

Suggested Guidelines for Purchasing, Bidding, and Contracting for Washington State Conservation Districts

Municipal Research and Services Center of Washington



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Municipal Research and Services Center

2601 4th Avenue, Suite 800

Seattle, WA 98121-1280

www.mrsc.org

mrsc@mrsc.org

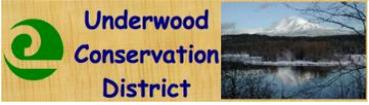
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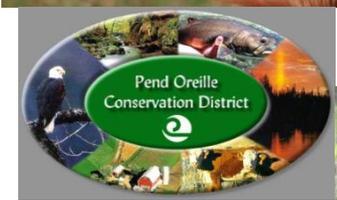
Welcome to Whidbey Island Conservation District



Small and Large Farm Assistance



Skagit Conservation District
2021 E. College Way, Suite 203
Mount Vernon, WA 98273
(360) 428-4313



Okanogan Conservation District
Conservation • Development • Self-Government
Home



North Yakima Conservation District



Purchasing, Bidding and Contracting for Washington State Conservation Districts

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[PURCHASING, BIDDING, AND CONTRACT MANAGEMENT SOURCEBOOK](#) (online only)

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

Purchasing, Bidding and Contracting for Washington State Conservation Districts

Introduction

Conservation districts are formed under the aegis of Chapter 89.08 RCW, which establishes a framework for how districts are formed and their general powers. This *Guidelines* document is based almost entirely on policy guidance developed by Washington State Conservation Commission staff in 2003, updated for current Washington State purchasing and public works contracting statutes. Conservation districts will also want to adopt and utilize MRSC's 2014 [Small Public Works Roster Manual: A guide for Washington's Local governments](#)

Acknowledgments

John Carpita, MRSC Public Works Consultant, is the principal editor of these *Suggested Guidelines*.

Disclaimers

These *Suggested Guidelines* are permissive and discretionary and are applicable to all conservation districts. Where the *Suggested Guidelines* recommend particular practices using such terms as "should" or "may" the recommendation is permissive and not mandatory. In addition, districts must also consider their own Board of Supervisors resolutions, policies, and procedures to determine what requirements are truly mandatory for a given contracting scenario. Case law, new regulations, or audit findings for one type of Municipal Corporation will not necessarily apply to all municipal corporations since enabling statutes may differ

What's in These Suggested Guidelines?

These guidelines explains general practices and procedures your conservation district is required to use when acquiring goods and/or services to accomplish grant projects using Conservation Commission funding. It also includes an explanation of public works and prevailing wage statutes and how they apply to your district.

Why It Is important to Follow These Suggested Guidelines

These policies are intended to insure that quality projects, goods and services are acquired at the least cost. Other goals are to reduce, if not eliminate, the impact of favoritism in purchasing and prevent fraud. Competitive bidding, which requires open advertisements to all qualified bidders and public opening of bids, has been determined by the legislature to be the best way to accomplish these goals. Unfortunately, following competitive bid laws is often counterproductive for small projects, can be confusing, and is sometimes expensive. Recognizing this problem, the state legislature has, over the years, established and modified dollar amounts (commonly referred to as bid limits) below which competitive bids are not required, and has provided exemptions and alternatives to the competitive bidding process.

What's required when purchasing or bidding?

In most cases, your district and its employees will accomplish all activities for which grant funds are awarded. In the event your district decides to acquire goods and/or services, or assign work or services to accomplish grant contract work, you must first obtain approval from the Commission. This applies to all district subcontracts, Interagency Agreements, and procurement procedures entered into under a Commission grant contract. However, approval by the Commission is considered automatic if the intent to subcontract or enter into an Interagency Agreement is clearly included in the final grant contract's Scope of Work.

When acquiring goods and/or services related to the grant contract, districts will:

1. Use sound business judgment

The district will use sound business judgment and fair administrative procedures in acquiring goods and services. This applies to invitations to bid, requests for proposals, solicitation of subcontractors or vendors, and awards of subcontracts or purchase contracts.

2. Select responsible subcontractors

The district will award subcontracts only to responsible subcontractors with the ability to perform successfully under the terms of the grant contract. The district should consider such matters as subcontractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3. Competitive procurement

The district will award subcontracts through a competitive process, if required by State law and/or this Grants Administrative Policy.

4. Ensure subcontractor compliance

The district will ensure that subcontractors adhere to the same terms and conditions as the district. The district will ensure that all subcontractors comply with all applicable federal, state and local laws and regulations related to discrimination, labor and job safety, and environmental protection; and that subcontractors perform in accordance with the terms and conditions of their contracts. Where deviation from those terms is permitted by the district, the responsibility for any extra costs may not be allowed by the Commission.

5. Provide a written contract document

Subcontracts must be written, enforceable and legally sound, and must include appropriate general conditions (i.e. verbal contracts are not permitted). When subcontracting, the district is responsible for:

- Including specified provisions of the grant contract in any subcontract or Interagency Agreement it enters into;
- Ensuring that the subcontractor follows applicable Commission reporting formats and procedures;
- Ensuring that the State of Washington is named as an express third-party beneficiary of such subcontracts, with full rights as such;
- Ensuring that no right or claim arising from the grant contract is assigned either in whole or in part, except to the Commission as provided for in suspension or termination procedures; and
- Seeking administrative, contractual, or legal remedies in instances where subcontractors violate or breach grant contract terms.

6. Maintain complete subcontracting records:

- Your district is required to submit to the Commission, on request, all signed subcontracts or Interagency Agreements it awards;
- Your district is required to keep a complete written record of the procedures leading up to the award of any subcontract or Interagency Agreement
- Your district may be required to forward to the Commission copies of financial and activity reports, and records pertaining to any and all subcontracts and Interagency Agreements.

7. Maintain standards of ethical conduct

Districts will maintain a code of conduct governing the performance of their representatives including employees engaged in the award and administration of subcontracts. No employee, officer, or agent of the district will participate in the award or administration of a subcontract under the grant contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, officer or agent,
- any member of his or her immediate family,
- her or his partner, or
- an organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected.

The district's officers, employees, or agents must not solicit or accept gratuities, favors, or anything of monetary value from subcontractors, potential subcontractors, or other parties to subcontracts. Districts may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, the district's code of conduct will provide for penalties, sanctions, or other disciplinary actions for violations by its employees or agents, or by its subcontractor's employees or agents.

8. Analyze purchases for cost-effectiveness

Districts will avoid purchase of unnecessary or duplicate items, and consolidate or break out purchases as appropriate to obtain a more economical price. Where applicable, the district will analyze lease versus purchase alternatives in determining the most economical approach.

9. Consider cooperating with other local governmental units

To foster greater economy and efficiency, districts are encouraged to consider entering into agreements with other public agencies for joint or cooperative action, pursuant to [Chapter 39.34 RCW](#), the Interlocal Cooperation Act.

10. Use state or federal surplus property when possible

Districts are encouraged to use federal or state excess and/or surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces projects costs.

11. Resolve disputes promptly and fairly

Districts are responsible for the fair and just settlement of all contractual and administrative issues related to subcontracts for goods and services. Such issues include, but are not limited to, source evaluation, protests, disputes, and claims. This does not imply that the district is to be relieved of any contractual responsibilities under subcontracts.

12. Protest procedure required

The district will have a protest procedure for handling disputes relating to subcontracts and interagency agreements and will disclose all information regarding protests to the Commission at the request of the Project Officer. A protester must exhaust all administrative remedies with the district before pursuing a protest with the Commission. The Commission will limit its review of protests to violations of state law, regulations, or the standards of the grant contract, and violations of the district's protest procedures in its failure to review a complaint. The Commission will refer all other protests to the district and will not substitute its judgment for that of the district unless the matter is primarily a Commission concern.

What Kind Of Purchase Is It?

Conservation district purchases are generally categorized as:

- Personal Services (consultants)
- Professional Services (Consultants) Related to a Public Works Project
- Purchased Services
- Purchases of Equipment, Materials and Supplies
 - Materials and supplies include articles which form a part of a finished product or support the purchase or work
 - Equipment is used in carrying on the work (such as tools, appliances, etc.)
 - Materials and supplies are entirely consumed in that process and become a physical part of the product, while equipment does neither
- Public Works Contracts

Note the graphic entitled *Purchasing and Contracting Limits for Conservation Districts* on the next page.

Definitions

Personal Services

Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, which may not reasonably be required in connection with a public works project meeting the definition in [RCW 39.04.010\(4\)](#). “Personal service” does not include purchased services or professional services procured using the competitive selection requirements in [Chapter 39.80 RCW](#) (A&E).

Professional Services Reasonably Required in Connection with a Public Works Project

Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters [18.08](#) (Architects), [18.43](#) (Engineers and Land Surveyors), or [18.96](#) (Landscape Architects) [RCW. RCW 39.80.020\(5\)](#). Services are procured using the qualifications based selection requirements in Chapter 39.80 RCW.

Public Work (RCW 39.04.010)

Public work means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

Purchased Services

Services provided by a vendor to accomplish routine, continuing, and necessary functions. “Purchased services” includes, but is not limited to: services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

Distinguishing between Personal Services and Purchased Services and/or Goods

Procurement procedures are quite different for personal services, professional services and purchased services. It is important that your district clearly distinguish among the three.

Personal services differ significantly from purchased services in the degree of independence in performance of the services. Personal services are performed independently from the day-to-day control of the district. Purchased services may be more directed by the district. Another difference is in the level of professional or technical skill or competency. Personal services require more professional or technical expertise, whereas purchased services do not. Purchased services are more general, routine, or repetitive in nature.

The following chart will assist in determining the distinctions between personal and purchased services.

| Personal Service Characteristics | Purchased Service Characteristics |
|---|---|
| <ul style="list-style-type: none">◆ Services are professional or technical in nature and meet more specialized district needs. Work is predominantly intellectual and varied.◆ Work is independent from the day-to-day control of the district; consultant maintains control of work methods.◆ Work requires regular exercise of judgment, discretion, and decision-making; involves providing advice, opinions or recommendations; may have policy-implications for district; often addresses management-level issues. | <ul style="list-style-type: none">◆ Services are more repetitive, routine or mechanical in nature, following established or standardized procedures generally involving completion of an assigned task, rather than an entire project.◆ Services contribute to the day-to-day business operations of the district, rather than the management or policy side of the district, and may meet more general needs of the district. |

| | |
|--|---|
| <ul style="list-style-type: none"> ◆ May require advanced or specialized knowledge, or expertise gained over an extensive period of time in a specialized field of experience. ◆ Work may be original and creative in character in a recognized field of endeavor, the result of which may depend primarily on the individual's invention, imagination or talent. ◆ Personal service provider generally assumes risk of loss if the agreed to requirements are not satisfied. | <ul style="list-style-type: none"> ◆ Services generally follow established procedures, as contrasted with customary and regular exercise of discretion or independent judgment. ◆ Decision-making and analysis, if required, is more routine or perfunctory in nature ◆ Services performed are generally based upon district direction |
|--|---|

In addition, the following chart describes what factors a district may consider when acquiring services of various types:

| Purchased Services | Personal Services | Professional Services Under Chapter 39.80 RCW |
|---|--|--|
| Cost or Price | Fees or costs | Qualifications first, then price - after selection |
| Quality of previous performance | Quality of previous performance | Quality of previous performance |
| Ability to meet deadlines for contract performance | Ability to meet deadlines for contract performance | Ability to meet deadlines for contract performance |
| Responsiveness to solicitation requirements | Responsiveness to solicitation requirements | Responsiveness to solicitation requirements |
| Demonstrated compliance with employment security and sales tax requirements (all as applicable) | Compliance with statutes and rules relating to contracts or services | Compliance with statutes and rules relating to contracts or services |
| Ability, experience, and reputation | Ability, experience, and reputation | Ability, experience, and reputation |
| References | References | References |
| Staff readily available for the project | Staff readily available for the project | Staff readily available for the project |
| Financial capacity | Financial capacity | Financial capacity |
| Meets applicable licensing requirements | Meets applicable licensing requirements | Meets applicable licensing requirements |
| Safety record | Safety record | Safety record |
| Ability to meet | Ability to meet | Ability to meet |

| | | |
|---|---|---|
| necessary response times for unscheduled work and emergencies | necessary response times for unscheduled work and emergencies | necessary response times for unscheduled work and emergencies |
| N/A | History of Errors and Omissions | History of Errors and Omissions |
| N/A | N/A | Construction Change Order History |

Soliciting for Personal Services

The chart below outlines the procedures for personal services procurement.

