NEW LEGISLATION: Effective July 28, 2019, ESSB 5418 increases the small works roster and limited public works thresholds, as well as making other changes to procurement law. We will be updating this publication soon to reflect this new information.
Small Works Roster A guide for Washington’s local governments

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

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Introduction

This manual explains the Washington laws related to the use of a small public works roster for awarding public works contracts. This edition is published in two formats: this Small Works Roster guide in Adobe PDF format which can be viewed online and/or printed by the user; and an online version – that will be updated as new and better sample documents become available.
Quick Tips for Small Works Roster Success

So, you think your agency needs to do a small works roster (SWR) contract? Follow these quick tips for getting started.

1. **Does your projected need feel like a public works project?**
   Check out the Definitions (page 10), and Maintenance vs. Public Works (page 12).

2. **If it is a public works project, is it an emergency?**
   Check out Public Works Contracting in an Emergency (page 28).

3. **If it is a public works project, then what is the estimated cost?**
   Check out Cost Estimates (page 33), and then use the Public Works Contracting Flow Chart (page 8).
   
   If the estimated cost exceeds $300,000, you cannot use the SWR process.
   
   If the estimated cost is less than your agency’s Bid Limits (page 15), then you do not need to use the SWR process.

4. **Is your agency authorized to use the SWR process?**
   Check out Authorized Agencies (page 14).

5. **If your agency is authorized to use the SWR process:**
   Follow the checklist on page 7. Does your agency have its own SWR and/or has it considered a shared SWR with other nearby agencies or contracting with MRSC Rosters?
   
   Has your agency adopted a SWR Resolution? See the Model Resolutions in Appendices B and C.
   
   Does your SWR Resolution establish policies and procedures for registering and selecting contractors?

   Does your SWR Resolution establish policies and procedures for requesting quotes and for awarding contracts?

6. **Does your agency have policies and procedures in place for administering SWR projects?**
   Use the SWR Contract Administration Checklist on page 9 and look at the sample procedure/policy documents online in the *Purchasing, Bidding, and Contract Management Sourcebook*. Another checklist is in Appendix B.
As shown in the table *Small Works Roster Legislative History* (see Appendix A), small works procedures began modestly in 1981, with a limit of $25,000. Only four specific state agencies were authorized to use the SWR. In 1991, counties were authorized, with a limit of $100,000. In 1993, the statute was revised to include “all authorized municipalities,” with cities being specifically authorized, in addition to counties. In 2000, the limit was raised to $200,000, uniformly for all authorized state agencies and municipalities. The Legislature raised the limit to $300,000 and changed corresponding notice requirements in Section 2(c), effective on July 26, 2009.
## Small Works Roster Adoption Submittal and Implementation Checklist

### Roster Adoption Checklist

<table>
<thead>
<tr>
<th>Procedure or Document</th>
<th>Date</th>
<th>By</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Option A – Agency Roster</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>We will use our own roster</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council/commission has adopted a SWR for our agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Option B – Shared Roster</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>We will share a roster with</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council/commission has adopted an interlocal agreement for a shared SWR. The agreement must identify a lead agency.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Option C – MRSC Rosters</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>We will contract with MRSC Rosters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council/commission has approved a contract with MRSC Rosters</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Roster Submittal Checklist (for Option A and B Lead Agency)

**Application Form (Paper or Electronics)**

- Contact information, email, telephone, fax, address, and contact person(s)
- Mandatory responsibility criteria per RCW 39.04.350(1)
- Supplemental responsibility criteria per RCW 39.04.3502(2), experience, claims history, safety history, etc.
- Insurance requirements
- Bonding requirements

### Roster Implementation Checklist

- Invitation to Bid (ITB) documents are to be available electronically on
  - Agency website
  - Builder’s Exchange website
  - Other ______
- ITB documents are to be available in paper form at
- ITB notifications will be via email, fax, telephone, other
- For contracts less than $150,000, ITBs are sent to all contractors in a given work category or ITBs are sent to only 5 contractors in a given work category
- For contracts greater than $150,000, ITBs are sent to all contractors in a given work category or ITBs are sent to only 5 contractors in a given work category and we notify all other contractors in a given work category via email, or fax, or publish in paper, or USPS mail
- For contracts less than $35,000 under the limited public works process, ITBs are sent to at least three (3) contractors in a given work category, and our agency will waive payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW
- ITB responses will be accepted via email, fax, telephone, mail, other
- Before a SWR contract is awarded, our ______ will check to be sure that the contractor meets all mandatory and supplemental responsibility criteria

**Notes:** Use not applicable (NA) to mark those items that do not pertain to a given item. Be sure your agency is authorized to use SW.
**Small Works Roster (SWR) Contracting Flow Chart**

**My contract will be for public works/maintenance.**

Is my public works/maintenance contract estimated to cost over $300,000?

