-owned businesses. If they use direct contracting, they must also notify those firms on the applicable roster.</p> <p>For small business contracts specifically: How a government directly contracts depends on the number of small business contractors on the applicable roster:</p> <ul style="list-style-type: none"> • More than six: You must direct-contract with one of the small businesses on the applicable roster; rotate through the contractors on the appropriate small works roster; and when qualified contractors are available who may perform within budget, use different contractors on different projects. • Less than six: You may direct contract with any contractor on the applicable roster <p>Anyone engaging in direct contracting may not favor certain contractors on the appropriate small works roster by repeatedly awarding contracts without documented attempts to direct contract with other contractors on the applicable roster.</p>
Bonds	<i>Bid</i> bonds are not required, but a good practice. <i>Performance</i> bonds are typically required for projects, but are no longer required for projects under \$5,000.
Retainage	Retainage is required for projects, however there is an option to waive it if the local government assumes liability for contractor nonpayment. You must provide notice of any retainage deduction or waiver in the bid solicitation. Retainage is no longer required for projects valued at under \$5,000.
Awarding contracts	To the lowest responsible bidder with the lowest responsive bid.
Records	After you award a contract, you should record the bid quotations you obtained, and ensure they are publicly available and available by request.
Annual notice	As of July 1, 2024, governments must publish a list of small works contracts awarded and contractors contacted for direct negotiation, for details about the reporting requirements refer to RCW 39.04.200.

Be aware that when using federal funds, local governments may not use a small works roster process for any procurement exceeding their simplified acquisition threshold (you establish this in your documented procedures after considering several factors, but this amount may not exceed \$250,000). Additionally, local governments may not use the direct contracting method under federal rules as it does not comply with [2 CFR §200.320](#). For more information, refer to the Uniform Guidance [federal procurement standards](#).

For more information about state requirements, refer to MRSC's [Small Public Works Roster Manual 2024](#).

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 [Piggybacking under Washington State Law](#). 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** 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 70A.210.110
Water pollution facilities	Must be procured using the process described in 70A.140.040
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.

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 advertise either for each project or a general advertisement for projected needs (such as an annual advertisement to create a roster of interested firms, by category or type of professional services). However, if you use any federal funds, you must only advertise on a per project basis and publicize your evaluation factors and their relative importance.
- You must establish your own criteria for evaluating firms, and keep records of the evaluation and selection process to demonstrate that you awarded the contract to the most highly qualified firm. If you use any federal funds, you must have written procedures for conducting technical evaluations of the proposals you received and making selections.
- 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 those requirements are similar to those of the state but with some additional responsibilities. Refer to the Uniform Guidance, [2 CFR §200.320](#) and the [other federal procurement standards](#) for additional information. Note that you must comply with the federal requirements no matter the size of the project due to the state's zero dollar threshold for competitive processes (this becomes your federal simplified acquisition threshold, according to federal requirements).

Consultant services

Consultant services are 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 usually triggers competitive procurement requirements.
- Ports must establish policies to competitively procure many of these types of service contracts. Check the statute in the sidebar for details.
- Public Facility Districts are subject to various requirements when procuring these types of services. However, rules vary based on your district's governing statutes. Check your district's resolutions and the statutes in the sidebar for additional guidance.

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](#),

Uniform Guidance

[2 CFR §200.320](#) and

[procurement standards](#)

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, as with other service types, using federal funds will likely trigger competitive procurement requirements. Check federal procurement standards for guidance.

For additional resources on this topic, see MRSC's [Contracting for Services manual](#).

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 costly because they happen after the contract is awarded and therefore the pricing may not have been determined in a competitive environment.

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.
- As of June 6, 2024, you must comply with new requirements over issuing and paying change orders in accordance with the timeframes specified in [RCW 39.04.360](#).

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. 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	As of June 30, 2024, fire districts are statutorily authorized to use day labor for prudent utility management purposes only, subject to limits based on materials cost. It is unclear what is meant by prudent utility management purposes in the context of a fire district, work with your legal counsel to determine what constitutes prudent utility management and to evaluate how the statutory requirements apply to you.	52.14.110
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 based on materials cost	54.04.070
School Districts	Per-project limits	28A.335.190
Water-Sewer Districts	Per-project limits based on materials cost	57.08.050

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 Manual*](#) 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.



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