

City of Washougal

Procurement Policy

Version	Date	Notes
A	2/14/22	Release

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I. General

A. Purpose

This document is intended to set policy for the procurement of purchasing and contracting of services at a reasonable cost. An open, fair, documented, and competitive process is to be used whenever reasonable and possible. Procurement facilitates the integrity, efficiency, and effectiveness of sound government spending.

B. Objectives

The objectives of the city's procurement program are as follows:

- To provide a uniform system to obtain supplies, materials, equipment, and services in an efficient and timely manner;
- To comply with the comprehensive State procurement statutes which govern expenditures of public funds;
- To facilitate responsibility and accountability with the use of city resources;
- To ensure equal opportunity and competition among suppliers and contractors;
- To promote effective relationships and clear communication between the city and its suppliers and contractors;

C. Scope

These guidelines apply to purchases of:

- Public works projects
- Professional services (including architectural and engineering design)
- Non-professional services
- Purchase of supplies, materials, and equipment

The guidelines do not apply to the acquisition, sale, or lease of real property.

If grant funding is involved in the proposed purchase, applicable requirements should be obtained from the funding agency. Such requirements may be more restrictive than the city's policy.

D. Controlling Laws

All purchases shall comply with appropriate and relevant federal, state, and city laws and policies. If the appropriate and relevant federal or state laws, regulations, grants, or requirements are more restrictive than these guidelines, such laws, regulations, grants, or requirements should be followed.

In the event any bid threshold limits in the Revised Code of Washington (RCW) are different from the values listed within this Policy, the RCW limits shall control.

The City Attorney shall be consulted when questions regarding potential conflicts arise. Applicable laws and regulations will be cited throughout this document.

II. Ethics of Procurement

A. Gifts and Conflicts of Interest

The city is committed to providing a fair, transparent and equitable process for purchases. We ask all staff participating in a solicitation and/or award process to be thoughtful of any perceived or actual conflicts of interest. Many of the situations defined as prohibited conduct in the city's Personnel Policies could arise in the procurement context.

1. Reasonable Person Standard. The city seeks to avoid situations that involve conflicts of interests or the appearance of such conflicts based on inappropriate opportunities to influence the solicitation and/or award process. The city uses the measures of how a reasonable person would perceive the situation. A reasonable person standard might consider how the situation would appear if covered by a news story or viewed from the perspective of a public interest group. Common questions to ask are: Could you comfortably explain your actions? Would taxpayers believe you were acting in their best interest?

2. Limitations on gifts. Employees shall not, except as permitted by law, regulation, or the [City of Washougal Personnel Policy](#), solicit or accept gifts or other items of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the City, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties. Vendors are prohibited from offering gifts during the solicitation and ensuing contract award process.

Contact the Finance Director or Public Works Business Administrator for assistance if you encounter unusual situations.

B. Former Employees as Vendors/Consultants/Contractors

Contact Legal before initiating a contract with former city employees to determine if doing so would create an actual conflict of interest or the appearance of a conflict of interest.

III. Accountability and Communications

City staff involved in specification development must carefully consider conflicts of interest and other public accountability rules. Consider each of the following:

A. Public Disclosure

The city's procurement process, and the submittals, materials, information, decisions and many of the notes related to that process are all public records subject to public disclosure unless an exemption applies under the Washington Public Records Act (PRA), Chapter 42.56 RCW.

- Submittals are subject to disclosure. Certain state law exemptions may apply and disclosure may be reasonably delayed to avoid unreasonable interference with the evaluation and award decision.

- Your notes are subject to disclosure as they pertain to the city's official business, processes and decisions. Do not make remarks or comments that you would not be comfortable sharing with a public audience.
- Keep those notes that help to document the process and decisions, and clearly organize them so they can be understood in the future.
- Important notes and materials that are significant to documenting the decision and process should be given to the Procurement Specialist at the end of the process and saved in the event of a public records request.
- The city is not required to create summaries or new public records in response to a PRA request. The city is not required to do research or analysis for vendors under PRA. However, summaries or analyses are subject to disclosure if the city has already created such records.
- Further information regarding public disclosure may be obtained from the Finance Director.

B. [Maintain Confidentiality](#)

Documents, decisions, information, and opinions are generally to be kept confidential, except as required to be disclosed under the Public Records Act. Do not share information other than with city staff who are directly involved in the evaluation and selection process. Project Managers, the Procurement Specialist, and in some cases selection advisory committee members, may contact respondents to city solicitations seeking additional information and clarification regarding vendor submittals, as well as to negotiate a contract. However, conversations or contact with respondents regarding details of the evaluation process should otherwise be limited, and care must be taken to maintain the objectivity of the evaluation process.

If respondents call with questions, particularly regarding evaluation, or to request documents, refer them to the Project Manager or Procurement Specialist.

C. [Fair, Prudent, and Thorough Evaluation](#)

The process must be fair to all respondents; be thoughtful and deliberative in order to preserve the integrity of the public bid process.

1. The Project Manager, and city staff invited to assist in specification development, solicitation efforts, and/or award processes, must be considerate of conflicts of interest and other public accountability rules.
2. In the event a member of a RFP selection advisory committee has a conflict of interest, he or she must immediately withdraw from the process. If you have a conflict or perceived conflict of interest, you must consult with the Finance Director.

Use caution:

1. When discussing any aspect or any opinion you might have of the solicitation process, vendors, bids, or results until the award is complete.

2. To avoid actions that give, or may be perceived to give, preferential treatment to any vendor.

IV. Grants and Federal Funding

Are you trying to procure something that involves any type of grant or federal funding? Then STOP!



Purchases or work that have received a grant or federal funding may not be covered by this manual. These types of purchases often have their own procurement requirements. The requirements in this manual adhere to current Washington State processes and may not be applicable to federally funded projects.

ALL GRANTS ARE DIFFERENT, so one size does not fit all. Some grants simply require you to use your own procurement rules, while others require you to insert their contracting clauses into your contract. Contact the Granting agency and Procurement Specialist for advice on how to proceed. We will review your specific grant and guide you on what the next steps are. Procured purchases and contract may be ineligible for reimbursement if they do not adhere to the grant procurement requirements.

V. Controlled Commodities

The following items require review and approval from designated people.

- Cell phones, telephone equipment, computers and related equipment, printers, scanners and copiers, software, or systems – **Information Technology (IT) Manager**
- Vehicles purchased using Equipment Rental and Revolving (ER&R) funds – **Public Works Business Administrator**

VI. Signature Authority and Approval

Per [RCW 35A.13](#), the City's authority to contract, and be contracted with, is vested in the City Council and City Manager. City Council has delegated authority to the City Manager to execute contracts and modifications. Only the City Manager has the designated signature authority to sign contracts and binding agreements for the City.

City Council approval is required for contracts and purchases that:

1. Have a total aggregate value of greater than \$50,000 that are not approved within the budget or;
2. Are cost modifications that, either singly or combined with all previous modifications, increases the total contract amount to above 115% of the initial contract aggregate total.

Example 1: a \$200,000 contract has a change order for \$22,000 for a new contract amount of \$222,000. The next step is to figure out if the new total contract amount is 115% over the original value. 115% of \$200,000 would be \$230,000, so this modification does not result in

a new total contract amount 115% over the original contract amount and does not need to be approved by Council. The City Manager may sign the contract increase.

Example 2: a \$50,000 contract already had a supplemental #1 for \$5,000 signed by the City Manager. Now there is a new supplemental #2 for \$500. The next step is to determine if this modification results in a new contract amount greater than 115% of the initial total. The new contracted total of \$55,500 is 111% of the original amount, so supplemental #2 does not need to be approved by Council. The City Manager may sign the contract increase.

Example 3: a \$10,000 contract has a modification of \$2,000 for a new contract amount of \$12,000. The modification pushes the total contract amount to 120% of the original contract amount. Although this is still less than \$50,000 the modification exceeds 115% and needs to be approved by Council before the City Manager may sign for the increase.

VII. Determining Contract Value

Contract value refers to the total aggregate value of the contract including all base periods, plus potential renewal periods.