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---|--|
| Less than \$10K | Minimal Competition OR Select From Roster | <ul style="list-style-type: none"> ◆ Seeking competition is always recommended, though not required for this dollar range. ◆ Telephone calls can be made to firms or individuals describing the services desired and requesting price, schedule and qualifications to perform. ◆ Subcontract is entered into upon selection of subcontractor, regardless of dollar amount. |
| \$10K to \$40K | Informal Competition -- also called "evidence of competition" | <ul style="list-style-type: none"> ◆ Prepare written solicitation document/letter including at a minimum: description of services required, project schedule, request for consultant's qualifications, request for costs or fees, and due date for responses. ◆ Send to a minimum of three firms/individuals. May be faxed to them and responses may be faxed to the district to expedite processing. List of firms can be developed from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc. ◆ Evaluate responses and make award decision. ◆ Negotiate subcontract with successful contractor. ◆ Document for file: names of firms solicited; information of firm's responses, basis for award decision, and copy of subcontract. |
| \$40K or more | Formal Competition | <ul style="list-style-type: none"> ◆ Prepare formal solicitation document, e.g., Request for Proposals (RFP) or Request for Qualifications/Quotations (RFQQ). Include all requirements in order for proposers to understand what the district needs and how the district will evaluate responses. ◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop mailing list from firms responding to notice. ◆ Post solicitation document on district website (optional). ◆ Develop score sheets for use by evaluators. ◆ Issue RFP or RFQQ to a minimum of 6 firms/businesses. |

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---------------------|---|
| | | <p>District may also just send a notification to 6 or more businesses that the solicitation document is posted on their web site and can be accessed there. Document for the file if fewer than 6 firms are contacted & state the reason why.</p> <ul style="list-style-type: none"> ◆ Conduct pre-proposal conference, if required in RFP or RFQQ, and issue addendum. ◆ Provide answers to bidders' questions via addenda to all who receive the RFP or RFQQ. Or advise those who download the RFP or RFQQ from the web site to check back for any addenda that may be posted. ◆ Date and time stamp proposals received by the due date. Electronic proposals will have the date and time automatically noted. ◆ Evaluate proposals strictly against criteria set forth in the RFP or RFQQ and score. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine ranking of proposers. ◆ Schedule and conduct oral interviews of top finalists, if desired. ◆ Determine final scoring and select apparent successful contractor. ◆ Notify successful and unsuccessful firms. ◆ Negotiate contract with apparent successful contractor. ◆ Conduct debriefing conferences with unsuccessful proposers, if requested. |

Soliciting for Professional Services

The chart below outlines the procedures for procurement of professional services reasonably required in connection with a public works project. These services must be obtained using the quality based selection (QBS) procedures of Chapter 39.80 RCW. Chapter 39.80 RCW requires selection of professional architecture, engineering, surveying and landscape architecture services on the basis of qualifications of the firm or individual. AGO 1988 No. 4 notes:

- A public agency may not, in procuring architectural or engineering services, consider proposed price or cost in determining which firm is most highly qualified to provide services.
- When a public agency selects a firm to perform architectural or engineering services, price and cost may be considered only after the most qualified firm has been selected, at which time the law provides for negotiation of a "fair and reasonable" price.

RCW 39.80.030 requires advance publication of an agency's requirement for professional services. Two methods of compliance are noted:

- an announcement for each project (project based selection)
- or a general announcement of projected requirements for any category or type of professional services. [Typically referred to as a Consultant Roster.]

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---|---|
| Less than \$10K | Select From Roster | <ul style="list-style-type: none"> ◆ Develop a list of firms from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc. ◆ Select the most qualified firm from those who have qualifications on file with the district. ◆ OR Advertise for statements of qualifications and proposals from interested firms ◆ Negotiate a contract with the firm deemed most highly qualified from either method. |
| \$10K to \$40K | Informal Competition -- also called "evidence of competition" | <ul style="list-style-type: none"> ◆ Develop a list of firms from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc. ◆ Prepare written solicitation document/letter including at a minimum: description of services required, project schedule, request for consultant's qualifications and/or non-price proposal and due date for the responses. ◆ Send to a minimum of three firms/individuals. May be faxed to them and responses may be faxed to the district to expedite processing. ◆ Evaluate responses and select the most qualified firm. ◆ Negotiate subcontract with most qualified firm. ◆ Document for file: names of firms solicited; information of firm's responses, basis for award decision, and copy of subcontract. |
| \$40K or more | Formal Competition | <ul style="list-style-type: none"> ◆ Prepare formal solicitation document, e.g., Request for Proposals (RFP) or Request for Qualifications/Proposal (RFQ/RFP). Include all requirements in order for proposers to understand what the district needs and how the district will evaluate responses. ◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop mailing list from firms responding to notice. ◆ Post solicitation document on district website (optional). ◆ Develop score sheets for use by evaluators. ◆ Issue RFP or RFQ/RFP to a minimum of 6 firms/businesses. District may also just send a notification to 6 or more businesses that the solicitation document is posted on their web site and can be accessed there. Document for the file if fewer than 6 firms are contacted & state the reason why. ◆ Conduct pre-proposal conference, if required in RFP or RFQ/RFP, and issue addendum. ◆ Provide answers to bidders' questions via addenda to all who receive the RFP or RFQ/RFP. Or advise those who download the RFP or RFQ/RFP from the web site to check back for any addenda that may be posted. ◆ Date and time stamp proposals received by the due date. |

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---------------------|---|
| | | <p>Electronic proposals will have the date and time automatically noted.</p> <ul style="list-style-type: none"> ◆ Evaluate proposals strictly against criteria set forth in the RFP or RFQ/RFP and score. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine ranking of proposers. ◆ Schedule and conduct oral interviews of top finalists, if desired. ◆ Determine final scoring and select apparent successful contractor. ◆ Notify successful and unsuccessful firms. ◆ Negotiate contract with most qualified firm. ◆ Conduct debriefing conferences with unsuccessful proposers, if requested. |

Soliciting for Purchases of Equipment, Materials and Supplies, and/or Purchased Services

The chart below outlines the procedures for purchased services as well as goods procurement.

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---|---|
| Less than \$10K | Minimal Competition or Direct Buy | <ul style="list-style-type: none"> ◆ Seeking competition is always recommended, though not required for this dollar range. ◆ Telephone calls can be made to vendors describing the services desired and requesting price, schedule and qualifications to perform. Purchases should be made based on the District's inquiries and experience and knowledge of the market to obtain the best quality product at the best price. |
| \$10K to \$40K | Informal Competition -- also called "evidence of competition" | <ul style="list-style-type: none"> ◆ Either written solicitation or documented telephone solicitation may be used. The solicitation should include at a minimum: a description of goods or services required, project schedule, request for qualifications, request for bid, and due date for responses. If solicitation is done by phone, it must be thoroughly documented. ◆ Seek bids from a minimum of three vendors. If written, the solicitation may be faxed to them and responses may be faxed to the District to expedite processing. A list of vendors can be developed from telephone listings, internet listings, a published legal notice requesting information on available services, etc. ◆ Evaluate responses and make award decision. ◆ Negotiate subcontract with successful bidder. ◆ Document for file: names of vendors solicited; information on vendor's responses, basis for award decision, and copy of subcontract. |

| Dollar Threshold | Competitive Process | Major Activities |
|------------------|---------------------|--|
| \$40K or more | Formal Competition | <ul style="list-style-type: none"> ◆ Prepare formal solicitation document. The Invitation for Bid (IFB) is the solicitation document most frequently used by Districts to subcontract for purchased services or goods. The IFB identifies the functional performance threshold at which the District needs would be met, serves as the basis for the applicants to respond, and also provides the foundation for the eventual subcontract. ◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop bidder's list from firms responding to notice. ◆ Issue IFB to responding bidders. ◆ Conduct a preproposal conference to clarify the extent of the work and permit prospective bidders to ask questions. ◆ Date and time stamp proposals received by due date. ◆ Evaluate proposals strictly against the criteria that are set forth in the IFB and score the proposals. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Determine apparent successful bidder. ◆ Notify successful and unsuccessful firms. ◆ Negotiate subcontract with successful contractor. ◆ Conduct debriefing conferences, if requested. ◆ Begin subcontract work. |

Soliciting for Public Works

Public work is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction, under RCW 39.04.010. This statute requires competitive bids for public works projects (except for emergencies under RCW 39.04.280).

Responsible Bidder

Regardless of contract size, a conservation district must award public works contracts **only** to responsible bidders that meet the minimum requirements of RCW 39.04.350 (1):

- (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
- (a) At the time of bid submittal, have a certificate of registration in compliance with chapter [18.27](#) RCW;
 - (b) Have a current state unified business identifier number;
 - (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title [51](#) RCW; an employment security department number as required in Title [50](#) RCW; and a state excise tax registration number as required in Title [82](#) RCW; and
 - (d) Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#)(3).

RCW 39.04.350(2) allows an agency to establish relevant supplemental bidder responsibility criteria if warranted. Most small public works roster projects do not warrant development and use of supplemental

criteria. For more information and sample criteria contact the MRSC Public Works Consultant and/or go to [Suggested Guidelines to Bidder Responsibility/Approved by CPARB](#) revised 01/12.

MRSC's 2014 [Small Public Works Roster Manual: A guide for Washington's Local governments](#) has detailed information on bid bonds, performance/payment bonds, retainage, sales tax issues and prevailing wages. For this reason, these topics are not covered in detail in these Guidelines.

Competitive Processes

- ❖ Competitively Bid Public Works Projects
 - ◆ Over \$300,000 (but can be for smaller projects)
 - ◆ Formal Advertisement
 - ◆ Bid Bonds
 - ◆ Sealed Bids
 - ◆ Public Bid Opening
 - ◆ Formal Award
 - ◆ P/P Bonds Required
 - ◆ Retainage Required
 - ◆ Insurance

Performance and payment bonds are required for public works contracts under Chapter 39.08 RCW, except as noted below under the limited public works process. In addition, 5% retainage is required under Chapter 60.28 RCW, except as noted below. Insurance is not required by the statutes, but is essential to protect the district's assets from crippling claims. Your district's risk manager and/or attorney can best advise you on the proper limits and types of insurance.

Small Works Roster Process

Conservation districts do not have direct statutory authority to use small works roster procedures under RCW 39.04.155, nor do they have "bid limits", as do most other units of local government. However, as most district public works projects are under \$300,000, formal bids for each project place an unwarranted administrative burden on district staff. Therefore, each conservation district board of supervisors should adopt by reference the small works roster process in RCW 39.04.155. Conservation districts will also want to adopt and utilize MRSC's 2014 *Small Public Works Roster Manual for Local Governments*.

The small works roster process utilizes a competition following notification to some or all public works contractors who have requested placement on a roster kept by the local governmental unit. This differs from competitive bids in which there is competition following advertisement in designated legal newspapers and other media that is open to all public works contractors. A small works roster lists contractors who have requested placement on the roster and who are properly licensed or registered to perform work in this state.

Conservation districts may create their own small works roster. They may not, however, use the small works roster of another governmental unit through a negotiated, interlocal agreement. Use of a contracted service provider, such as MRSC Rosters, is permitted, however, as there is no interlocal agreement involved.

- ❖ Small Public Works Roster (SPWR) Projects
 - ◆ Under \$300,000
 - ◆ RFQ to all interested contractors on SPWR
 - ◆ No advertisement required, just notice to SPWR
 - ◆ Bid Bonds Optional
 - ◆ Electronic, Faxed, or Telephone Quotes Allowed
 - ◆ Informal Quote Opening(s)

- ◆ Award Can Be Delegated
- ◆ P/P Bonds Required
- ◆ Retainage Required
- ◆ Insurance

Limited Public Works Process

A subset of the Small Works Roster Process - available only if a conservation district has established a small works roster – is the Limited Public Works Process under RCW 39.04.155(3) for work, construction, alteration, repair, or a improvement project estimated to cost less than thirty-five thousand dollars (\$35,000). Advantages to using the Limited Public Works Process Public are that the distinct may waive retainage and performance/payment requirements and use a combined intent and affidavit form for prevailing wages under RCW 39.12.040(2).

❖ Limited Public Works Projects (Less than \$35K)

- ◆ SPWR required
- ◆ Three or more quotes required
- ◆ No advertisement required, just notice to SPWR
- ◆ Bid Bonds Optional
- ◆ Electronic, Faxed, or Telephone Quotes Allowed
- ◆ Informal Quote Opening(s)
- ◆ Award Can Be Delegated
- ◆ P/P Bonds Can Be Waived
- ◆ Retainage Can Be Waived
- ◆ Notices of Completion not required if final cost of project is under \$35K
- ◆ Notices of Completion required if final cost of project is over \$35K

Small Public Works Projects

Almost all municipalities (other than conservation districts) have statutory “bid limits” for public works projects, below which they can simply contract without using either the competitive bid processes or the small public works process. A conservation district may adopt such a policy. MRSC recommends an upper limit for this policy of \$65,000.