- Example #1: A three-year contract for \$50,000 per year is considered a \$150,000 contract.
- Example #2: A contract originally routed as a one year \$25,000 contract. If a renewal is negotiated for an additional year for another \$25,000, the aggregate value of the contract becomes \$50,000 and is 200% of the initial contract value or a 100% increase.
- Exception: Hardware/software maintenance agreements are treated as stand-alone agreements and do not need to be aggregated to the original hardware/ software purchase agreement.
- Procured contracts for projects that are approved by Council in the budget may be sent to the City Manager for signature.
- For projects not listed in the budget that are approved by department heads and managers, the City Manager may sign contracts valued up to \$50,000.
- Contracts valued above \$50,000 whose work is not named in the budget require Council approval. Procurement of the scope of work may occur prior to council approval or budget availability, but the contract may not be awarded nor executed without Council approval.
- City Manager may execute increases to all contracts that do not exceed 15% of the initial contract value.
- All supplemental increases or change orders above 115% of all aggregate contract values must be approved by council, even if the aggregate contract value is less than \$50,000.00.

VIII. Bid Splitting

The breaking of any project into units, or accomplishing any projects by phases, is prohibited if it is done for the purpose of avoiding compliance with bidding statutes.

The Washington Supreme Court has held that a city cannot break a public work into phases for the purpose of estimating the cost of a public works project, even though those phases are performed at different intervals of time. Instead, a city, while completing the actual project in phases, must total the cost of all phases of the public work or purchase. If the aggregate cost exceeds the applicable bid limit, the city must bid each phase of the project even though a single phase may cost less than the bid limit.

To avoid bid splitting:

1. Combine all phases of a public work project when estimating cost.
2. Combine the total of foreseen identical items purchased at the same time or within a calendar years' time, in which the cost exceeds competition limits (i.e., office supplies, laundry services, janitorial products, etc.).
3. Items that are designed, or intended to be used together (i.e., water meters and covers), and the cost exceeds competition limits should be bid together.

IX. [Electronic Signatures](#)

Electronic (digital) signatures are defined under [RCW 19.34.020](#):

"Digital signature" means an electronic signature that is a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:

1. Whether the transformation was created using the private key that corresponds to the signer's public key; and
2. Whether the initial message has been altered since the transformation was made.

The City declares DocuSign as the electronic signature provider for the City. Specifically, the City Manager, City Attorney, and Finance Director, and their designees, are authorized to use DocuSign, or any future replacement of such platform, to affix electronic signatures to electronic records. A City document that is required by law to be wet-ink signed may not be digitally or electronically signed.

X. [Types of Projects](#)

Local government purchases and projects generally fall into one of five categories:

[Public works](#): All work, construction, alteration, repairs, or improvements to physical property, other than ordinary maintenance, that are paid for by a municipality.

[Professional architecture and engineering services](#): Professional services provided by a consultant that fall under architecture, engineering, land surveying, or landscape architecture.

[Personal services](#): Technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, not including professional architecture and engineering services.

[Purchased services](#): Services provided by vendors for the routine, necessary, and continuing functions of a local agency, mostly related to physical work.

Materials, Supplies, Equipment: Purchases of goods, equipment, supplies, or materials that are not connected with a public works project.

XI. Public Works

A. Definition: What is a Public Work?

This covers more than you think: “all work, construction, alteration, repair or improvement other than ordinary maintenance” to pretty much any structure or facility the city owns. L&I considers “ordinary maintenance” to be that performed by your own staff, so that means every time you call in a carpenter, plumber, electrician, painter, roofer, elevator repair technician, tree trimmer, fencing company, HVAC repair technician, equipment operator or other person wearing tools who isn’t city staff, the purchase falls under public works procurement rules.

Contact the Procurement Specialist if there is any question whether your project falls under “Public Works” or as to which procurement process is necessary. **ALL public work in ANY amount requires an intent and affidavit to ensure payment of prevailing wages, and insurance.**

B. Day Labor

The city may use our own employees to perform public works projects with an estimated cost up to \$75,500 (single craft) or \$116,155 (multiple craft). For larger projects, you must contract with a responsible contractor. However, the city must provide a report to the state auditor of the costs of all public works in excess of \$5,000 that are not let by contract. For any project using city workers that costs in excess of \$25,000, the city must publish a description of the project and its estimated cost in its official newspaper at least fifteen days before beginning the work.

C. Determining the Cost of a Public Work (Engineer’s Estimate)

The total construction cost of each **project** must be estimated in order to correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid. The “engineer’s estimate” shall include all phases and anticipated contracts for the entirety of the project, and include materials, supplies, equipment, and labor on the construction of that project AND applicable sales and use taxes. However, the value of volunteer labor, material, or equipment need not be included in the cost estimate for a public works project, as these are not a cost to the agency. The estimate may be prepared by an outside third party, however the final cost estimate must be validated by the city. The estimate needs to be prepared before any work begins and should be sent to the Procurement Specialist. The estimate is not an indication that the project has been competitively procured and should not be misconstrued as a bid submittal.

D. Thresholds for Use of the MRSC Small Public Works Roster

Public Works			
Using MRSC Small Public Works Roster (SWR)	Dollar Limit	Quotes	Approval
	\$0-50,000	Minimum 3 quotes solicited; bid bond optional	\$0-\$50,000 = City Manager \$50,000+ = City Council

	\$50,000-250,000	Minimum 5 quotes solicited; bid bond required	City Council
	\$250,000-350,000	Minimum 5 quotes solicited; must notify all contractors on roster	City Council

In the event the threshold limits in the Revised Code of Washington (RCW) are different from the values above, the RCW limits shall control.

See Page 39 for an expanded table.

E. Small Works Roster (SWR)

When the estimated cost of a public works project is \$350,000 or less, the city may follow the Small Works Roster (SWR) process for construction of a public work or improvement as an alternative to the general competitive bidding requirements. The City of Washougal has contracted with the Municipal Research and Services Center of Washington (MRSC) for the city use of a statewide electronic database for small public works roster and consulting services developed and maintained by MRSC.

Publication

At least once a year, on behalf of the city, MRSC 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 the appropriate MRSC roster or rosters at any time that they submit a written request and necessary records.

To use the SWR:

- Notifications and postings must emphasize that bids will be accepted only from contractors on the small works roster.
- Notifications and postings should list if bonds and prevailing wage will be required.
- Project Manager or Procurement Specialist contacts contractors off the Small Works Roster. Invitation for bid quotations shall include an estimate of the scope and nature of the work to be performed, materials and equipment to be furnished, and the date, time and location to return quote. However, detailed plans and specifications need not be included in the invitation.
- At the time bids are solicited, the city shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.
- **No city employee may negotiate with any of the bidders.** Some submissions may involve errors, omissions, or other irregularities; contact legal to decide how to handle them.
- The Project Manager or Procurement Specialist shall make a written record 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 or e-mail inquiry.

- The Project Manager forwards solicitation, quotes, and project information to the Procurement Specialist who initiates the contract process.
- Formal bids are not required.
- Advertising is not required.
- Bid bonds are not required.
- A signed contract IS required.
- Prevailing wage IS required.
- Insurance IS required.
- Retainage may be waived.

Small Works Roster “Limited Public Works Process” – up to \$50,000

- If a work, construction, alteration, repair, or improvement project is estimated to cost less than fifty thousand dollars (\$50,000), the city may award such a contract using the limited public works process.
- **A minimum of three electronic or written bid quotations** from the appropriate small works roster are to be solicited and the contract shall be awarded to the lowest responsible bidder.
- The city will maintain a list of the contractors contacted and contracts awarded during the previous 24 months under the limited public works process, including contractor name, registration number, amount of contract, brief description of work and date contract awarded.
- The Procurement Specialist administers the contract process and since the cost is \$50,000, it is under the City Manager’s signature authority threshold.

Small Works Roster Process - Between \$50,000 and \$250,000

- Bid 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.
- The Procurement Specialist administers the contract process and if the contract is required to be approved for award by City Council, approval is obtained before sending the contract to the City Manager for signature.

Small Works Roster Process - Between \$250,000 and \$350,000

- 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. However, **if the city chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster the city must**

also notify the remaining contractors on the roster that quotations on the work are being sought. The city has the sole option of determining whether this notice to the remaining contractors is made by:

- publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- mailing a notice to these contractors; or
- sending a notice to these contractors by email
- The Procurement Specialist administers the contract process and the contract is required to be approved for award by City Council.