❖ Small Public Works Projects (Less than \$65K)

- ◆ Three or more quotes recommended
- ◆ No SPWR Required
- ◆ No advertisement required
- ◆ Bid Bonds Optional
- ◆ Electronic, Faxed, or Telephone Quotes Allowed
- ◆ Informal Quote Opening(s)
- ◆ Award Can Be Delegated
- ◆ P/P Bonds Required
- ◆ Retainage Required
- ◆ Notices of Completion not required if final cost of project is under \$35K
- ◆ Notices of Completion required if project is over \$35K

Prevailing Wages

(See Appendix Entitled District Operations Brief: Prevailing Wage:

When conservation districts have to pay it and when they don't)

The Washington State Public Works Act, also known as the "Prevailing Wage Law," is a worker protection act that requires that workers be paid prevailing wages when employed on public works projects. Public works projects include all work, construction, alteration, repair or improvement that is executed at the cost of the state or of any municipality. There is no minimum dollar amount below which prevailing wages need not be paid.

District subcontracts involving services which are reimbursed using Commission funding are classified as public work projects and are subject to the prevailing wage law. Primarily developed for "blue collar" job classifications, the prevailing wage law does not apply to work that is clerical, executive, administrative or professional in nature; nor does it apply to work done by district employees.

Prevailing wages are the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers and mechanics. Prevailing wages are established, by the Department of Labor and Industries (L & I) for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions. *(For specific county information contact your local L & I office, or visit their website at <http://www.lni.wa.gov/tradeslicensing/prevwage/>.* Rather than trying to include just those classifications that may fit a specific project (such as stream restoration) MRSC recommends including all the current classifications and wage rates; i.e. download the entire county listing.

Failure to comply with the provisions under the Prevailing Wage Law may subject the district to liability for all unpaid prevailing wages and penalties. A district must stipulate - both in the solicitation document and in the subcontract - that workers will receive the prevailing rate of wage and include applicable prevailing wage rates.

After the subcontract is awarded by the district, the subcontractor submits a Statement of Intent to Pay Prevailing Wages to the Department of Labor and Industries. The district may not make any payments to the subcontractor until they receive evidence that the Intent form has been approved by L & I. After the work is completed, the subcontractor submits the Affidavit of Wages Paid to the Department of Labor and Industries. The district may not make the final payment to the subcontractor until they receive evidence that the Affidavit form has been certified by L & I.

Excerpt from Prevailing Wage District Operations Brief appendix:

When is a conservation district acting as an excepted agency and when as a municipality?

- As an excepted agency when the work under a contract is conservation of resources as described in [RCW 89.08.010](#) and reclamation of waste or undeveloped lands. For these activities, a CD is acting in the same capacity of an excepted agency per [RCW 89.16.040](#):
“. . . and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts.”
- As a municipality for all other work.

Note the following table, but also note the more detailed table in Prevailing Wage District Operations Brief appendix

| Type of Activity | Prevailing Wages Must Be Paid | Subcontractor must submit Statement of Intent to Pay Prevailing Wages to L&I | Subcontractor must submit Affidavit of Wages Paid to L&I |
|---|--------------------------------------|---|---|
| District hires full-time or part-time permanent staff who provide technical assistance to landowners in the field | No | Not applicable | Not applicable |
| District requests bids and awards a contract to a work crew for seasonal work (if stream restoration only, district may pay the lower rates established by L&I and shown in Appendix L) | Yes | Yes | Yes |
| District hires its own intermittent or temporary work crew for seasonal work | No | Not Applicable | Not Applicable |
| District solicits and awards a contract for heavy equipment work to a contractor who is a sole proprietor and who actually performs the work himself | No | Yes | Yes |
| District solicits and awards a contract for heavy equipment work to a contractor who uses employees to carry out the work, whether or not he performs any of the work himself | Yes | Yes | Yes |
| Landowner hires a crew or an individual to install a cost shared project | No | No | No |

Purchasing and Contracting Limits for Conservation Districts

| | Professional Services - QBS Only | Personal Services | Purchased Services | Equipment, Materials, and Supplies | Public Works Contracts |
|---|----------------------------------|----------------------|----------------------|------------------------------------|---|
| Minimal Competition OR Select From Roster | Less than \$10,000 | Less than \$10,000 | Less than \$10,000 | Less than \$10,000 | Less than \$65,000 OR Less than \$35,000 & Using LPWR |
| Informal Competition | \$10,000 to \$40,000 | \$10,000 to \$40,000 | \$10,000 to \$40,000 | \$10,000 to \$40,000 | \$65,000 to \$300,000 & Using SPWR |
| Formal Competition | Over \$40,000 | Over \$40,000 | Over \$40,000 | Over \$40,000 | Over \$300,000 |

Procurement/Purchasing Manual/Contracting Checklist

| | |
|--------------------------|--|
| <input type="checkbox"/> | Mission/Vision/Goals |
| | <input type="checkbox"/> Mission |
| | <input type="checkbox"/> Vision |
| | <input type="checkbox"/> Goals |
| <input type="checkbox"/> | Code of Ethics and Prohibitions |
| | <input type="checkbox"/> Gifts and Gratuities |
| | <input type="checkbox"/> Conflicts of Interest |
| | <input type="checkbox"/> Appearance of Propriety |
| <input type="checkbox"/> | Authorization And Reporting Levels |
| | <input type="checkbox"/> Central Purchasing versus Department Level |
| | <input type="checkbox"/> Expenditure Approval Levels |
| | <input type="checkbox"/> Controlled Commodities |
| <input type="checkbox"/> | Purchase of Materials, Supplies, Equipment Unrelated to Services, A&E, or Construction/Public Work |
| | <input type="checkbox"/> Micro Purchases |
| | <input type="checkbox"/> Small Purchases |
| | <input type="checkbox"/> Purchase Orders |
| | <input type="checkbox"/> Purchasing Cards and Credit Cards |
| | <input type="checkbox"/> Blanket Contracts |
| | <input type="checkbox"/> Vendor List Procedures |
| | <input type="checkbox"/> Informal Bids or Quotes |
| | <input type="checkbox"/> Competitive Bids |
| | <input type="checkbox"/> Bid Protest Procedures |
| | <input type="checkbox"/> Equipment Service Contracts and Warranties |
| | <input type="checkbox"/> Freight, Returns, and Credits |
| | <input type="checkbox"/> Sole Source, Single Source and Standardization |
| | <input type="checkbox"/> Fleet and Vehicle Purchases (including trade-ins) |
| | <input type="checkbox"/> Large Scale Fixtures and Furniture ITBs |
| | <input type="checkbox"/> Large Scale Medical Equipment RFPs |
| <input type="checkbox"/> | Uniform Exemptions to Competitive Procedures Under RCW 39.04.280 |
| | <input type="checkbox"/> Purchasing in an Emergency Under RCW 39.04.280 |
| | <input type="checkbox"/> Sole Source Purchases |
| | <input type="checkbox"/> Special Facilities or Market Conditions |
| | <input type="checkbox"/> Insurance |
| | <input type="checkbox"/> Bonds |
| <input type="checkbox"/> | Electronic Data Processing and Telecommunication Purchases and Contracting |
| | <input type="checkbox"/> Purchases Only |
| | <input type="checkbox"/> Purchases with Installation Component |
| <input type="checkbox"/> | Contracting for Public Works Construction Activities – Traditional (Design-Bid-Build) |
| | <input type="checkbox"/> Small Contracts – No Bonds or Retainage |
| | <input type="checkbox"/> Small Contracts –Bonds and/or Retainage |
| | <input type="checkbox"/> Small Public Works Roster Contracts |
| | <input type="checkbox"/> Limited Public works Contracts Under the Small Public Works Roster |
| | <input type="checkbox"/> Competitively Bid Contracts |
| | <input type="checkbox"/> Public Works Contracting in an Emergency Under RCW 39.04.280 |

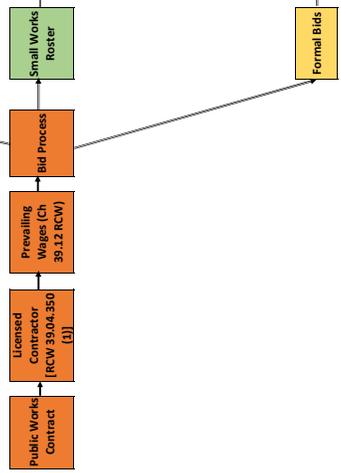
Procurement/Purchasing Manual/Contracting Checklist

| | |
|--------------------------|---|
| <input type="checkbox"/> | Contracting for Public Works Construction Activities - Alternative |
| | <input type="checkbox"/> Job Order Contracting |
| | <input type="checkbox"/> Design-Build |
| | <input type="checkbox"/> General Contractor - Construction Manager (GC-CM) |
| <input type="checkbox"/> | Contracting for Professional Architectural & Engineering Services under Chapter 39.80 RCW |
| | <input type="checkbox"/> Small Contracts With or Without a Roster |
| | <input type="checkbox"/> Minimal Contracts With a Roster |
| | <input type="checkbox"/> Informal Contracts With a Roster |
| | <input type="checkbox"/> Formal Contracts With a Roster |
| | <input type="checkbox"/> Formal Contracts Without a Roster |
| <input type="checkbox"/> | Contracting for Personal Services |
| | <input type="checkbox"/> Small Contracts With or Without a Roster |
| | <input type="checkbox"/> Minimal Contracts With a Roster |
| | <input type="checkbox"/> Minimal Contracts Without a Roster |
| | <input type="checkbox"/> Informal Contracts With a Roster |
| | <input type="checkbox"/> Informal Contracts With a Roster |
| | <input type="checkbox"/> Formal Contracts With a Roster |
| | <input type="checkbox"/> Formal Contracts Without a Roster |
| <input type="checkbox"/> | Contracting for Purchased Services |
| | <input type="checkbox"/> Minimal Contracts Without Prevailing Wages |
| | <input type="checkbox"/> Minimal Contracts With Prevailing Wages |
| | <input type="checkbox"/> Informal Contracts Without Prevailing Wages |
| | <input type="checkbox"/> Informal I Contracts With Prevailing Wages |
| | <input type="checkbox"/> Formal Contracts Without Prevailing Wages |
| | <input type="checkbox"/> Formal Contracts With Prevailing Wages |
| <input type="checkbox"/> | Leases |
| | <input type="checkbox"/> Equipment With Option to Purchase |
| | <input type="checkbox"/> Equipment Without Option to Purchase |
| | <input type="checkbox"/> Real Property With Option to Purchase |
| | <input type="checkbox"/> Real Property Without Option to Purchase |
| | <input type="checkbox"/> Rent or Lease? |
| <input type="checkbox"/> | Intergovernmental Purchases (Piggybacking) |
| | <input type="checkbox"/> State of Washington Master Contracts (DES) |
| | <input type="checkbox"/> Purchases Under Other Non-Federal Government Agency Contracts |
| | <input type="checkbox"/> Purchasing Cooperative Contracts |
| | <input type="checkbox"/> Purchases from GSA Contracts |
| <input type="checkbox"/> | Auctions |
| | <input type="checkbox"/> in-Person |
| | <input type="checkbox"/> Online |
| <input type="checkbox"/> | Disposal of Surplus Properties |
| | <input type="checkbox"/> Equipment and Vehicles |
| | <input type="checkbox"/> Real Property |
| | <input type="checkbox"/> Other Personal Property |
| | <input type="checkbox"/> Scrap |
| | <input type="checkbox"/> Donation |
| <input type="checkbox"/> | Federal Grant or Loan Funded Purchases or Contracts |

| Estimated Cost | Number of Bids | Informal Notification | Advertisement & Public Bid Opening | Bid Bond | General Supplemental Criteria | Project Specific Supplemental Criteria | Retainage/Retainage Bond | Performance/Ret Payment Bond | Taxes (See Matrix) | Intents and Affidavits | Notice of Completion |
|--|--|-----------------------|------------------------------------|----------|-------------------------------|--|--------------------------|------------------------------|--------------------|--|----------------------|
| \$35K Bond and Retainage Threshold (RCW 39.08.010) | | | | | | | | | | | |
| Less than \$2500 | 1 | A | NR | NR | NR | NR | NR** | Waive at Contractor Option | | There are no filing fees for contracts less than \$750 | NA |
| \$2500 to \$10K | 2-3 RC | A | NR | NR | NR | NR | NR** | | | No-Fee Combined Form | NA |
| \$10K to \$35K | 2-3 RC | A | NR | O | P | O | RQ | | | RQ* | NA |
| Less Than Agency Bid Limit(s) | AR by Agency Policy | AR by Agency Policy | AR by Agency Policy | RQ | P | O | RQ | | | RQ | If Over \$35K |
| Limited SWR Process Less Than \$35K | Minimum of 3 RQ | RQ to SWR | | O | O | O | O | | | RQ | If Over \$35K |
| SWR Process Less Than \$150K | All on Roster Category or 5 | RQ to SWR | | O | RC | O | RQ | | | RQ | If Over \$35K |
| SWR Process \$150K to \$300K | If 5, Then Notify All on Roster Category | RQ to SWR | | O | RC | O | RQ | | | RQ | RQ |
| Under \$300K | Open to All | | RQ | RQ | RC | O | RQ | | | RQ | If Over \$35K |
| Over \$300K | Open to All | | RQ | RQ | RC | O | RQ | | | RQ | RQ |