F. Formal Bid Process – Public Works

Competitive bidding is designed to prevent favoritism in awarding public work contracts and to enable local governments to obtain the best work or supplies at the most reasonable prices. It is also designed to provide a fair forum for bidders and to protect the public interest.

1. The Project Manager submits the project information, including technical specifications, bid and contract timeframes, pre-bid conference dates/times (if applicable), and BARS # to the Procurement Specialist.
2. The Procurement Specialist compiles the bid package.
3. The notice to bid is to be published in the city's official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the submittal deadline. The notice shall state the nature of the work for which plans and specs will then be available free of charge online and on file. The notice will also be posted to the City's bid portal.
4. Sealed Bids must be delivered to the City within the time specified.
5. Each bid requires a bid proposal deposit of 5% or more in the form of cashier's check, postal money order, or surety bond.
6. Public bid opening is required. The public bid opening may be held virtually.
7. The Procurement Specialist verifies the bids meet the requirements of the Invitation to Bid and notifies the Project Manager of the lowest responsive bid.
8. The Procurement Specialist verifies the contractor is a responsible bidder.
9. The Procurement Specialist determines contract award approval requirements, and if required, schedules and prepares the City Council documents.
10. The Procurement Specialist administers the contract process.

G. Requests for Bid Documents

The City of Washougal Purchasing Policy requires that the City maintain the integrity of official bid documents sets, provide swift response when incorporating addenda changes, and communicate in a singular, fair, and equitable manner to registered bidders. The City will post for free all sealed bid openings on the City's website.

H. Unit-Priced Contracts – “On-Call” and Systemwide Maintenance

Effective June 7, 2018, all cities, towns, and port districts are authorized to use unit-priced contracts. A unit-priced public works contract, sometimes called an “on-call”

public works contract, is when a local government contracts for an unknown number of small public works projects over a fixed period of time (“indefinite quantity, indefinite frequency”). State statute defines a unit-priced contract as:

“[A] competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the [agency type], under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.”

While traditional public works contracts are awarded for specific projects/scopes with a specific total dollar value, **unit-priced contracts are not associated with a particular project**, do not guarantee any amount of work, and do not establish a total dollar value (although the contract may cap the dollar value at a certain level over the life of the contract). Instead, the agency agrees to pay a defined “unit price” for certain types of anticipated (but unplanned) work or trades over a certain time period.

The prices for different tasks may be based upon different units. Commonly used units include:

- Weight, such as tons
- Surface area, such as square feet or acres
- Volume, such as gallons or cubic yards
- Length/depth, such as linear feet or vertical linear feet
- Time, such as hours
- Quantity of items
- Lump sum per task

When a specific project is identified, individual work orders are authorized based upon either a “not-to-exceed” time and materials basis or a negotiated lump sum amount using the previously established unit prices. Intents & affidavits for each work order will be filed to ensure payment of prevailing wages.

[Unit-Priced On-Call Contract Requirements:](#)

1. Can only be used for activities that are not specifically planned and have no set project-specific budget.
2. The contract shall have a specified total aggregate not-to-exceed value.
3. The initial term of the contract may not exceed three years, with the option to extend or renew the contract for one additional year.
4. Modifications: During the course of a contract, there may be occasions when the original unit prices do not address particular work items that are needed. In those situations, new line items may be added by contract modification.

[To Bid a Unit-Priced On-Call Contract:](#)

- Use the Formal Bid or Small Work Roster procedures applicable to the estimate total aggregate not-to-exceed value of the contract.
- The Invitation to Bid must:
 - Specify that the contract will expire when the work orders total the estimate total aggregate not-to-exceed value including WA sales tax, or the contract term expiration date, whichever occurs first.
 - State that there is no minimum volume of work guaranteed.
 - Specify that Prevailing Wage rates in effect at the beginning date of contract year must be applied.
 - Specify that Prevailing Wage rates must be updated, and Intents and Affidavits submitted to Labor and Industries annually (12-month contract period).

Unit Priced Systemwide Maintenance and Repair Contracts:

There are also some systemwide maintenance and repair contracts that are sometimes referred to as “on-call contracts” but actually fall under traditional public works contracting as long as the scope is clearly and properly defined.

To qualify as a traditional public works contract instead of an on-call contract, a systemwide maintenance or repair contract must cover specific activities planned in advance and budgeted (as opposed to on-call contracts which cover activities that are not specifically planned and have no set budget).

Examples include:

- Sewer or storm drain “jetting” (cleaning) up to a certain budget amount, but not an exact number of linear feet
- Sidewalk/trail construction or reconstruction in relation to the city’s pedestrian master plan (not necessarily a fixed quantity), up to a certain budget amount
- Storm pond maintenance
- Annual contracts for pavement crack sealing, chip seals, overlays, etc.

These contracts can be structured so that they qualify as public works projects with readily determinable quantities and costs related to a fixed scope. Systemwide maintenance and repair contracts should not cover unanticipated projects or emergency repairs, which would fall under on-call contracting.

I. Withdrawal of Bids – Cancellation of Awards

Bids may be modified, or the bid may be withdrawn by written notice received prior to the time set for opening in the office designated in the invitation for bids. After bid opening, withdrawal of bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence presented in a sworn affidavit or declaration submitted no later than 5:00 p.m. on the first business day after bid opening, that a clerical mistake was made and not a mistake in judgment, and the bid price actually intended. All decisions to permit the withdrawal of bids after bid opening, or to cancel

awards or contracts based on bid mistakes, shall be made by the City Manager after consulting with legal counsel.

J. [Cancellation of Invitations for Quotations or Bids](#)

An invitation for quotations or bids may be canceled at the discretion of the department director. The reasons shall be made part of the contract file. Each invitation for quotations or bids issued by the city shall state that the invitation may be canceled. Notice of cancellation shall be sent to all parties that have been provided with a copy of the invitation. The notice shall identify the invitation for quotations or bids and state briefly the reasons for cancellation.

K. [Responsive Bid](#)

What is a Responsive Bid?

Responsive bids are bids that are submitted on time with all the information the city requested. Bids submitted after the submittal deadline or at the wrong location should be rejected as non-responsive – in other words, the city will neither accept nor open late bids. If a contractor claims extenuating circumstances, refer them to the City Attorney.

Typically, bidders must provide the following information at the time of bidding:

- Sealed bids, with the name of the project and the time and date of the bid opening clearly stated on the outside of the bid packet
- Bid guarantee in the form of a bid bond, cashier's check, certified check, or personal money order
- Lump sums, unit prices, and total prices in the spaces provided on all the bid forms, including all appropriate sales taxes
- Receipt of addenda acknowledged
- Acknowledgment of attendance at mandatory pre-bid meeting (to be verified)
- Non-collusion affidavit certificate
- Mandatory bidder responsibility questionnaire with all items completed

While it is possible to do a brief check when the bids are first opened, the city reserves the right to ascertain full compliance with the bid proposal requirements after a more detailed review, generally within a maximum of 30-45 days.

Additional items may be required shortly after bid opening:

- If supplemental bidder responsibility criteria are required (see below), a separate questionnaire must be filled out and submitted within 72 hours after bid opening. However, this questionnaire should only be required of the apparent low bidder and the next two lowest bidders.
- For projects that cost an estimated \$1 million or more, a list of all subcontractors for HVAC, plumbing, or electrical work must be submitted ([RCW 39.30.060](#)). The bidder may also submit itself for any of these categories. This list may either be submitted within one hour after the bid opening (the preferred method) or at the time the bid is submitted.

- In addition, [RCW 39.04.350](#) allows agencies to adopt additional relevant responsible bidder criteria for individual projects. Supplemental criteria may be on two levels:
 - 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 termination for cause or default, and unwarranted lawsuits with respect to public contracting.
 - A secondary level whose criteria relate to the nature of a specific project. For example, the city may require that a contractor must have completed three projects of a similar scope and dollar volume within the past five years.

These supplemental criteria and associated evaluation methods must be provided in the invitation to bid or bidding documents.

L. Responsible Bidder

The city is required to award public works contracts to a responsible bidder with the lowest responsive bid ([RCW 39.04.010](#)). This applies to informal bidding, such as a small works roster, as well as formal competitive bids.

Responsible bidders ([RCW 39.04.010](#), [RCW 39.04.350](#)) must meet mandatory criteria.