Public Works Contract Requirements Flowchart

Symbol Key
 RC = Recommended
 M = Minimal
 AR = As Required
 FB = Full Bid
 NR = Not Required
 O = Optional
 NA = Not Applicable
 A = Allowed
 P = Possibly
 ** Full Fee Combined Form Available
 ** Agency must adopt policy waiving bonds and retainage for these small contracts.
 SWR = Small Works Roster



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

| Contract Amount | Require in Contract (also See Note 1) | | Needed for Project Closeout Files (Before Releasing Retainage) (Also See Note 9) | | | |
|-------------------------------------|--|-----------------------------|---|---------------------------------------|--|---|
| | Performance and Payment Bonds | Retainage | Sales and/or Use Taxes | Prevailing Wages | Industrial Insurance | Employment Security Taxes |
| Over \$ 35,000 | Yes | Yes | Notice of Completion (NOC) and DOR Release (See Note 4) | Intent and Affidavit (See Note 5) | NOC and Ind. Ins. Certification (See Note 6) | NOC and Certificate of Payment (See Note 8) |
| \$35,000 or less Limited PW Process | Can Waive (See Notes 2 & 7) | Can Waive (See Notes 2 & 7) | Not Required (See Note 4) | Intent and Affidavit (See Note 5 & 7) | Not Required | Not Required |
| \$35,000 or less | Can Waive (See Note 3) | 50% Retainage (See Note 3) | Not Required | Intent and Affidavit (See Note 5) | Not Required | Not Required |
| \$ 2,500 or less | May Not Be Needed (10) | May Not Be Needed (10) | Not Required | Small Works Form (7) | Not Required | Not Required |

Note 1: Contract documents must require that prevailing wages must be paid and must contain the prevailing wages applicable to the project, regardless of contract amount.

Note 2: RCW 39.04.155 (3) allows a local government to waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW. To use this limited public works process an authorized local government must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. A SWR process is required.

Note 3: RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less (Chapter 210, 2007 Laws) - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from DOR and L&I and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

Note 4: City files Notice of Completion of Project with DOR and will receive Certificate of Payment of Excise Taxes from DOR for the project. DOR may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 5: Contractor files Intent to Pay Prevailing Wages and Affidavit of Wages Paid with L & I. The public agency will receive approved Intent and Affidavit forms from the Contractor. L & I sends the forms to the Contractor who in turn sends them to the public agency.

Note 6: L&I issues 'Letter of Release' from liability for industrial insurance premiums for the project (online?). L&I may also demand payment for unpaid premiums on other projects per Chapter 423, 2009 Session Laws.

Note 7: RCW 39.12.040 (2) allows the local government agency to process combined Intent and Affidavit short forms and forward them to L & I monthly. If the agency chooses not to use this process, see Notes 5 & 6. Chapter 210, 2007 Laws allows use of this form for contracts up to \$35,000 if RCW 39.04.155 (3) is followed.

Note 8: DOR forwards Notice of Completion to ESD. ESD issues Certificate of Payment of employment security contributions, penalties and interest. ESD may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 9: RCW 60.28.011(3)(b) states that "Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW." (But not chapter 50.24 RCW.). Therefore, an agency should release retained funds, less the amount of any claims by laborers, suppliers and subcontractors, at the end of sixty (60) days to avoid possible ramifications under the Prompt Pay Act (RCW 39.76). If Certificate from DOR and approved Affidavits from L&I per notes 4-6 are not available at that time, contact your agency attorney. An agency should also try to have the ESD Certificate in its files as well. See MRSC Contract Closeout Paperwork and Deadline Summary also.

Note 10: Unless an agency waives bonding and/or retainage (B/R) under the Notes 2 and 3 scenarios, both are theoretically required, even for very small projects. However, as a practical matter, payment for small projects is usually well after completion and - in effect - there is a 100% retainage for 2-4 weeks, so there is very little risk if an agency does not require B/R. Be sure, as much as practical, that suppliers have been paid and that an approved Affidavit of Wages Paid from the contractor is on file.

RETAINAGE RELEASE

CHECKLIST

Basic Information

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

Documentation Required

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

*Claim, Renewal, Release

This Public Works Tax Matrix summarizes administrative code regulations for [WAC 458-20-171](#) regarding sales and use tax applicability to public works contracts for linear construction and [WAC 458-20-170](#) for applicable taxes for constructing and repairing of new or existing buildings or other structures upon real property. [WAC 458-20-171](#) applies to a public works contract on street, place, road, highway, mass public transportation terminal or parking facility, bridge, tunnel, or trestle owned by a municipal corporation or political subdivision of the state or by the United States government.

How the Matrix Works

The Matrix is broken down into **two main categories** whose public works contracts in which business and occupation, use tax, and retail sales tax are all included in the total contract price or whose contracts in which business and occupation tax and use taxes are included in the total contract price and to which a percentage of retail sales tax is applied to the total contract price. Some contracts, however, may include elements of both categories A and B. In those cases, splitting the contract into separate schedules to accommodate/account for the separate tax treatments is a good idea.

For category B, the percent of retail sales tax is based upon the retail sales tax rate applicable to the location of the work performed. See retail sales tax rates on [Washington State's Department of Revenue \(OR\) Local Sales Tax Use Quarterly](#).

Bid examples are located within the Matrix. General contracting and construction definitions, can be found in the [OR Construction Industry Guide](#).



Questions

- Questions regarding applicable sales and use tax for public works projects may be directed to MRSC Public Works Consultant John Carpita at john.carpita@mrsc.org, or the Department of Revenue Public Works Contracts Department at 360-704-5650.

CA OR A

Contract Bid Price Includes Applicable:
Use Tax, B&O Tax
Sales Tax

or Public Works involving the
Building, Repairing, Or Improving
of Any of the following:

- Street
- Place
- Road
- Mass Public Transportation Terminal/ Parking Facility
- Bridge
- Tunnel
- Restle
- Walks

or Public Works involving
the Constructing of:

- Road and Street Lighting Systems
- Road and Street Drainage Systems

CA OR B

Contract Bid Price Includes Applicable:
Use Tax
B&O Tax
Retail Sales Tax added as percent (%) in addition
to the contract bid price

Buildings
Structures

- Constructing of water mains, telephone, telegraph, electrical power or sewage disposal facilities.

- Railroads
- Wharves
- Moorings
- Hallways
- Catwalks
- Runways
- Aprons
- Taxiways

- Docks used primarily by ferry boats operated in connection with a street, road, or highway, are included in Category A.
- Ferry boats purchased by the state or municipal corporations are exempt from retail sales taxes (WAC 458-20-189(6)(f)).
- Aprons or Taxiways includes those for the takeoff or landing of airplanes.

EXAMPLE "BID TABS"

CATEGORY A

CA□□□□□□□□□□

C□M□I□□□□□

CA□□□□□□□□□□A□□□

Category A (Road/Streets)

Category B (Sewer and Water Mains)

Categories A & B Combined

[All B&O, Use, and Sales Taxes Are Included in Bid Items 1-4]

[B&O and Use Taxes Are Included in Bid Items 1-4]

[B&O, Use, and Sales Taxes Are Included in Bid Items 1-4]

Item 1 Paving \$100,000
 Item 2 Curb \$ 50,000
 Item 3 Sidewalk \$ 60,000
 Item 4 Lighting \$ 80,000

Total Bid \$290,000

Item 1 Water Main \$ 90,000
 Item 2 Valves \$ 30,000
 Item 3 Sewer Main \$ 80,000
 Item 4 Manholes \$ 40,000

Bid Subtotal \$240,000

Retail Sales Tax (10%) \$24,000

Total Bid \$264,000

Item 1 Paving \$100,000
 Item 2 Curb \$ 50,000
 Item 3 Sidewalk \$ 60,000
 Item 4 Lighting \$ 80,000

Sch. A Subtotal \$290,000

Schedule B (Sewer and Water Mains)

[B&O and Use Taxes Are Included in Bid Items 5-8]

Item 5 Water Main \$ 90,000
 Item 6 Valves \$ 30,000
 Item 7 Sewer Main \$ 80,000
 Item 8 Manholes \$ 40,000

Sch. B Bid Subtotal \$240,000

Retail Sales Tax (10%) \$ 24,000

Total Sch. B Bid \$264,000

Total Bid \$554,000

PREVAILING WAGE

WHEN CONSERVATION DISTRICTS PAY IT AND WHEN THEY DON'T

Conservation districts, as we all know, are unique. That uniqueness extends into the world of contracting and bidding and, specifically, prevailing wages. The following guidance applies only to prevailing wages and when to pay them. This guidance does not cover the full contracting and bidding process.

Conservation districts (CDs) have the dubious distinction of having a “split personality”. On many projects they must comply with prevailing wages (and other statutory requirements) as a “municipality”. On other CD projects, they needn’t comply with prevailing wages (and other statutory requirements) because the CD is performing work as an “excepted” agency in relation to [RCW 39.04.010\(3\)](#).

When is a conservation district acting as an excepted agency and when as a municipality?

- As an excepted agency when the work under a contract is conservation of resources as described in [RCW 89.08.010](#) and reclamation of waste or undeveloped lands. For these activities, a CD is acting in the same capacity of an excepted agency per [RCW 89.16.040](#):
 “. . . and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts.”
- As a municipality for all other work.

Under most circumstances, land ownership beneath a project location has no bearing on whether a CD is performing work as an excepted agency or not. Similarly, the source of funding normally would have no bearing, but there may be grant restrictions that require payment of prevailing wages and possibly federal Davis-Bacon wage rates. If there is no cost (i.e., all the work/labor and materials are donated) to a sponsoring conservation district, then the project is not subject to prevailing wages.

| Classification of Conservation District (CD) Work | | |
|--|--|--|
| Work Performed | CD is Municipal Agency: Prevailing Wages Apply | CD is Excepted Agency: Prevailing Wages Do Not Apply |
| Work, construction, alteration, repair, maintenance, or improvement of CD owned facilities and buildings. | X | |
| Building service maintenance (janitorial) contracts for CD owned or leased facilities and buildings. | X | |
| Reclamation, conservation, and restoration of stream corridors | | |
| Bridge or culvert replacement/installation for fish passage. | | X |
| Installation of fish screens (steel modular and concrete cast in place units) on agricultural irrigation diversions. | | X |

"This information is provided as a courtesy to Washington State Conservation Districts. It is not legal or tax advice. For legal and tax status questions, we encourage you to consult qualified legal and accounting professionals."

| Classification of Conservation District (CD) Work | | |
|---|--|--|
| Work Performed | CD is Municipal Agency: Prevailing Wages Apply | CD is Excepted Agency: Prevailing Wages Do Not Apply |
| Planting and seeding of riparian vegetation along the stream corridor and installation of irrigation systems on new riparian plantings. | | X |
| Equipment usage and other work to move and/or place materials on site in the stream and along the stream corridor. | | X |
| Fencing along stream corridors to keep livestock away. | | X |
| Installation of erosion control blanket along stream corridors. | | X |
| Installation of livestock crossings & watering facilities on streams. | | X |
| Installation of in-stream diversions and pipelines to livestock troughs. | | X |
| Site preparation and removal of buildings/obstructions in riparian corridors | | X |
| Installation of in-stream diversions and pipelines to off-stream irrigation headworks. | | X |
| Conservation and reclamation of water on private farm/ranch land | | |
| In-stream sediment pond construction. | | X |
| Hardened feed lot construction and drainage to sediment pond. | | X |
| Irrigation systems for developed farm/ranch land | | |
| Installation of agricultural pipelines on private land and public right-of-way for individual producers and irrigation districts. | X | |
| Plumbing of individual delivery points for agricultural irrigation systems. | X | |
| Topographical and archeological surveys for excepted work. | | X |
| Aerial survey (LiDAR) and photography. | | X |
| District hires its own intermittent or temporary work crew for seasonal work | | X |

Failure to comply with the provisions under the Prevailing Wage Law may subject the district to liability for all unpaid prevailing wages and penalties. A district must stipulate - both in the solicitation document and in the subcontract - that workers will receive the prevailing rate of wage and include applicable prevailing wage rates.

After the subcontract is awarded by the district, the subcontractor submits a Statement of Intent to Pay Prevailing Wages to the Department of Labor and Industries. The district may not make any payments to the subcontractor until they receive evidence that the Intent form has been approved by L & I. After the work is

completed, the subcontractor submits the Affidavit of Wages Paid to the Department of Labor and Industries. The district may not make the final payment to the subcontractor until they receive evidence that the Affidavit form has been certified by L & I.

| What difference does it make if a conservation district is acting as an excepted agency and when it is acting as a municipality? | |
|---|--|
| CD is Municipal Agency | CD is Excepted Agency |
| <p>Depending on estimated cost, a CD must:</p> <ul style="list-style-type: none"> • either advertise or request quotes • likely require a bid bond • likely require sealed bids or quotes • likely require public bid opening • likely have award and acceptance by Board • require performance and payment bond • require retainage • require prevailing wages | <p>Depending on estimated cost, funding source and project, type, a CD:</p> <ul style="list-style-type: none"> • may contract with a landowner and pass through funds without requiring payment of prevailing wages • may request quotes rather than sealed bids • may contract for work with a private contractor without requiring payment of prevailing wages • may waive performance and payment bond • may waive retainage |

More information...

The [Suggested Guidelines for Purchasing, Bidding, and Contracting for Washington State Conservation Districts](#) is a resource written by MRSC specifically to help conservation districts comply with State law.

MRSC’s 2009 [Small Public Works Roster Manual for Local Governments](#) has detailed information on bid bonds, performance/payment bonds, retainage, sales tax issues and prevailing wages. For this reason, these topics are not covered in detail in these Guidelines.

Questions? Contact your WSCC Regional Manager or John Carpita, MRSC (jcarpita@mrsc.org).



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

June 8, 2012

John Carpita
Municipal Research and Services Center
2601 Fourth Avenue, Suite 800
Seattle, WA 98121-1280

Re: Conservation Districts, Reclamation/Restoration Projects: Prevailing Wage Requirements

Dear Mr. Carpita:

Thank you for your May 25, 2012 e-mail regarding the exclusions from the definition of "municipality" which are identified in RCW 39.04.010(3). Those exceptions apply to certain stated districts and "other districts authorized by law for the reclamation or development of waste or undeveloped lands." Your message provided information relevant to some types of work involving conservation districts. You contend that conservation districts are not "municipalities" for some types of work and therefore do not have a prevailing wage requirement under chapter 39.12 RCW.

As you observed, the definition of "public work" in RCW 39.04.010(4) applies to work performed at a cost to the state or a municipality. RCW 39.12.020 requires the payment of not less than the prevailing rate of wage to the laborers, workers, or mechanics performing public work. The prevailing wage requirement in chapter 39.12 RCW is not activated if the public agency is neither the state nor a "municipality" and the work is not by law a lien or charge on any property therein.

You first request a determination that work performed on private lands under the SCC Cost Share program would not be public works and not be subject to prevailing wages; and, second, note that "conservation districts have a number of other programs in which they contract directly with licensed contractors on projects that are indeed public works projects" that require payment of not less than the prevailing rates of wage.

The enabling statute for conservation districts is in title 89 RCW, "Reclamation, soil conservation, and land settlement." The conservation districts law is in chapter 89.08 RCW. The legislature detailed the importance of the lands of the state and the importance of preservation of those lands in RCW 89.08.010. Problems with soils blowing, washing, and soil erosion are linked to other issues including degradation of streams and waterways, fisheries, agricultural issues including drought and crop failures, diminishing underground water reserves, and damage

to infrastructure. The legislature concludes that certain actions are necessary to conserve resources such as “the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.”

Are these conservation activities for the “reclamation or development of waste or undeveloped lands”?

There is an area in chapter 89.16 RCW that talks about which public agency districts are considered to be reclamation districts:

Payments from account — Reclamation districts specified — Rehabilitation of existing projects.

From the moneys appropriated from the reclamation account there shall be paid, upon vouchers approved by the director of ecology, the administrative expenses of the director under this chapter and such amounts as are found necessary for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the director, and such amounts as may be authorized by him for the reclamation of lands in diking, diking improvement, drainage, drainage improvement, diking and drainage, diking and drainage improvement, irrigation and irrigation improvement districts, *and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts.*

RCW 89.16.040 (emphasis added).

Arguably, this section of statute clarifies that certain land rehabilitation projects are considered to be the work of “reclamation districts.” This thought is important since much of the work of conservation districts as detailed above is rehabilitation of lands that may be environmentally impaired or challenged.

Certain work that conservation districts may contract to have performed will not involve the reclamation or development of waste or undeveloped lands. Such work includes building construction, reconstruction, and repair or maintenance of improvements to property including janitorial work, and landscape maintenance work such as mowing the lawn. That work will be subject to the prevailing wage requirements of chapter 39.12 RCW.

John Carpita
June 8, 2012
Page 3 of 3

Some work by conservation districts including the partial reimbursements to private landowners for conservation actions consistent with the reclamation work identified in RCW 89.16.040 will not require prevailing wages under chapter 39.12 RCW since those actions are for the reclamation or development of waste or undeveloped lands.

As you can see, prevailing wage issues are heavily dependent on the facts. If the facts vary, the answer could be different.

I appreciate the opportunity to address your questions. Please let me know if you have any questions or new fact sets to consider.

Washington State prevailing wage information, including the WACs, are available on the Department's web site: <http://www.lni.wa.gov/TradesLicensing/PrevWage/default.asp>

I hope this answers your questions. If you need additional information or have questions, please call or e-mail me at 360 902-5330 or sela235@lni.wa.gov.

Sincerely,



L. Ann Selover
Industrial Statistician
Program Manager



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage
PO Box 44540 • Olympia, Washington 98504-4540
360/902-5335 Fax 360/902-5300

April 4, 2013

Jeff Slothower
Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
P O Box 1088
Ellensburg, WA 98926

Re: Request for Determination – Kittitas Reclamation District (KRD)
Your File #701146.001

Dear Mr. Slothower:

Thank you for your letter of January 25, 2013 in which, on behalf of Kittitas Reclamation District (KRD), you request a determination as to whether the KRD is subject to the payment of prevailing wages on two upcoming projects that the KRD is undertaking.

Determinations of the prevailing rate of wage are made by the Industrial Statistician of the Department of Labor & Industries (L&I). Requests for modification of such determinations are addressed pursuant to the enclosed "*Prevailing Wage Determination Request and Review Process.*"

You identify the contemplated projects as: (1) removal of certain dead and burned trees located on the KRD canal right-of-way that were burned as a result of the Taylor Bridge Fire; and (2) installation of a buried pipeline using state and federal funds. Later, you withdrew your question regarding the pipeline issue for purposes of the determination. For the reasons identified below, it is my conclusion that the tree removal and other actions connected therewith do not require prevailing wage compliance.

The definition of "public work" in RCW 39.04.010(4) applies to work performed at a cost to the state or a municipality. RCW 39.12.020 requires the payment of not less than the prevailing rate of wage to the laborers, workers, or mechanics performing public work. Generally, payment of prevailing wage rates is required for tasks performed by workers, laborers, or mechanics preparatory to or pursuant to a construction project, or to maintain structures and constructed areas, including the clearing of trees from such public access paths, roadways, walkways, and similar areas. However, the prevailing wage requirement in chapter 39.12 RCW is not activated if the "irrigation district exemption" in WAC 296-127-030 applies.

KRD is an irrigation district, organized pursuant to chapter 87.03 RCW *Kittitas Reclamation District v. Spider Staging Corp.*, 107 Wn. App. 468 (2001). It was created in anticipation of the U.S. Bureau of Reclamation constructing the Kittitas division of the Yakima Irrigation Project. *Id.* Irrigation districts are quasi-municipal or public corporations of the state of Washington. They are organized primarily for the purpose of furnishing water for agricultural or domestic use relating to lands within a district, usually through the operation of an irrigation system. AGO 1965-66, No. 37 at 2-3 citing *Beasley v. Assets Conservation Co.*, 131 Wn. 439, 443 (1924).

WAC 296-127-030, titled "Irrigation district exemption," states:

Contracts awarded by irrigation districts for the reclamation or development of waste or undeveloped lands are not covered by the prevailing wage law, pursuant to RCW 39.04.010. Any work, construction alteration, repair or improvement that is not solely for the reclamation or development of waste or undeveloped land is covered by the prevailing wage laws and therefore subject to all the laws and regulations contained in and adopted pursuant to chapter 39.12 RCW.

Following this rule, if the purpose of the described work is *solely for the reclamation or development of waste or undeveloped lands*, such work would not require prevailing wage compliance.

In looking to the nature of this project, the work, as you described it, involves a proposed Energy Unleashed Program Cost Sharing Assistance Application and Agreement between KRD and Kittitas County Conservation District (KCCD). The agreement states that the work will involve hazard tree removal of 10 trees, aerial or broadcast seeding of 10 acres, 450 square yards of mulch, and construction of 16 straw erosion structures. The agreement also describes the environmental quality benefits expected to be produced by this project: "practices are recommended to reduce the potential for soil erosion impacting life and property within and adjacent to the burn area. The benefits of the recommended practices include soil stabilization and protection of infrastructure." The KCCD website also describes the "Taylor Bridge Burn Area Restoration" project as "restoration of the burn area, with a particular emphasis on preventing soil and wind erosion. This effort may include broadcast seeding, straw bale dams, hand-falling trees across slopes to act as erosion control, lopping and scattering of burn materials and applying mulch."

Discussions between our staff and you further clarified that the trees will be removed so that district staff can safely use the maintenance road and the damaged trees will not fall into the canal, wash downstream, and cause damage to the canal's features or interrupt operation. The purpose also includes erosion control, caused by loss of vegetation due to the same fire that killed the trees.

In a determination issued on June 8, 2012 concerning prevailing wage requirements for conservation districts and reclamation/restoration projects, one of the questions raised was whether certain conservation activities were for the "reclamation or development of waste or undeveloped lands." These activities listed in RCW 89.08.010(3) include:

Jeff Slothower
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...[T]he construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

Reading the language of RCW 89.08.010(3) in conjunction with WAC 296-127-030, and understanding that the prevailing wage law is a remedial statute to be liberally interpreted in favor of worker protection [*See Everett Concrete Products, Inc. v. Department of Labor & Industries*, 109 Wn2d 819, 748 P.2d 1112 (1988) at 823] the “irrigation district exemption” is a narrow exception. Even so, the activities that you describe for the irrigation district project at issue, tree removal, seeding, mulch, and erosion control, all seem to clearly fall within the scope of “reclamation or development of waste or undeveloped lands” as discussed in the June 8, 2012 determination referenced above because these activities are related to reclamation of lands that have been damaged by fire, as opposed to those types of activities addressed in the latter part of WAC 296-127-030, “any work, construction, alteration, repair or improvement that is not solely for the reclamation or development of waste or undeveloped lands.” Thus, given the specific tasks at issue here, the activities are included within the parameters of the narrow exception of WAC 296-127-030 and do not require prevailing wage compliance.

I hope this is helpful to you. If you have further questions, please let me know.

Sincerely,



L. Ann Selover
Industrial Statistician/Program Manager
Ann.Selover@Lni.wa.gov
(360) 902-5330

Enclosure

WAC 296-127-030**Irrigation district exemption.**

Contracts awarded by irrigation districts for the reclamation or development of waste or undeveloped lands are not covered by the prevailing wage law, pursuant to RCW **39.04.010**. Any work, construction alteration, repair or improvement that is not solely for the reclamation or development of waste or undeveloped land is covered by the prevailing wage laws and therefore subject to all the laws and regulations contained in and adopted pursuant to chapter **39.12** RCW.

[Statutory Authority: RCW **39.12.015**, **39.12.060** and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-030, filed 8/27/82.]

Contracting Corner

Strategies for improving purchasing and contracting practices

A Responsible Contractor?

What exactly is a responsible contractor? Is he/she an agency's dream contractor who has 20 years of experience, gives great bids, never complains, and does a superb job to boot? Is he/she someone that just recently managed to get a contractor's license and is trying to break into the public works contracting market? The answer is that it can be both.

First, a bit of statutory background:

- [RCW 39.04.010\(1\)](#) defines "Award" as the formal decision by the state or municipality notifying a **responsible bidder** with the lowest **responsive bid** of the state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.
- [RCW 39.04.010\(5\)](#) further defines a "Responsible bidder" as a contractor who meets the criteria in [RCW 39.04.350](#).
- [RCW 39.04.350](#), in turn, establishes mandatory responsibility criteria and optional supplemental responsibility criteria.
- [RCW 39.04.350\(1\)](#) sets forth the following mandatory bidder responsibility criteria: must be a registered contractor; must have a current UBI number; must have industrial insurance coverage; must have an employment security department account, must have a state excise tax registration number; must not be disqualified from bidding on any public works contract; and must have no apprenticeship violations (if applicable).
- [RCW 39.04.350\(2\)](#) allows an agency to adopt relevant supplemental criteria for determining (additional) bidder responsibility applicable to a particular project that the bidder must meet.