The bidder must:

- At the time of bidding be a registered contractor in compliance with [Chapter 18.27 RCW](#)
- Have a current Washington State Unified Business Identifier (UBI) number
- If applicable, have industrial insurance/workers' comp coverage required in [Title 51 RCW](#)
- Have a Washington State Employment Security Department (ESD) account as required in [Title 50 RCW](#)
- Have a state excise tax registration number as required in [Title 82 RCW](#)
- Not be disqualified from bidding under [RCW 39.06.010](#) or [39.12.065\(3\)](#)
- Not have any apprenticeship violations, if applicable
- Certify through a sworn statement that they are not a willful violator of labor laws per [RCW 49.48.082](#)
- Have received training on the requirements related to public works and prevailing wage under [Chapter 39.04 RCW](#) and [Chapter 39.12 RCW](#), or received exemption from this requirement by completing three or more public works projects and have had a valid business license in Washington for three or more years

M. Bid Deposit, Performance Bond, and Payment Bond

Whenever competitive quotes or bids are required, a bidder may be required to make a deposit in the form of a certified check or bid bond in an amount equal to not less than five percent (5%) of the total bid, which percentage shall be specified in the call for bids.

As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid, and that he/she has not colluded with any other bidder or any other person. All public works contractors shall furnish a performance bond and a payment bond in an amount equal to the total amount of the contract on a form approved by the City.

N. Retainage

State law requires the city to withhold up to five percent (5%) of the contract price earned by the city's contractor during performance of public work and construction contracts. The withheld amount, known as "retainage," is for the benefit of laborers and material suppliers in the event the contractor fails to pay them. Retainage may also be used to satisfy tax claims by the Department of Revenue and/or the city, prevailing wage related claims by the Department of Labor and Industries, unemployment compensation related claims by the Employment Security Department, and contract performance claims by the city itself. Retainage is not paid ("released") to the contractor until appropriate releases are received from the involved state agencies and city departments/divisions.

A contractor has several options in how retainage will be held:

1. The most common is to have the city withhold and retain five percent (5%) from each payment made during performance of the contract in a non-interest bearing fund.
2. A bond in-lieu-of retainage (aka "retainage bond") may be submitted by the contractor on the city's standard form or one that is acceptable to the city for all or any portion of the contract retainage amount.

At the conclusion of contract performance, any retainage reserved by the city will be released or otherwise disbursed according to the city's standardized contract close out process.

O. Prevailing Wage

- State law requires prevailing wages to be paid by the contractor on all public works projects and all public building service maintenance contracts. To see the list of applicable labor categories, go to [State of Washington Department of Labor and Industries](#). Prevailing wage questions may be directed to the Department of Labor and Industries (L&I), Prevailing Wage Section, 360-902-5300, PW1@lni.wa.gov.
- There is no minimum dollar amount for public work or prevailing wage. Prevailing wages must be paid for any work, construction, alteration, repair or improvement, other than ordinary maintenance, that the city causes to be performed by a private party through a contract. Should the city fail to comply the city can be held responsible for any unpaid prevailing wages. Contractors should file the Intent immediately after the contract is awarded and, if possible, before work begins.

- Payments by the city are not allowed when contractors have not submitted an Intent form that has been approved by the L&I industrial statistician. The city may not pay the final payment or release retainage until all contractors and subcontractors have submitted an Affidavit form that has been certified by L&I and if applicable, retainage releases received by L&I, DOR and ESD.
- Specification documents must state that workers shall receive the prevailing rate of wage. The specifications must either list all the applicable prevailing wage rates, or else provide the URL address for [L&I's website](#) with the exact wage publication date and county. NOTE: Prevailing wage rates are adjusted twice annually – usually in the spring and fall
- Public works contracts require that each and every employer on the project file a Statement of Intent to Pay Prevailing Wages (Intent), and Affidavit of Wages Paid (Affidavit), regardless of the size of the contract. Two choices of combined Intent to Pay and Affidavit of Wages Paid forms may be used, when appropriate, at the option of the City (the public awarding agency):
 - \$2,500 or less (including tax) combined Intent/Affidavit form. No form filing fee.
 - Limited Public Work: \$2,501 to \$50,000 (including tax) combined Intent/Affidavit form. \$40 filing fee.
- File the combined form online through the Awarding Agency and Contractor portals.
- Owner/Operators that do not have any employees do not need to pay themselves prevailing wages, however, they do still need to file Intents and Affidavits with the Department of Labor and Industries and list in section 3 of the form that they are Owner/Operator.
- For all public works contracts, except janitorial and building service maintenance contracts, the applicable prevailing wage rates shall be those in effect on the submittal due date. These rates shall remain in effect throughout the duration of the contract. If a contract is not awarded within six months of the submittal due date, the applicable prevailing wage rates shall be those in effect on the date the contract is awarded and shall remain in effect for the duration of the contract.
- For janitorial, building service maintenance contracts, and unit-priced contracts, the prevailing wage rates in effect on the submittal due date are the minimum rates that must be paid for the first year of such contract and thereafter. However, any janitorial, building service maintenance contract, and unit priced contract, of more than one year in duration must include wage increase language specifying that wages will be altered annually to follow the most recent publication of prevailing wage rate.

****Federal Prevailing Wage Requirements**

The federal government has its own public works prevailing wage requirements, or wage decisions, established by the Davis-Bacon Act (DBA). For any public works project

receiving federal funding, contractors must pay the higher of the state or federal wage rates. This should also be stated in the bid specifications and contracts.

To look up current federal wage decisions by trade, see [Wage Determinations Online](#).

XII. Services

The first step in successfully contracting for services is to determine the category of service that you will be contracting for, as there are distinct differences between service types and the manner of solicitation. Distinguishing between services and public work is also important, as services may have different bidding requirements.

A. Architectural and Engineering Services (A&E Services)

Professional architecture and engineering (A&E) services are services provided by any person, other than an employee of the agency, that fall under the general statutory definitions of:

- Architecture ([Chapter 18.08 RCW](#))
- Engineering ([Chapter 18.43 RCW](#))
- Land surveying ([Chapter 18.43 RCW](#))
- Landscape architecture ([Chapter 18.96 RCW](#))

Contracts for A & E Services

Architectural and Engineering consultants are initially selected based upon their qualifications, rather than price. The defining characteristic of [Chapter 39.80 RCW](#) is its strict insistence on qualification-based selection (QBS) of A&E professionals. In contrast to public works contracts, purchases (equipment, materials, and supplies), and purchased service contracts, an agency **cannot consider price** in the selection process for professional A&E services; it must select the most qualified firm, and then negotiate a price for the work contemplated. There are three ways to select an A&E firm based upon their qualifications:

1. **Minimal MRSC Consultant Roster Selection:** Direct selection of the most qualified consultant from the MRSC Roster and a cost proposal requested for the scope. This would be appropriate for small design projects or for work that will not have outside grant funding. Discuss with the Finance Director and Procurement Specialist prior to using this method of contract procurement.
2. **Informal MRSC Consultant Roster Selection** using a request for proposals (RFP) process. This process requires the city representative to develop a written scope of the project and any criteria used to select the service provider and then select a qualified contractor from the city's MRSC architectural, landscape architectural, and engineering service roster, following the procedures of [39.80 RCW](#). Submit proposal to Procurement Specialist and shortlist of 3-5 qualified roster members to solicit prior to entering into a contract.
3. **Formal Consultant Selection:** If the Project Manager does not choose to use the roster, then a formal Request for Qualification (RFQ) process must be followed,

following the procedures of [39.80 RCW](#). Develop the proposal to submit to the Procurement Specialist to prior to entering into a contract.

See Page 40 for a table of architecture and engineering professional services thresholds.

The city will negotiate a contract with the most qualified firm at a price which the city determines is fair and reasonable. In making its determination the city shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature. If the city is unable to negotiate a satisfactory contract with the firm selected at a price the city determines to be fair and reasonable, negotiations shall be terminated, and the city shall begin negotiations with the next highest qualified firm. Forward all documentation to the Procurement Specialist for archiving. Once a firm has been selected, the final negotiated scope with cost will be provided to the Procurement Specialist who then administers the contract process.

B. *Personal Services*

Services provided by independent consultants that require specialized knowledge, advanced education, professional licensing or certification and where the primary service provided is mental or intellectual, involving the consistent exercise of judgment and discretion.