So, if an agency chooses not to use supplemental criteria, then the neophyte contractor above can a responsible contractor, which may be okay for small projects where there is minimal risk. Theoretically, I suppose, an agency could set its supplemental criteria standards so high that only dream contractors will meet them. By doing so, however, they limit competition, which may lead to higher bids than would occur if the eligible contractor pool was larger. Note that [RCW 39.04.350\(2\)](#) provides that a potential bidder may request that the state or municipality modify the supplemental criteria, which an agency may or may not chose to do. Note also that [RCW 39.04.350\(3\)](#) requires the [Capital Projects Advisory Review Board](#) (CPARB) to develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria, which are posted at [CPARB's Suggested Guidelines for Bidder Responsibility](#) (revised 01/12).

[RCW 39.04.350](#) became law in 2007. Since then, many local agencies have developed supplemental criteria on two levels. First, there's a basic level that may include such things as no delinquent state taxes, no federal debarment, minimal prevailing wages violations, no excessive claims against retainage and bonds, no public bidding violations, no terminations for cause or default, and no unwarranted lawsuits with respect to public contracting. Second, there's a deeper level whose criteria relate to the nature of a specific project. For example, an agency may require that a contractor must have completed three projects of a similar scope and dollar volume within, say, the past five years. In addition to stating the criteria, the agency lists the measurement parameters and documentation needed for the contractors to demonstrate that they in fact met those requirements. Lastly, the agency sets out the procedures that the contractor must follow to request a modification of the criteria before the bids are due

and also to protest the agency's determination after the bid submittals that the contractor is not responsible.

Then there are agencies (and their consultants) who are still using their "tried and true" boilerplate language that predates [RCW 39.04.350](#). (You know who you are!) Here is an example from a project that is now out for bids:

Qualification of Bidder Information

Each bidder shall furnish satisfactory evidence of his/her competency to perform the proposed work, including the bidder's ability, capacity, and skill to perform the contract within the time specified.

Such evidence of competency shall consist of the following three items:

- Written statement covering the bidder's past experience on similar work;
- List of equipment that would be available for the work and key personnel that would be available;
- Names, addresses, and telephone numbers of three (3) persons who have knowledge of the bidder's competency to complete this project and who are authorized to discuss with owner, confidential information attesting to the bidder's competency to perform the proposed work.

Each bidder shall submit evidence of competency as required above to the owner with his/her bid. Failure of the bidder to submit the above required information with the bid shall render the bid non-responsive and shall be grounds for rejection of said bid.

Note that there are no parameters established for what constitutes sufficient experience, what types and classes of equipment are satisfactory, and what constitutes a bad reference check. This makes any determination of whether the contractor is responsible very subjective, and indefensible in light of RCW 39.04.350. No matter how much the agency staff may not want to award a bid to the sleazy contractor

that submitted the lowest bid, if he/she meets the mandatory bidder responsibility criteria in RCW 39.04.350(1), they probably will be forced to do so.

As always, MRSC can help provide you with sample documents, advice, and even a quick review of your proposed document set. Just email me at jcarpita@mrsc.org.



By John Carpita
Public Works Consultant
MRSC

April Election Update

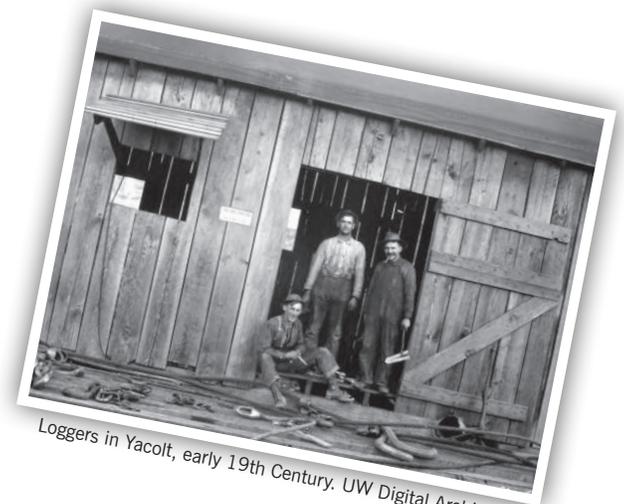
There were 18 local government measures, excluding those from school districts, on the April 2014 election ballot:

- Four EMS levies passed.
- One funding measure for a library capital facility area passed (Sno-Isle), and one failed (Spokane County).
- The creation of the Methow Valley Park and Recreation District failed.
- The Meto Parks Tacoma bond issue and the South Whidbey Park and Recreation District and the Lincoln County Park and Recreation District No. 1 levies passed.
- Two fire district bond measures passed, as well as a fire district levy lid lift.
- The Marysville Transportation Benefit District (TBD) passed a sales tax; the King County TBD funding measure failed.

History Quiz Answer (Question on Cover)

Yacolt, population 1,556

The Yacolt Burn started on September 11, 1902, and for two days burned through 238,920 acres – more than 370 square miles – and took the lives of 38 people in Clark, Cowlitz, and Skamania counties, making it the largest forest fire ever recorded in Washington State. Ironically, while the fire was named after the town of Yacolt, the flames never actually reached the little community.



Loggers in Yacolt, early 19th Century. UW Digital Archives.



APWA | WA Chapter

Dave Berg, PE
Responsible Bidder Act – Are Local Agencies
Utilizing These Tools?

Fall 2014 Conference

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies
Utilizing These Tools?

Responsive vs. Responsible

Responsive = Relates to the form of the actual bid

- Incomplete submittals, unsigned bids, late bids, etc...

Responsible = Bidders ability to satisfactorily perform the work

- Defined in RCW 34.04.350 and can include supplemental criteria

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Responsible Bidder Criteria

- Mandatory
- RCW 39.04.350(1)
- Applies to Subcontractors

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Supplemental Bidder Criteria

- Not mandatory
- If using, statutory requirements owners and bidders must follow
- Relevant, deliberate, documentable, defensible
- Capital Projects Advisory Review Board (CPARB) has Suggested Guidelines for Bidder Responsibility

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Relevancy of Criteria

- Clear nexus between owners concerns and criteria
- What areas of project pose significant risk?
- Relevant experience, training and/or certification requirements or qualifications
- Same for subs, suppliers or employees who will performing specific work

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Information required in bidding documents (per RCW)

- Criteria relevant to specific project
- Basis for evaluation
- Deadline for submitting documentation
- Appeal deadline

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Why do we use supplemental criteria?

- Responsible just as important as responsive
- Enables conversations up front
- Helps owner identify issues and non-standard items up front
- Helps bidder provide a more accurate bid and know what the important issues are

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Things to consider

- How does your agency approach public works contracts
- Past experience
- Risk tolerance of agency
- Procedurally, is your agency set up for the documentation/tracking?
- Development and evaluation may add additional time to project schedule
- Don't make criteria so restrictive you exclude qualified bidders

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Other items to have in place

- SOPs for consistency in awarding bids
- Standard project reference forms
 - Type of contract, WSDOT specs, project management, subs coordination, responsive, cooperative, quality of work, on-time on-budget, CO negotiations
- Standard post-construction rating form
- Documentation controls

APWA 2014

10/6/2014

Responsible Bidder Act – Are Local Agencies Utilizing These Tools?

Examples and Discussion



City of Bellevue

Transportation Department Standard Operating Procedure

Title: **Bid Award and Bid Rejection**

Responsible Division:
Capital Program Services

Category:
Operations

APWA Accreditation Chapter Number(s):

12 - Bid Process

APWA Practice(s):

12.6 Bid Award/Rejection

Revision History:

Revision Date:

Revision:

Revised by:

7/13/2007

Applicable Divisions (Click all that apply):

Entire Department CPS Director's Office Planning Traffic Management

Applicable Sections (per Division):

Capital Program Services (click all that apply):

CIP Construction Design Development and Pavement
Mgmt. Program Services

Traffic Management (click all that apply):

Development Review Neighborhood Services Right of Way
 Signals and Lighting Operations & Design

Purpose:

Pursuant with City contracting policies for formal bids, bid proposals may be awarded or rejected by the City Council. The following procedure provides applicable references regarding Council authority, Council action, RCW and City Code in determining the "lowest responsible and responsive bidder", and the award or rejection of a bid or bidders.

Procedures:

Award or Rejection - Authority & Policies:

Pursuant with City Ordinance 4040, all decisions regarding the award or rejection of contracts shall be made by the City Council and bids shall be submitted to the City Council with the recommendation of

the department.

Pursuant with chapter 42.23.030 of the Revised Code of Washington (RCW) no municipal officer may act on the award of a bid where such officer shall be beneficially interested, directly or indirectly.

Pursuant with City Code, Section 4.28.180, the City Council shall award the contract to the lowest responsible bidder or may reject any and all bids for any transaction whereby the public interest will be served.

Pursuant with section 236-51-615 of the Washington Administrative Code (WAC), an agency may cancel or reject bids before the award based on established criteria.

Pursuant with RCW 39.04.010 "Award means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder."

Award or Rejection - Action:

Pursuant with Section 1-03.2 of the Washington State Standard Specifications award or rejection of a bid will occur within 45 calendar days following the bid opening.

A motion in the form of a recommendation to award or reject a bid shall be presented at a regular meeting of the City Council. The agenda memorandum with the applicable motion is typically scheduled as a consent item on the Council Agenda. In unique circumstances, the motion may require action under new or old business and/or may be scheduled to occur at a Study Session or Extended Study Session with advanced approval of the department Director and City Clerk.

The Project Manager shall review with the CIP Construction Manager, Engineering Manager, and Legal Department criteria applicable in determining the "responsible bidder with the lowest responsive bid," and upon agreement, develop a recommendation to award or reject a bid based on RCW, Bellevue City Code, Washington State Standard Specifications, Transportation Standard Special Provisions, and Transportation Department Standard Operating Procedures.

Procedures - Award:

RCW 39.04.010 provides criteria that must be met to be considered a responsible bidder with the lowest responsive bid.

Section 4.28.190 of the Bellevue City Code provides supplemental criteria for determining the lowest responsible bidder.

Section 1-02.1 and 1-03.1 of the Washington State Standard Specifications, as supplemented or revised by the Transportation Department Special Provisions provides guidance in determining qualifications of the lowest responsible bidder.

In the event a bid is considered to have minor irregularities and/or in accordance with RCW and Bellevue City Code is determined to be a "responsible bidder with the lowest responsive bid" in the public interest, a recommendation shall be submitted to the City Council for award of the contract to

the responsible bidder with the lowest responsive bid.

Procedures - Rejection:

Section 4.28.210 of the Bellevue City code provides that the City Council may reject any or all bid proposals received.

Section 1-02.13 of the Washington State Standard Specifications, as may be supplemented by the Transportation Department Special Provisions, provides guidance when a bid is considered irregular and "will be rejected."

Section 1-02.14 of the Washington State Standard Specifications, as may be supplemented by the Transportation Department Special Provisions, provides guidance in determining if a bidder is not responsible and the proposal should be rejected.

Pursuant with RCW, Bellevue City Code, the Washington State Standard Specifications, Transportation Department Special Provisions, and Standard Operating Procedures in the event a bidder is deemed not responsible and the lowest responsive bid, the proposal is to be rejected or all bids may be rejected.

RCW 39.04.010 further provides that where a bidder is determined not responsible the "municipality must provide, in writing, the reasons for the determination." If the determination is appealed and the City Council affirms that the bidder is not responsible, the award may proceed; however, the contract may not be executed until two days following notification of the final determination rendered by Council.

References (associated SOPs, City Code and Ordinances, RCWs, etc):

- Revised Code of Washington (RCW) chapter 39.04.010
- Revised Code of Washington (RCW) chapter 47.28.100
- Revised Code of Washington (RCW) chapter 42.23.030
- City of Bellevue Ordinance 4040
- Bellevue City Code 4.28
- Washington State Standard Specifications
- Transportation Department Special Provisions
- Bid Irregularities - Evaluation (SOP)

Documentation:

Definitions:

Associated SOPs:

-

Attached Files:

 File Attachment

Hyperlinks:

Click here to insert a hyperlink

7. What was their general understanding of the work and requirements of the specifications such as compaction, testing, etc.?

8. What is the company's area of expertise?

9. Did they complete the project on time and within budget?

10. Were there any change orders and how were they to negotiate with?

11. Would your organization award to them again?

12. How was their paperwork — submitted properly — Federally Funded project?



Checklist for Developing Supplemental Bidder Responsibility Criteria

| No. | Description |
|-----|---|
| 1 | <p>Appropriateness: Why do you think Supplemental Bidder Responsibility Criteria are appropriate for this project? What are the risks to the project if you don't include Criteria?</p> |
| 2 | <p>Suggested Guidelines: Have you reviewed the Suggested Guidelines for Bidder Responsibility published by the Capital Projects Advisory Review Board (CPARB) (http://www.ga.wa.gov/CPARB/index.html)?</p> <div style="float: right; text-align: right;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> |
| 3 | <p>Details of Criteria: Based on the project, what types of criteria are important?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Contractor's experience in similar type of work (must be defined) <input type="checkbox"/> Experience of contractor's key personnel <input type="checkbox"/> Contractor's and their key personnel's experience <input type="checkbox"/> Number of years of experience of the contractor <input type="checkbox"/> Dollar size of previous projects completed by the contractor <input type="checkbox"/> Specialty subcontractor qualifications <input type="checkbox"/> Criteria from CPARB's Suggested Guidelines for Bidder Responsibility <input type="checkbox"/> Other |
| 4 | <p>Reasons: Describe your reasons for including the specific Criteria you have included in the bidding documents. Be specific. For example, if you have asked for 4 years of experience, describe why 4 years is the appropriate number of years and how you arrived at your conclusion.</p> |

Checklist for Developing Supplemental Bidder Responsibility Criteria

| | | |
|----|--|--|
| 5 | <u>References:</u> Have you described how references will be used in validating the documentation submitted and in evaluating whether the bidder is responsible? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6 | <u>Relevancy:</u> On a scale of 1 to 10, with 10 being the most relevant, rate the relevancy of the Supplemental Bidder Responsibility Criteria you have developed to the project. 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> Provide an explanation for why you have rated the Criteria as you have, and describe in detail how the Criteria are Relevant to the project. | |
| 7 | <u>Project Criteria:</u> Have you included project-specific Supplemental Bidder Responsibility Criteria in the bidding documents? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8 | <u>Generic Criteria:</u> Have you included any generic Supplemental Bidder Responsibility Criteria in the bidding documents? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 9 | <u>Documentation:</u> Have you included a list of the documentation that must be submitted by the bidder to demonstrate they meet the Criteria? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 10 | <u>Relevance of Documentation:</u> Is there a one-to-one correspondence between the Criteria and the documentation to be submitted? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 11 | <u>Deadline for Submittal:</u> Do the bidding documents include the length of time after the bid submittal deadline the bidder has to submit the documentation? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 12 | <u>Deadline for Appeal:</u> Do the bidding documents include how long the bidder has to appeal after being notified they are not a responsible bidder? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Checklist for Developing Supplemental Bidder Responsibility Criteria

| | | |
|----|--|--|
| 13 | <u>Research:</u> What market research have you done to validate which bidders meet the Supplemental Bidder Responsibility Criteria <input type="checkbox"/> | |
| 14 | <u>Bidding Pool:</u> How many bidders will meet the criteria <input type="checkbox"/> | |
| 15 | <u>Potential Bidders:</u> What are the names of the bidders who will meet the Criteria <input type="checkbox"/> | |
| 16 | <u>Bidding Pool Analysis:</u> On a scale of 1 to 10, with 10 being the most restrictive of the bidding pool, rate how restrictive you think the Supplemental Bidder Responsibility Criteria are <input type="checkbox"/> <div style="text-align: center;"> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> </div> | |
| 17 | <u>Non-Complying Bidders:</u> What are the names of the bidders who will probably not meet the Criteria <input type="checkbox"/> | |
| 18 | <u>Protesters:</u> Do you think any bidders may protest the Criteria <input type="checkbox"/> If yes, what would be their likely basis of protest <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 19 | <u>Bid Protest Risk:</u> On a scale of 1 to 10, with 10 being the highest risk, what do you think the risk is of a bid protest with the Supplemental Bidder Responsibility Criteria you have developed <input type="checkbox"/> <div style="text-align: center;"> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> </div> <p>Do you think your Criteria are defensible if your agency was taken to court <input type="checkbox"/> Why <input type="checkbox"/></p> | |

Checklist for Developing Supplemental Bidder Responsibility Criteria

| | | |
|----|---|--|
| 20 | <u>Definitions:</u> Have you defined all terms and concepts included in the criteria <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 21 | <u>Undefined Terms:</u> Are there undefined or ambiguous terms included in the Supplemental Bidder Responsibility Criteria that may be subject to a different interpretation by various parties <input type="checkbox"/> What are those terms <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 22 | <u>Delays:</u> Does your project schedule have sufficient time to deal with possible delays resulting from use of Supplemental Bidder Responsibility Criteria based on time to: <ul style="list-style-type: none"> <input type="checkbox"/> Develop the Criteria <input type="checkbox"/> Consider requests for changes in the Criteria during bidding <input type="checkbox"/> Evaluate bidder's documentation after bid submittal <input type="checkbox"/> Check references to validate information provided <input type="checkbox"/> Manage an appeal and possible lawsuit from a bidder determined to be not responsible <input type="checkbox"/> Deal with a protest from another bidder that the low bidder doesn't meet the Criteria | |
| 23 | <u>Review of Criteria:</u> Who in your agency has reviewed the draft Criteria <input type="checkbox"/> <ul style="list-style-type: none"> <input type="checkbox"/> Project Manager <input type="checkbox"/> Public Works Director <input type="checkbox"/> Construction Manager <input type="checkbox"/> Purchasing/Contracting/Procurement personnel <input type="checkbox"/> Attorney <input type="checkbox"/> Outside design consultant (architect or engineer) <input type="checkbox"/> Other public agencies <input type="checkbox"/> Contractors | |
| 24 | <u>Mandatory Responsibility Criteria:</u> Are any of the items you've included in the Supplemental Bidder Responsibility Criteria part of the Mandatory Bidder Responsibility Criteria from RCW 39.04.350 <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 25 | <u>Responsiveness Issues:</u> Are any of the Supplemental Bidder Responsibility Criteria really issues of responsiveness instead of responsibility <input type="checkbox"/> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 26 | <u>Clarity of Criteria:</u> On a scale of 1 to 10, with 10 being the most clear, rate the clarity of the Supplemental Bidder Responsibility Criteria. 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> | |

MRSC Construction Project Checklist

(Federal and State Grant Neutral)

Really Small Project (< \$2,500)

Single Quote

Date: _____

Project: _____

Contractor Name, Address and Contact Info:

Insurance Certificate and Endorsements (Must be on file)

Sales tax is or is not required for this project (circle one)

Verification of Minimum Qualifications (RCW 39.04.350(1))

Contractor Registration Number: _____

Contractor Unified Business Identifier (UBI #): _____

Contractor Industrial Insurance Coverage (Is he/she current): _____

Contractor Employment Security Department Number: _____

Contractor State Excise Tax Registration Number: _____

Contractor Debarred: _____ Yes _____ No

(Attach copy of web page print out)

Estimated (or Actual) Cost: _____

(Attach Quote)

Date Work Started: _____

Date Work Completed: _____

Date(s) Work Paid: _____

Warrant/Check/PO #(s) _____

Combined Intent and Affidavit Form (Only for Projects less than \$2500)

Completed by Agency and Contractor: _____ Date _____

Sent to L&I: _____ Date _____

Note: The agency may wish to ask for evidence that material and equipment rental suppliers have been paid before making payment.

The Statement of Intent to Pay Prevailing Wages & Affidavit of Wages Paid

Only the forms approved by the Industrial Statistician of the Department of Labor and Industries may be used for the Statements of Intent to Pay Prevailing Wages and the Affidavits of Wages Paid. See RCW 39.12.040. The regular (separate) Intent and the regular Affidavit forms may be used for any public work including the smaller dollar value projects that could use the alternates below.

ALTERNATIVE FILING OPTIONS

1. Combined Intent/Affidavit for small works projects up to \$2,500 including sales tax

A combined Statement of Intent to Pay and Affidavit of Wages Paid form for small public works projects up to \$2,500 may be used only at the option of the public contract awarding agency. Form fees are waived by L&I policy on the up to \$2,500 combined form. A signature by the public awarding agency is required in addition to the contractor's signature. The public agency approves the form with their signature, must retain a copy for three (3) years, and must send a copy to L&I within 30 days. The public contract awarding agency has a liability for unpaid wages when the alternate form is used, so only that awarding agency can authorize the use of the combined form.

2. Combined Intent/Affidavit for limited public works projects up to \$35,000 including sales tax A combined Statement of Intent to Pay and Affidavit of Wages Paid form for limited public works projects up to \$35,000 awarded under the terms of RCW 39.04.155 may be used only at the option of the public contract awarding agency. An \$80 filing fee is required. The public agency approves the form with their signature, and must retain a copy for three (3) years. A copy with payment of the filing fees (\$80) must be sent to L&I within 30 days. The public contract awarding agency has a liability for unpaid wages when the alternate form is used, so only that awarding agency can authorize the use of the combined form.

LIMITS ON USE OF THE ALTERNATE FILING OPTIONS

- **The public contract awarding agency decides** if the alternative process may be used in each and every instance. This is not a decision made by the contractor.
- **Non-governmental organizations** (such as private non-profits) are not a "public awarding agency" and may not use the combined forms since they are not subject to the relevant laws that control public agency use of the combined forms and assign a liability for unpaid wages.
- **Liability to the public agency** for unpaid wages is a condition of using an alternate filing process. See RCW 39.12.040(2)(d) and RCW 39.04.155(4). The public agency may bring legal action to recover from the contractor after paying the workers their wages.
- **No subcontractors.** The contractor must file the form with the public awarding agency and the public agency must provide a copy to the department within thirty (30) days. Note: Allowing any subcontractors would make the public contract awarding agency liable for unpaid wages by employers that may not be known to the public agency. No subcontractors are allowed in this alternate process.
- **Single payment.** Multiple payments require using a separate Intent before any payment is made and then a separate Affidavit before final payment of retainage is made. See RCW 39.12.040.
- **State the total contract dollar amount, not "time and materials."** The total cost of the contract entered on the combined Intent/Affidavit includes materials, labor, and sales tax, and must be within the dollar limits for the form.
- **No dividing or phasing of projects.** The law prohibits breaking the project into units or phases to avoid the maximum dollar limit.
- **The public agency must approve** the combined forms by signature.
- **No payment may be made** to the contractor until the form is approved by the public agency.
- **\$500 civil penalty.** Failure to file subject to penalty: If a contractor fails to file, or the public agency fails to file the form with the department within 30 days, a Notice of Violation may be issued under RCW 39.12.050.

**SMALL WORKS
PUBLIC WORKS CONTRACT
(\$2,500 or less including tax)**



**STATEMENT OF INTENT TO
PAY PREVAILING WAGES
AND
AFFIDAVIT OF WAGES PAID**

This form must be typed or printed in ink and completed in full or it will be returned for correction. Large, bold numbers match instructions on the back of this form. Shaded areas are for the Awarding Agency and Labor & Industries (L&I) use only.

No filing fee

Contractors may obtain this form from the CONTRACT AWARDING AGENCY only. Contractors must complete and return the form to the CONTRACT AWARDING AGENCY. If the agency approves the form, it will send a copy of the approved form to L&I within 30 days of the date the agency received the form from the contractor.

| | | | | | |
|--|-------|-------|-----------------------------------|--------------------------------|--|
| 1 Contract Awarding Agency | | | Project Name | | |
| Awarding Agency Address | | | Contract or Purchase Order Number | | |
| City | State | ZIP+4 | County Where Work Was Performed | City Where Work Was Performed | |
| Indicate Total Dollar Amount of Your Contract - Include Sales Tax (No "Time & Materials" allowed) \$ | | | Date Contract Awarded (mm/dd/yy) | Date Work Completed (mm/dd/yy) | |

2 Number of Owner/Operators who own at least 30% of the company who performed work on this project: (check one box) None (0) One (1) Two (2) Three (3)

3 Did employees perform work on this project? (check one box) Yes No (If "Yes" - please list below)

| 4 Crafts/Trades/Occupations and Apprentices – For Apprentices enter the name, registration number, trade, dates worked on project, stage of progression, wage and usual benefit for each apprentice. | 5 Number of Workers in Each Trade | 6 Total # of Hours Worked in Each Trade | 7 Rate of Hourly Wages | 8 Rate of Hourly Usual ("Fringe") Benefits |
|--|---|---|----------------------------------|--|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

| | | | | | |
|----------------------------------|--------------------------|--|-------|-------|--|
| 9 Contractor Company Name | | Contractor Address | | | |
| Contractor Phone Number | Contractor Email Address | City | State | ZIP+4 | |
| Contractor Registration Number | Contractor UBI Number | Contractor Industrial Insurance Account Number | | | |

I hereby certify that the above information is correct and that all workers I employed on this Public Works Project were paid no less than the Prevailing Wage rate(s) as determined by the Industrial Statistician of the Department of Labor & Industries. I understand that contractors who violate Prevailing Wage laws, e.g., apply incorrect classifications/scopes of work for tasks performed on the project, fail to pay correct prevailing wage rates, etc., are subject to fines and/or debarment and will be required to pay any back wages due workers. See RCW 39.12.065.

| | | |
|----------------------|------|-------|
| Contractor Signature | Date | Title |
|----------------------|------|-------|

PLEASE NOTE:
In approving this form, the Awarding Agency must verify that the Contractor's Registration or License is current and valid. The contract dollar amount indicated shall only be for a single payment in full on a single contract with the Awarding Agency. **NO** subcontractors. For information on potential Awarding Agency liability regarding use of this alternate filing process, see RCW 39.12.040(2)(d). RCW 39.12.040(2)(e): Nothing in this section shall be interpreted to allow an Awarding Agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by RCW 39.12.040(1).

| | | |
|---|--------------|---------------|
| 10 Approval: Name and Title of Individual Authorized to Approve This Form on Behalf of the Awarding Agency (type or print) | Phone Number | Email Address |
|---|--------------|---------------|

| | |
|--|------|
| Signature of Individual Authorized to Approve This Form on Behalf of the Awarding Agency | Date |
|--|------|

Received: Department of Labor & Industries

Date: _____

**INSTRUCTIONS FOR COMPLETING THE
STATEMENT OF INTENT TO PAY PREVAILING WAGES AND AFFIDAVIT OF WAGES PAID FORM
FOR SMALL WORKS PUBLIC WORKS CONTRACTS \$2,500 OR LESS, INCLUDING TAX**

Contractors: Please submit this form to the CONTRACT AWARDING AGENCY, not to Labor & Industries.