Examples: accountants, attorneys, consultants, graphic artists, strategic planning, studies/analysis, training, certification services

Purchases of Personal Services

1. Send a written solicitation to qualified firms or individuals describing the needed services. The MRSC Consultant Roster can be used if desired. Request prices, schedules, and qualifications.
2. If a formal Request for Proposals is needed, contact the Procurement Specialist for assistance.
3. Submit all proposals and any evaluation documents to the Procurement Specialist who then administers the contract process.

C. *Purchased Services*

Purchased services are those provided by vendors for routine, necessary, and continuing functions of a local government agency, mostly relating to physical activities. These services are usually repetitive, routine, or mechanical in nature, support the agency's day- to-day operations, involve the completion of specific tasks or projects, and involve minimal decision-making. For most purchased services, the main determinant of award is price and there are no bid limits or requirements for advertising, bonds and/or retainage, or, depending on the specific facts, prevailing wages. Contractors whose work includes only observing, directing, verifying, and reporting would not have a prevailing wage requirement. There are a number of purchased services, however, that hover over that thin gray line between purchased services and public works contracting. Purchased service contracts require, on the whole, much less paperwork than public works

contracts. If a particular contract is very near the gray line, the conservative approach is to consider it a public works contract.

Contact the Procurement Specialist if there is any doubt as to if a project is a purchased service or public work.

Examples: janitorial services, elevator, or equipment inspection (but not repair), grounds keeping, pest control, moving services, fire extinguisher inspection, vehicle towing

L&I considers some service contracts, such as HVAC maintenance or road striping, to be public works and subject to public works bidding requirements.

Purchases of Purchased Services

1. Determine if you will procure through obtaining quotes, a formal bid, or RFP. The Procurement Specialist must be involved in the formal bid or RFP process.
2. If obtaining quotes, request quotes from one or more qualified firms or individuals describing the desired services. Request prices (including prevailing wage if applicable), schedules, and qualifications.
3. Evaluate the proposals and determine the lowest responsible bidder.
4. Submit proposals and all evaluation documents to the Procurement Specialist who then administers contract process.

D. Publication

[RCW 39.80.030](#) requires that the city shall publish in advance the city's requirement for professional services. The city may comply with this section by (1) publishing an announcement on each occasion when professional services provided by a consultant are requested by the city; or (2) announcing generally to the public its projected requirements for any category of type of professional service to create a Consultant Roster. Advertising for the Consultant Roster must be done at least once a year by MRSC on the city's behalf. The MRSC Consultant Roster will distinguish between professional architectural and engineering services as defined in [RCW 39.80.020](#) and other consulting services. Firms or persons providing consulting services shall be added to the appropriate roster at any time they submit a written request and necessary records. The city reserves the right to publish an announcement on each occasion when professional services or other consulting services are required.

XIII. Purchasing Materials, Supplies, and Equipment

(Unrelated to public works, professional services, or personal services)

At first glance, one would think there would be no trouble figuring out what purchases fall into the category of "materials, supplies, and equipment" not used in connection with a public work project or improvement. Stationery, rubber bands, fire trucks, and copy machines come to mind. Services should also be easy to identify. But sometimes the situation is ambiguous.

Distinguishing between public works and materials, supplies and equipment not used in a public work is important, as different bidding requirements apply to each. Purchasing refers to the buying of goods, equipment, materials, and supplies, as long as that purchase is not made in connection with a public works project. If the purchase is made in connection with a public works project, it must follow public works bidding requirements.

Common sense can be a good guide in this area of the law, but sometimes gray areas can create confusion and uncertainty. If you are concerned about a specific situation, consult the Procurement Specialist.

A. Thresholds and Local Preference

Dollar Limit	Procurement Process	Approval	Local Preference
\$0 to \$7,500	Competition not required Departments encouraged to determine price is fair and reasonable and document in department files.	Department Head	All departments shall make a good faith effort to purchase goods within the City of Washougal when they are available and suitable to city needs at a price that is competitive. Three quotes may be requested as needed. <u>Legal Restrictions:</u> Even below bid threshold, City has obligation to procure goods at the best price as steward of public funds. Therefore, City may not require only local purchases.
\$7,501 to \$15,000	MRSC Vendor Roster 3 Quotes Obtained Or Formal Sealed Bid Process (Contact Procurement Specialist)	Department Head	RCW 39.30.040 allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Any other preferences favoring local businesses are not permitted during any formal bid process. <u>Legal Restrictions:</u> Over bid thresholds, Cities are only allowed to procure goods as expressly provided by state law. The only allowance for local preference in state law is as provided in RCW 39.30.040, which allows cities to take sales tax revenue into account.
\$15,001+	Must use Formal Sealed Bid Process Or Piggyback Off Interlocal Procured Purchase Agreements (Contact Procurement Specialist)	Department Head if under \$50,000; City Council if \$50,000+	RCW 39.30.040 allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Any other preferences favoring local businesses are not permitted during any formal bid process. <u>Legal Restrictions:</u> Over bid thresholds, Cities are only allowed to procure goods as expressly provided by state law. The only allowance for local preference in state law is as provided in RCW 39.30.040, which allows cities to take sales tax revenue into account.

			<p>Exceptions include purchase of surplus equipment from other Cities or special market conditions such as auction purchase.</p> <p>The City has Interlocal Agreements in place with NPPGov, WA STATE DES, KCDA that allow the City to purchase off the procured pricing of current contracts.</p>
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*Approval: The Department Head may only approve purchases that are provided for in the city budget and are under \$50,000.00. Purchases should have a Purchase Order entered that references the interlocal procurement agreement pricing or the sealed bid/vendor roster procurement. All dollar limits include freight, handling, set-up cost, and appropriate sales tax.

It is the Department Head's responsibility to approve of who shall make purchases for their department on the city's behalf under the respective quote limits.

B. Informal Competitive Quotes - Materials, Supplies or Equipment between \$1-\$7,500

1. A city representative shall make an effort to contact at least three vendors. Departments are encouraged to attempt to obtain at least one quote from a business within the City of Washougal. The number of vendors contacted may be reduced if the item being sought is only available from a smaller number of vendors. When fewer than three quotes are requested or if there are fewer than three replies, an explanation shall be attached to the electronic invoice.
2. Whenever possible, quotes will be solicited on a lump sum or fixed unit price basis.
3. At the time quotes are solicited, the city representative shall not inform a vendor of any other vendor's quote.
4. A written record shall be made by the city representative of each vendor's quote on the materials, supplies, or equipment, and of any conditions imposed on the quote by such vendor.
5. It is allowable to use criteria other than cost (e.g., qualifications, available staff, delivery timelines, return policies, Washougal businesses, etc.) in making an award.
6. Award shall be made to the vendor submitting the lowest and best responsible quote.
7. Whenever there is a reason to believe that the lowest acceptable quote is not the best price obtainable, all quotes may be rejected, and the city may obtain new quotes.
8. Attach all quotes to the electronic invoice.

Notes:

- If your quote is of a complex nature, let the Procurement Specialist obtain the quotes for you to ensure all quotes are requesting the same pricing information.
- In the request for quotes, be sure technical information defines acceptable quality and ensure vendors are quoting on equal and comparable items. All vendors must be provided the same information. If one vendor offers an acceptable alternative, it must be re-quoted using the alternative specifications.

- The city will not pay for any technical information from the vendor. If the information is to be shared with other vendors, it must be stated so up front. If you use a vendor's technical information without their approval, you may find yourself in a legal tangle.
- Staff may arrange on-site demonstrations or delivery of preview/trial merchandise but must keep in mind that just because you have demoed someone's product does not mean you will be able to buy it. Competition may still be required, and it must be made clear to the vendor beforehand that no preferential treatment will be given.
- Obtain freight pricing (FOB Destination, Freight Prepaid).

C. **Vendor Roster – Materials, Supplies, or Equipment between \$1 - \$15,000**

When purchasing materials, supplies, or equipment not connected to a public works project in the amount of \$15,000 or less, the city may award purchasing contracts by a vendor list process. The City of Washougal has contracted with the Municipal Research and Services Center of Washington (MRSC) for the city use of a statewide electronic vendor roster developed and maintained by MRSC.

Publication

At least twice a year, on behalf of the city, MRSC shall publish in a newspaper of general circulation within the district a notice of the existence of a roster(s) of vendors for materials, supplies, and equipment, and shall solicit names of vendors for the roster.

To use the Vendor Roster, the Project Manager:

- Drafts a written description 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.
- Makes a good faith effort to contact at least three (3) of the vendors on the roster to obtain telephone or electronic solicitation quotations from the vendors for the required materials, supplies, or equipment.
- Doesn't share telephone quotation from one vendor with other vendors solicited for the bid on the materials, supplies, or equipment.
- Saves a written record of each vendor's bid on the material, supplies, or equipment, and of any conditions imposed on the bid by such vendor and attaches them to the electronic invoice.

D. **Formal Bid Process – Materials, Supplies, or Equipment between \$1 and Any Amount, Required Above \$15,000**

Unless the Vendor Roster process is used, purchases of supplies, goods, materials, and/or equipment over \$15,000 that are not part of a public works and improvements contract must call for bids using the formal bid process, with price being the primary factor in the contract award decision. Purchases of custom or specialty goods, and/or products that are subject to proprietary design or similar rights, are sometimes conducted using the Request for Proposal (RFP) process, with price performance criteria

as well as price being factors in the contract award decision. Contact the Procurement Specialist to discuss whether the formal bid or RFP process best fits your situation.

- Unless otherwise specifically approved by the City Council, all contracts relating to the purchase of materials, equipment, or supplies shall be in accordance with the city budget.
- The Project Manager notifies the Finance Department regarding any budget transfers to cover funding.
- The Project Manager submits the project information, including technical specifications, bid and contract timeframes, pre-bid conference dates/times (if applicable), BARS #, as well as a list of potential vendors (if applicable), to the Procurement Specialist.
- The Procurement Specialist compiles the bid package and administers the bid process.
- An invitation for bids shall be issued which shall include the specifications and the contractual terms and conditions applicable to the procurement.
- Public notice of the invitation for bids shall be published at least once in a newspaper of general circulation. The public notice shall state the date and time of bid opening. Bids not received by the date and time stated for bid opening will not be accepted or considered.
- Bids shall be opened publicly and recorded at the time and place designated in the invitation for bids.
- **Withdrawal of Bids - Cancellation of Awards.** Bids may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for opening. After bid opening, withdrawal of bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence presented in a sworn affidavit or declaration submitted no later than 5:00 p.m. on the first business day after bid opening, that a clerical mistake was made and not a mistake in judgment, and the bid price actually intended. All decisions to permit the withdrawal of bids after bid opening, or to cancel awards or contracts based on bid mistakes, shall be made by the City Manager after consulting with legal counsel.
- The Project Manager verifies the bids meet the requirements of the Invitation to Bid and notifies the Procurement Specialist of the lowest responsible bidder.
- The award of bid shall be made to the lowest responsible bidder whose bid meets the specifications and evaluation criteria set forth in the invitation for bids. The City may reject all bids at its discretion.
- The Procurement Specialist determines contract award approval requirements, and if required, schedules and prepares the City Council documents.
- The Procurement Specialist administers the contract process.

E. Lowest Responsible Vendor

The following factors, in addition to price, may be taken into account by the city in determining the lowest responsible vendor. If any or all these criteria will be applied during the evaluation process, then they must be included in the Invitation to Bid:

1. The ability, capacity, and skill of the vendor to perform the contract;
2. The character, integrity, reputation, judgment, experience, and efficiency of the vendor;
3. Whether the vendor can perform the contract within the time specified;
4. The quality of performance of previous contracts or services;
5. The previous and existing compliance by the vendor with laws relating to the contract;
6. Such other information as may be secured having a bearing on the decision to award the contract.

If recommendation for award is being made to anyone other than the low bidder, send a memo stating specific reasons why the low bid is not acceptable to the Procurement Specialist for evaluation.

F. [Lifecycle Costing](#)

In considering the purchase of materials, equipment, supplies, whenever there is a reason to believe that applying the "life cycle costing" method of quote evaluation would result in the lowest total cost to the City, first consideration shall be given to purchases with the lowest life cycle cost which complies with the specifications.

G. [Telecommunications and Computer Equipment or Software](#)

Recognizing the unique aspects of computer and telecommunication systems, the legislature established an alternative process for making such purchases. RCW 39.04.270, which is available to all municipalities, allows purchases through use of an alternative competitive negotiation process requiring, at a minimum, the following steps:

1. A request for proposals (RFP) must be published in a newspaper of general circulation at least 13 days before the last date on which the proposals will be received.
2. The RFP must identify significant evaluation factors, including price, and their relative importance.
3. The city must provide reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and selection for awarding the contract.
4. The award must be made to the qualified bidder whose proposal is "most advantageous" to the city.
5. The city may reject all proposals for good cause and request new proposals.

XIV. [Exceptions to the Competitive Process](#)

The Washington State statutes contain exceptions to the previously discussed bidding requirements. Exceptions, when exercised, should make good business sense and be in the best interest of the city.

It is important to note that ONLY the requirement for competitive bidding or advertising is waived. It does not waive any contractual requirements, approvals, or insurance requirements.

If you think your project or purchase falls under one of the exceptions to the bid law, think again. The bid laws are there for a reason – to try to ensure that cities get the best buy for their money. Many of the projects or purchases that a city might consider to fall within exceptions are in the “gray” area of the law.

Exemptions to the competitive bidding requirements:

- Purchases that are clearly and legitimately limited to a single source of supply
 - Licensed or patented good or service
 - Items that are uniquely compatible with existing equipment, inventory, systems, programs or services
 - Meets City standards (i.e., water meters)
 - Factory-authorized warranty services
- Purchases involving special facilities or market conditions
 - Item is of special design, shape or manufacture that matches or fits with existing equipment, inventory, systems; used items; auctions
- Purchases in an emergency
- Inter-Governmental Cooperative Purchases
- Purchases of insurance or bonds
- Pollution control facilities and some neighborhood “self-help” projects may be exempt from bidding requirements
- Cities may hire the state or county to do road projects without going out for bids

A. Brand Name and Sole Source Purchases

Brand Name Bidding

Cities may advertise for bids by specifying a particular brand name item as long as the responsible officials have exercised their judgment and determined that a certain brand name is of higher quality or is better suited to the municipality's needs. In *Smith v. City of Seattle*, the city advertised for bids for incandescent lamps, specifying a particular brand. In a suit brought by a maker of a similar lamp, the court stated that as long as the officials involved exercised their discretion in determining that a particular brand of lamps was more desirable, the city's procedure was proper in the absence of abuse of discretion or fraud. In this case, the fact that the city had used the specified lamps previously and they had performed satisfactorily provided a rational basis for city authorities to limit the bid advertisement to that specified brand of lamps, and the court found no abuse of discretion. There is no requirement that bid specifications naming a particular brand also include a phrase such as “or an equal brand.” Contact the Procurement Specialist for assistance in determining and documenting the brand name need, and preparation of bidding documents.

Sole Source Purchases

A sole source is a unique exception to the city's purchasing policies. A sole source situation is when it is only feasible to obtain a good or service from one supplier or

service provider. Sole source conditions include such things as: (a) products, systems, information, or services that are subject to patent or other proprietary use rights; (b) supplies or services that only one vendor is capable of providing or authorized to provide; (c) items that are available from a single source and such items are required in order to function with existing equipment, systems, programs, or services; (d) situations where the sole source is the only practical way to meet the city's requirements or delivery deadlines; and/or (e) security requirements or information mandates that limit procurement from only a single vendor.

- Unless a specific sole source condition exists, the department/division and project manager shall follow standard competitive solicitation process.
- If there is any doubt, the department/division should pursue a competitive solicitation.
- Specifications must be expansive as possible to ensure the greatest pool of bidders to compete. There must be a clear and appropriate reason for specifications that narrow the field to a sole source.
- A late start to the project does not justify a sole source.
- Prior contracts with a vendor for work on a project is not necessarily an appropriate reason for a sole source waiver.
- The department/division making such a waiver request must document sufficient information that objectively establishes there is only a single source or that a patented or proprietary use right restriction exists. If you have used expansive specifications and find significant data that indicate a sole source, speak with the Procurement Specialist.
- **Sole source waivers require a City Council resolution.**
- The Procurement Specialist will prepare the City Council documents and administer the contract process.

B. Special Market Conditions

Special Market Conditions – What Are They?