NOTE: Numbers on instructions match the large bold numbers on the front of this form.

- 1. Contract Awarding Agency** – This is the name of the **public** agency that awarded the contract. Awarding agencies that are not public agencies (i.e., non-profit awarding agencies) cannot authorize use of this form.
Address, City, State, ZIP +4 – This is the address of the contract awarding agency.
Project Name – This is the name of the project.
Contract or Purchase Order Number– This is the number of the contract or purchase order assigned by the awarding agency.
County where work was performed – This is the county in which the actual work was performed.
City where work was performed – This is the city in which the work was performed. If the work was performed outside the limits of any city, write “N/A” in this space.
Indicate Total Dollar Amount of Your Contract – Include sales tax. **Be sure to list the actual total dollar amount, not “Time & Materials” or “T&M”.**
Date Contract Awarded – This is the date the contract was awarded to the contractor by the awarding agency. (month/day/year)
Date Work Completed – This is the date you completed work on the project. (month/day/year)
- 2. Number of owner/operators who performed work on the project and own 30% or more of the company** – Please indicate the number of owner/partners who performed work on this project. **Individuals who own less than 30% of the company are not considered owners/operators, and must be paid prevailing wage rates.**
- 3. Did Employees Perform Work on this Project** – Please indicate “yes” or “no”. If “no”, you do not need to fill in the crafts/trades/occupations section below.
- 4. Crafts/Trades/Occupation** – List each craft/trade/occupation of workers employed on this project. If this is residential, landscape, or underground sewer and water construction, please state that on the form. If operating engineers and/or truck drivers were used, describe the type, and list the size or rated capacity of the equipment. If you indicated any owners/partners in the question above **AND** you also indicated no employees, you do not need to fill in this section.

Apprentices – If apprentices were employed on this project, list each by name, registration number, craft, stage of progression, beginning and ending dates of work performed on this project, and rate of hourly pay and fringe benefits. Any workers not registered with the Washington State Apprenticeship and Training Council must be paid prevailing journey-level wages. Any apprentice not registered with the Washington State Apprenticeship and Training Council within 60 days of hiring must be paid prevailing journey-level wages for the time preceding the date of registration. To verify apprenticeship registration and status, call (360) 902-5324.
- 5. Number of Workers** – List the number of journey-level workers employed for each craft/trade/occupation on this project.
- 6. Total Number of Hours Worked** – List the total number of hours worked for each craft/trade/occupation.
- 7. Rate of Hourly Pay** – Enter the rate of hourly pay for each craft/trade/occupation. **This is the wage you actually paid to the workers.**
- 8. Rate of Hourly Usual Benefits** – Enter the rate of hourly usual benefits. This is the cost of “usual benefits” (as defined by WAC 296-127-014 and RCW 39.12.010) that you actually provided to the workers. The amount listed for “Rate of Hourly Pay” plus the amount listed for “Rate of Hourly Usual Benefits” (if any) must equal or exceed the prevailing rate of wage.
- 9. Company Name (Contractor working directly for the Awarding Agency only. Subcontractors cannot use this form.)** – Indicate your company’s name, address, phone number, and the signature of an authorized company representative with date signed. (Your contractor registration number begins with the first letters of company name).
- 10. Awarding Agency Approval** – Indicate the date the form is approved, and enter the name, phone number, signature, and title of the awarding agency’s authorized representative.

**Within 30 days of receipt this form from the contractor,
the Awarding Agency must send a copy of the approved form to:**

**Prevailing Wage Program
PO Box 44540
Olympia, WA 98504-4540**

MRSC Construction Project Checklist

(Federal and State Grant Neutral)

Small Project (\$2,500 to \$10,000)

Single Quote

Date: _____

Project: _____

Contractor Name, Address and Contact Info:

Insurance Certificate and Endorsements (Must be on file)

Sales tax is or is not required for this project (circle one)

Verification of Minimum Qualifications (RCW 39.04.350(1))

Contractor Registration Number: _____

Contractor Unified Business Identifier (UBI #): _____

Contractor Industrial Insurance Coverage (Is he/she current): _____

Contractor Employment Security Department Number: _____

Contractor State Excise Tax Registration Number: _____

Contractor Debarred: _____ Yes _____ No

(Attach copy of web page print out)

Contractor Has Opted, under RCW 39.08.010 to, in lieu of providing a performance/payment bond, allow the agency to retain fifty percent of the contract amount for a period of thirty days after date of final acceptance.

Contractor's Signature Date

Estimated (or Actual) Cost: _____

(Attach Contractor's Quote)

Date Work Started: _____

Date Work Completed: _____

First 1/2 Payment Date: _____ Warrant/Check/PO # _____

Second 1/2 Payment Date: _____ Warrant/Check/PO # _____

Approved Intent to Pay Prevailing Wages (Copy in File): _____

(Must be before first 1/2 payment date)

Approved Affidavit of Wages Paid (Copy in File): _____

(Must be before last 1/2 payment date)

Note: The agency may wish to ask for evidence that material and equipment rental suppliers have been paid before making the last 1/2 payment.

MRSC Construction Project Checklist

(Federal and State Grant Neutral)

Small Project (\$10,000 to \$35,000)

Multiple Quotes

Date: _____

Project: _____

Contractor Name, Address and Contact Info:

Insurance Certificate and Endorsements (Must be on file)

Sales tax is or is not required for this project (circle one)

Verification of Minimum Qualifications (RCW 39.04.350(1))

Contractor Registration Number: _____

Contractor Unified Business Identifier (UBI #): _____

Contractor Industrial Insurance Coverage (Is he/she current): _____

Contractor Employment Security Department Number: _____

Contractor State Excise Tax Registration Number: _____

Contractor Debarred: _____ Yes _____ No

(Attach copy of web page print out)

Contractor Has Opted, under RCW 39.08.010 to, in lieu of providing a performance/payment bond, allow the agency to retain fifty percent of the contract amount for a period of thirty days after date of final acceptance.

Contractor's Signature Date

Estimated (or Actual) Cost: _____

(Attach all contractor quotes, with lowest(successful) bidder first)

Date Work Started: _____

Date Work Completed: _____

First 1/2 Payment Date: _____ Warrant/Check/PO # _____

Second 1/2 Payment Date: _____ Warrant/Check/PO # _____

Approved Intent to Pay Prevailing Wages (Copy in File): _____

(Must be before first 1/2 payment date)

Approved Affidavit of Wages Paid (Copy in File): _____

(Must be before last 1/2 payment date)

Note: The agency may wish to ask for evidence that material and equipment rental suppliers have been paid before making the last 1/2 payment.

MRSC Construction Project Checklist

(Federal and State Grant Neutral)

Limited Public Works Project

(\$0 to \$35,000)

Multiple Quotes Required

Must Use Small Works Roster

Date: _____

Project: _____

Contractor Name, Address and Contact Info:

Insurance Certificate and Endorsements (Must be on file)

Sales tax is or is not required for this project (circle one)

Verification of Minimum Qualifications (RCW 39.04.350(1))

Contractor Registration Number: _____

Contractor Unified Business Identifier (UBI #): _____

Contractor Industrial Insurance Coverage (Is he/she current): _____

Contractor Employment Security Department Number: _____

Contractor State Excise Tax Registration Number: _____

Contractor Debarred: _____ Yes _____ No

(Attach copy of web page print out)

Agency has waived, under RCW 39.04.155(3) performance/payment bonds and retainage for this project.

Estimated (or Actual) Cost: _____

(Attach all contractor quotes, with lowest (successful) bidder first)

Date Work Started: _____

Date Work Completed: _____

First ½ Payment Date: _____ Warrant/Check/PO # _____

Second ½ Payment Date: _____ Warrant/Check/PO # _____

Approved Intent to Pay Prevailing Wages (Copy in File): _____

(Must be before first ½ payment date)

Approved Affidavit of Wages Paid (Copy in File): _____

(Must be before last ½ payment date)

Note: The agency may wish to ask for evidence that material and equipment rental suppliers have been paid before making the last ½ payment.

_____ Conservation District
MODEL SMALL WORKS ROSTER RESOLUTION

Resolution No. _____

A RESOLUTION OF THE Board of Supervisors OF _____ Conservation District, WASHINGTON, ON THE SUBJECT OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

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

WHEREAS, conservation districts are not authorized agencies pursuant to this preceding statute, but are allowed and encouraged by Chapter 89.08 RCW to adopt policies for prudent and proper use and accounting for public moneys; and

WHEREAS, in order to implement small public works roster processes, the District desires to adopt the statutory framework in the preceding statutes as the policy of the District.

NOW, THEREFORE, THE Board of Supervisors OF _____ Conservation District, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Resolution No. _____ is hereby repealed.

Section 2. The following small works roster procedures are established for use by the District pursuant to and RCW 39.04.155.

1. **Cost.** The District need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the District may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The District may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the District as a condition of being placed on a roster or rosters.

4. **Publication.** At least once a year, the District shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The District may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between _____ Conservation District and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the District may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The District shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

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

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

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

c) For purposes of this resolution, "equitably distribute" means that the District may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are

solicited, the District representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

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

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

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

The District shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

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

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

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

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

[Executive Officer]

ATTEST:

APPROVED AS TO FORM:

CLERK

ATTORNEY

_____ Conservation District

VENDOR LIST

AND

SMALL WORKS ROSTER RESOLUTION

Resolution No. _____

A RESOLUTION OF THE Board of Supervisors OF _____ Conservation District, WASHINGTON, repealing Resolution No. _____ and establishing new procedures relating to purchasing and public works contracting; establishing a vendor list process for the purchasing of supplies, materials, and equipment and a small works roster process to award public works contracts.

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

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

WHEREAS, conservation districts are not authorized agencies pursuant to these preceding statutes, but are allowed and encouraged by Chapter 89.08 RCW to adopt policies for prudent and proper use and accounting for public moneys; and

WHEREAS, in order to implement vendor list and small public works roster processes, the District desires to adopt the statutory framework in the preceding statutes as the policy of the District.

NOW, THEREFORE, THE Board of Supervisors OF _____ Conservation District, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

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

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

1. **Publication of Notice.** At least twice a year, the District shall publish, in the District's official newspaper, notice of the existence of a roster(s) of vendors for materials, supplies, and equipment, and shall solicit names of vendors for the roster.
2. **Electronic Rosters.** In addition to paper and/or electronic vendor lists kept on file in the appropriate department, the District may also use that state wide electronic database

developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).

3 **Telephone Quotations.** The District shall use the following process to obtain telephone quotations from vendors for the purchase of materials, supplies, or equipment:

a. A written description shall be drafted of the specific materials, supplies, or equipment to be purchased, including the number, quantity, quality, and type desired, the proposed delivery date, and any other significant terms of purchase;

b. A District representative shall make a good faith effort to contact at least three (3) of the vendors on the roster to obtain telephone solicitation quotations from the vendors for the required materials, supplies, or equipment;

c. The District representative shall not share telephone quotation from one vendor with other vendors solicited for the bid on the materials, supplies, or equipment;

d. A written record shall be made by the District representative of each vendor's bid on the material, supplies, or equipment, and of any conditions imposed on the bid by such vendor;

e. The District representative shall present to the Board of Supervisors all telephone quotations and a recommendation for award of the contract to the lowest responsible bidder.

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

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

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract:

PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation,

maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

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

Section 3. The following small works roster procedures are established for use by the District pursuant to RCW 39.04.155.

1. **Cost.** The District need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the District may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The District may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the District as a condition of being placed on a roster or rosters.
4. **Publication.** At least once a year, the District shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The District may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between

_____ Conservation District and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the District may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The District shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

- a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

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

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

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

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

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

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

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

The District shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

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

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

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

scheduled Board of Supervisors meeting by means of the consent agenda. For public works projects over \$_____, the Board of Supervisors shall award all public works contracts by resolution.

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

Board Chair

ATTEST:

CLERK

APPROVED AS TO FORM:

ATTORNEY