[RCW 39.04.280\(1\)\(b\)](#) provides a “special market conditions” waiver from the bidding requirements for purchases of materials, supplies, or equipment. To use this exemption, the City Council must pass a resolution stating “the factual basis for the exception”.

What are special market conditions? No definition is given in the statutes. Some have suggested that if supplies or used equipment are offered at a very favorable price and will be sold before a city will have a chance to complete the bidding process, there is a special market condition. However, since there have been no court cases or attorney general’s opinion on this subject, if an employee wishes to invoke “special market conditions” to waive the bidding requirements, the Procurement Specialist and City Attorney should be consulted.

Auctions

Sometimes the city will find exactly what it needs, at a favorable price, at an auction. Obviously, seeking bids would be impossible in an auction setting. [RCW 39.30.045](#)

authorizes a city to acquire supplies, materials, and equipment through an auction conducted by the United States or any agency thereof, an agency of the state of Washington, a municipality or other government agency, or any private party, without bids, if the items to be purchased can be obtained at a competitive price. This authority, it would seem, would allow a city to make a purchase on an internet-based auction service, such as eBay, as well as through more traditional, in-person auctions. The Department Head must pre-approve an upper bidding limit, (which must be within the approved city budget), for the person doing the bidding.

C. Emergency Purchases

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

1. Obtain concurrence of the Department Head or designee that a qualifying emergency requiring immediate acquisition of goods or services exists.
2. The Project Manager must inform the contractor that prevailing wage rates apply and the paperwork will be required as soon as possible, and before payment is made.
3. Promptly notify the Procurement Specialist of emergency situations by submitting a memo describing the situation as soon as an emergency is known.
4. The Procurement Specialist prepares the contract and City Council documents.
5. Once approved by City Council, the Procurement Specialist sends the contract, bonds and insurance requirements to the contractor. Work may begin without the required documents but the executed contract must be obtained, along with an executed bonds, and insurance documentation, as soon as possible, and before any payment is made.

State law requires that if a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

Public works and improvements emergencies (e.g., broken water main, washed out road, sewer main break, etc.) require contract, performance bond, prevailing wages, and insurance. Local, state and federal laws do not exempt these requirements during an emergency.

D. Inter-Governmental Cooperative Purchases

[RCW 39.34.030](#) allows the city to join with other governmental agencies for the purchase of supplies, equipment, or services. This is done by entering into a written Intergovernmental Cooperative Purchasing Agreement (also known as an "interlocal agreement"). Contact the Procurement Specialist for assistance through this process.

Prior to making a purchase under such an agreement, the city must ensure that the procedure used by the agency that originally awarded the bid, proposal, or contract is allowable within the city's purchasing policy. The originating agency must also have fulfilled one of two additional public notice requirements:

- Posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations.
- Provided an access link on the state's web portal to the notice.

The originating agency's procurement, advertisement, contract documents, and the cooperative purchasing agreement must be saved with the city's contract documents.

The city may also make a bid call with another government entity as a joint purchase that complies with the procurement requirements of both jurisdictions. When practical, the city should include language in its solicitations that allows other public agencies to purchase from Washougal's contracts, provided that other agencies provide similar rights and reciprocal privileges to the City of Washougal.

The City Council must approve all Intergovernmental Cooperative Purchasing Agreements.

E. Pollution Control Facilities

[Chapter 70.95A RCW](#), relating to pollution control facilities and enacted in 1973, may offer an important exception to bidding requirements. The term "facility" is defined to mean "any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof . . . which is used or to be used . . . in furtherance of the purpose of abating, controlling, or preventing pollution." "Pollution" is defined broadly to include water pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution. To exercise this exemption, the Project Manager must receive a written certification from the Department of Ecology, or applicable regulating agency, that the project is designed to abate, control, and/or prevent pollution. The Procurement Specialist must be involved in this process.

F. Neighborhood "Self-Help" Projects

The city may contract with certain groups to do neighborhood improvement projects without regard to the competitive bidding laws. These groups include chambers of commerce, service organizations, community, youth, or athletic associations, or other similar associations located in and providing service to the immediate neighborhood. The contracting association may make park and recreation improvements, install equipment and artwork, and provide maintenance services while being reimbursed by the city for its expenses. The consideration received by the city (the improvements, artwork, etc.) must be at least equal to three times the city's payment to the association. All payments made by the city under the authority of this section for all such contracts in any one year shall not exceed twenty-five thousand dollars or two dollars per resident within the boundaries of the city, whichever is greater.

G. State or County Construction or Repair of Streets

By passing a resolution, the City Council may authorize Clark County to construct, repair, or maintain a city street. The city pays the "actual cost" of the work, with the payment being deposited in the county road fund. The state Department of Transportation may also provide engineering assistance road projects or do the actual construction. The state is reimbursed from the city's share of the motor vehicle excise tax in the motor vehicle fund. Such agreements with the county or the state do not require competitive bids.

XV. Additional or Special Considerations

When hiring anybody to do anything for the city, there are three main requirements that need to be met.

A. Certificates of Insurance

The contractor or consultant must furnish the city with a Certificate of Insurance, naming the City of Washougal as primary and noncontributory additional insureds with an additional attached endorsement. Insurance requirements are determined by the City Attorney.

B. Washington State Contractor's License

It is unlawful for the city to hire anyone to perform public work on our property that does not have a valid State of Washington Contractor's License. If someone is not properly licensed, DO NOT HIRE THEM. You may look up a contractor to determine if they have a valid Contractor's License at:

- Department of Labor and Industries
- Department of Revenue

C. City of Washougal Business License

A City of Washougal business license is required for any business working inside the city limits whose annual value of products, gross proceeds of sales, or gross income of the business in the city is more than \$2,000. You may look up business licenses on the [Department of Revenue website](#).

XVI. Sales Tax and Use Tax

A. Sales Tax

The City of Washougal is not sales tax exempt. State law defines which activities are subject to the retail sales tax. Generally, all sales of tangible personal property to consumers for their own use are considered retail sales, as well as a variety of services.

Sales tax is "destination based" for shipped or delivered merchandise and is collected based on the location where the buyer receives or takes possession of the merchandise.

- Destination based tax does not apply to the sales of motor vehicles, trailers, semi-trailers, aircraft, watercraft, modular homes, manufactured and mobile

homes, towing services, and florists. Sales tax is based on the seller's location even if the seller delivers the items to customers.

- Sales tax on services are coded to the location where they are performed.
- Over-the-counter (in person) sales are based on the location of the sale.

To look up tax rates, visit the [Washington State Department of Revenue \(DOR\) website](http://www.dor.wa.gov).

B. Use Tax

Use tax is a tax on goods and certain services that are paid to the state when sales tax is owed but was not collected by the seller. For example, if the seller should have collected sales tax on the sale, or sales tax is owed because the seller is out of state and does not collect Washington sales tax, the city still owes the tax and pays it to the state in the form of use tax. Use tax is destination based.

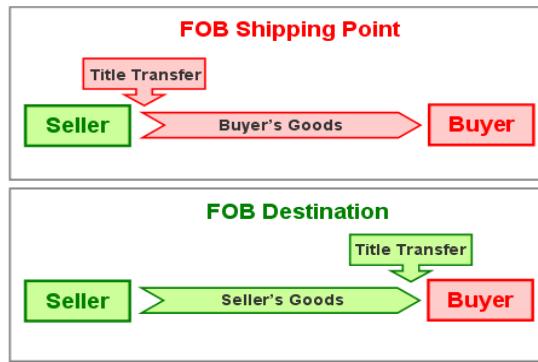
Use tax is due if:

- Goods are purchased in another state that does not have a sales tax or a state with a sales tax lower than Washington's. For example, items purchased from a business in Oregon to be used in Washington are subject to use tax.
- Goods are purchased from someone who is not authorized to collect sales tax. For example, purchases of furniture from an individual through a newspaper classified ad or a purchase of artwork from an individual collector.
- Goods are purchased out of state by subscription, through the Internet, or from a mail order catalog company. Some of these companies collect Washington's sales tax, but if the company from which you order does not, the city still must pay use tax.
- Personal property is acquired with the purchase of real property.

XVII. Freight

A. Shipping Terms

Whenever you are purchasing an item that will incur freight charges, always request that it be shipped Freight-On-Board (FOB) Destination, Freight Prepaid. What this means is that the vendor you ordered the merchandise from owns it until it reaches your door and there won't be a separate invoice for freight. If anything should happen to the merchandise during shipping, the vendor (not the city) is responsible for filing the claims with the carrier. FOB determines at what point the ownership transfers. If an item is FOB origin, the city owns the merchandise from the point of shipping while it is in transit.



Freight prepaid or collect refers to who is responsible for paying shipping charges - the city or the seller.

B. Receiving Freight

It is the responsibility of the individual who signs for the carrier's delivery receipt to properly receive all cartons they are signing for. Anyone who accepts and signs for receipt of goods, acknowledges that the item was received and accepted as delivered.

Get what you sign for

1. Confirm the package or carton is being delivered to the proper location.
2. Verify the number of cartons, crates or pieces is correct according to quantities on the packing slip.
3. Open packages and verify the order is correct.

Damaged Cartons

Any person receiving freight must make a notation on the carrier's delivery receipt of apparent damage to packages. State the specific type of damage on the delivery receipt and obtain the driver's signature (not just initials) on your copy of the receipt.

Concealed Damage

If the shipment of goods received showed no sign of damage upon receipt, but damage to the contents is found upon opening, concealed damage exists.

1. Call the carrier immediately upon discovery of the damage and request an inspection. Notate the date and the person contacted.
2. Notify the vendor to file a claim.
3. All shipping cartons should be retained for inspection on any damage. When making a request for an inspection, advise the carrier whenever possible what the value of the damaged goods is. If the value is less than \$50.00, most carriers will frequently waive inspection. Indicate person contacted on the claim form.
4. When an inspection is made, specific damages should be notated by both parties and signed by both on the inspection report. Send the report to the vendor and keep a copy for the city records.

XVIII. Payments

Inform all vendors to mail or email invoice(s) to:

City of Washougal
Accounts Payable
1701 "C" Street
Washougal, WA 98671

360-835-8501
accountspayable@cityofwashougal.us

All questions regarding payments should be directed to the city Accounts Payable. Invoices related to contracts are processed by the department managing the contract.

XIX. Appendices

A. Glossary

Bid

The executed document submitted by a bidder in response to an invitation to bid (ITB), a request for proposals, or a request for quotations.

Bid Bond

A bond or deposit submitted with a bid, for a sum not less than 5% of the bid amount (including sales tax). Designed to help ensure that a bid has been made in good faith and that the bidder will enter into a contract if a bid is accepted.

Bidder

A person or legal entity who submits a bid in response to a solicitation.

Change Order

Work that is added or removed from the original scope of work, as agreed upon in the contract signed by city and contractor before work began. As the work proceeds, either the city or the contractor decides a change is needed to be made to accommodate unforeseen factors. Change orders can be agreed to by the Project Manager but they do not obligate any party until a contract modification is fully executed.

Contract

A verbal or written, legally binding mutual promise between two or more parties.

Contract Modification

Written modification to a contract (sometimes called an amendment). A modification may include one or more change orders and must be fully executed by both parties

before it obligates the contractor to render services, or the city to pay for services rendered, in excess to the original contract.

Final Acceptance

Final acceptance occurs when the city formally accepts the work as complete, and it starts the clock for releasing retainage held on the contract. The Notice of Final Acceptance cannot be issued until all requirements of the contract have been met including, but not limited to:

- Intents to Pay Prevailing Wages for the contractor and any subcontractors have been approved by the Department of Labor and Industries
- Final invoice for the project received by the city
- The Project Manager has determined the contractor has completed the required deliveries or performed the required services
- All as-builts have been received by the city

Fully Executed

A document is fully executed when all parties have agreed to the terms and conditions by signing and dating the document and initialing any changes.

Notice of Completion

After final acceptance of any public works project over \$35,000, a public agency must file a Notice of Completion with the Department of Revenue (DOR), Department of Labor and Industries (L&I), and Employment Security Department (ESD). Each state agency must approve the Notice of Completion separately, at which point each agency will send a “certificate of release” certifying that all applicable taxes, premiums, and penalties have been paid. If DOR, L&I, or ESD report that there are unpaid taxes or fees, the agency may not release retainage to the contractor until the issue is solved, or pay the state agency penalties out of the retainage according to state law.

Request for Proposal (RFP)

All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals. The RFP procedure permits negotiation of proposals and prices, as distinguished from competitive bidding and a notice inviting bids. The procedure allows changes to be made after proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

Request for Quotation/Qualification (RFQ)

A document generally used for obtaining a summary of qualifications from prospective providers of professional services.

Payment Bonds

The purpose of a payment bond is to guarantee that the Contractor shall “pay all laborers, mechanics and sub-contractors.”

Performance Bonds

The purpose of a performance bond is to guarantee that the Contractor shall “faithfully perform all provisions of the contract.”

Sealed Bid

A bid which has been submitted in a sealed envelope to prevent its contents from being revealed before the deadline for the submission of all bids.

Specifications

A description of what the purchaser seeks to buy or accomplish - and consequently what a bidder must be responsive to in order to be considered for award of a contract. May be a description of the physical or functional characteristics, or the nature of a supply or service. May also include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

B. Summary Tables

City of Washougal Contract Requirements

Public Works Projects

Procurement Process	Estimated Cost	Quotes	Formal Bids	Ad & Public Bid	Bid Bond	Council Approval	Retainage	Performance & Payment Bonds	Intents & Affidavits	Notice of Final Acceptance	Notice of Completion
MRSC Small Works Roster	\$0- \$50,000	3 or more - ITB	No	No	Waived	City Manager May Sign Contract	Yes if over \$35k	Waived	Yes	No	Yes if over \$35k
	\$50,001- \$250,000	5 or all on the roster	No	No	Yes	Council Authorization of City Manager's signature required if project not named in the budget	Yes	Yes	Yes	Yes	Yes
	\$250,001- \$350,000	5 or all on the roster & email notice to all on roster that the work is being solicited.	No	No	Yes	Council Authorization of City Manager's signature required if project not named in the budget	Yes	Yes	Yes	Yes	Yes
Formal Sealed Bid	\$350,001 & Over	Cannot use Roster - Formal Sealed Bid Opening Only	Yes	Yes	Yes	Council Authorization of City Manager's signature required if project not named in the budget	Yes	Yes	Yes	Yes	Yes

*Grant Monies/ Outside Funding may require formal sealed bid procurement for amounts smaller than \$350k

City of Washougal Contract Requirements

Architecture and Engineering (A/E) Professional Services

Procurement Process	Estimated Cost	Quotes	Formal Bids	Ad	Bid Bond	Council Approval	Retainage	Performance & Payment Bonds	Intents & Affidavits	Notice of Final Acceptance	Notice of Completion
Minimal Threshold	Assumed Contract Budget of \$10k or less	May directly select the single most qualified A/E consultant off the roster to request a cost estimate for services	No	MRSC Consultant Roster	Not Applicable	City Manager May Sign Contract					
Informal	Assumed Contract Budget between \$10k & \$50k	Email 3-5 qualified consultants from the roster soliciting no-cost proposals	RFP	MRSC Consultant Roster	Not Applicable	City Manager May Sign Contract			Not Applicable		
Formal	Any outside funding or assumed contract budget greater than \$50k	Full RFQ advertised in paper, interview 3-5 most qualified consultants, negotiate final scope with cost with most qualified consultant	RFQ	Advertise RFQ in Newspaper & Website	Not Applicable	Council Authorization of City Manager's signature required if project not named in the budget					

City of Washougal Contract Requirements

Materials, Supplies, Equipment (Unrelated to Public Works Projects/Construction, Services, A/E)

Procurement Process	Estimated Cost	Quotes	Formal Bids	Ad	Bid Bond	Council Approval	Retainage	Performance & Payment Bonds	Intents & Affidavits	Notice of Final Acceptance	Notice of Completion
May use small purchase process	\$0 - \$7,500	Obtain 3 quotes and purchase	No	No	Not Applicable	Department Head may authorize budget for purchase if not named in the budget	Not Applicable				
May use a vendor Roster or formal competitive bid	\$7,501 - \$15,000	Must purchase from lowest responsive and responsible bidder	Maybe	Maybe		Department Head may authorize budget for purchase if not named in the budget					
Must use formal competitive bid	> \$15,001+	ITB Advertised in Newspaper and on Website	Yes	Yes		Council Authorization of required if purchase is greater than \$50k and not named in the budget					