- **YES**
  - Use formal competitive bid process, unless the estimated cost is less than your agency’s statutory bid limits.

- **NO**
  - Do the statutes authorize my agency to use the small works roster (SWR) process?

  - **NO**
    - Verify that a contractor meets the mandatory bidder responsibility bidder criteria and any supplemental criteria under RCW 39.04.350 before awarding public works/maintenance contracts.

  - **YES**
    - My agency has created a SWR under RCW 39.04.155 and established policies and procedures for registering and selecting contractors and for awarding contracts.*

      - **YES**
        - If SWR project is estimated to cost less than $35,000, agency can elect to waive performance and payment bonds and retainage under RCW 39.04.155 (3).

      - **NO**
        - Send ITBs to all contractors in a given works category **OR** at least 5 contractors at a time for any given SWR project.

        - If the SWR contract is estimated to cost between $150,000 and $300,000, and an agency sends ITBs to only 5 contractors at a time for any given SWR project, then the agency must notify all other contractors in a given work category.

  - **NO**
    - Commission or council must issue a written finding of existence of an emergency within two weeks.

- **Emergency Public Works Contract**
  - **YES**
    - Waive competitive bidding.

* As an alternative, your agency can subscribe to MRSC Rosters.
## SWR Contract Administration Checklist

**Project:**

**Contractor:**

**Contract Amount:** $

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

<table>
<thead>
<tr>
<th>Statutory</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Award</td>
<td>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. RCW 39.04.010.</td>
</tr>
<tr>
<td>Contract</td>
<td>A contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.</td>
</tr>
<tr>
<td>Municipality</td>
<td>Every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.</td>
</tr>
<tr>
<td>Responsible Bidder</td>
<td>A contractor who meets the criteria in RCW 39.04.350.</td>
</tr>
<tr>
<td>Public Works</td>
<td>All work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is, by law, a lien or charge on any property therein. All public works, including maintenance when performed by contract, shall comply with chapter 39.12 RCW. “Public work” does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).</td>
</tr>
<tr>
<td>Emergency</td>
<td>For purposes of this section “emergency” means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) Will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. RCW 39.04.280(3).</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Other</td>
<td>Definition</td>
</tr>
<tr>
<td>Bid Limits</td>
<td>Dollar amounts below which neither competitive bids, nor the small works roster process, are required for the purchase of equipment, supplies, or materials or for public works projects.</td>
</tr>
<tr>
<td>Competitive Bids (CB)</td>
<td>A competitive process following advertisement in designated legal newspapers and other media for equipment, supplies, material, and public works contracts open to all suppliers, vendors, and contractors, and in which price is the primary basis for consideration and contract award.</td>
</tr>
<tr>
<td>Small Works Roster (SWR)</td>
<td>A process through which there is competition for public works contracts following notification, normally through a request for quotes (RFQ), to some or all public works contractors who have requested placement on a roster kept by the local government agency.</td>
</tr>
<tr>
<td>Invitation to Bid (ITB)</td>
<td>A process through which written or electronic bids are solicited from contractors an agency’s small public works roster for public works contracts in which price is the primary basis for consideration and contract award.</td>
</tr>
<tr>
<td>Small Works Contracts (SWC)</td>
<td>A process through which written or electronic quotes are solicited from contractors for public works contracts with total estimated costs below the bid limits following notification as established by local agency policies, if any, and in which price is the primary basis for consideration and contract award.</td>
</tr>
<tr>
<td>On-Call (Task Order) Contract</td>
<td>An on-call (task order) contract, normally for maintenance or repair work, that does not specify a firm quantity of work to be performed (other than minimum or maximum quantities) and that provides for the issuance of orders for the performance of tasks (work orders) during the period of the contract.</td>
</tr>
<tr>
<td>Public Agency Work or Day Labor Limits</td>
<td>Limits set by the legislature on the amount of public works that can be accomplished using the agency’s own work force or by hiring day laborers. Limits are expressed as specific dollar amounts for single or multiple craft projects and/or as percentages of the public works or road fund budgets. The county road fund statutes have specific county forces road construction limits separate from a county’s general public work construction limits (Chapter 36.77 RCW)</td>
</tr>
</tbody>
</table>
There has been confusion over whether maintenance activities are considered public works in relation to public works bidding and prevailing wage statutes. In addition there has been confusion over the term “ordinary maintenance” as used in the definition of public works in RCW 39.04.010:

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

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

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

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

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

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

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

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

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

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

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**Treat any maintenance performed by contract (even though it is work that an agency may traditionally do), as a public work subject to both bid laws and prevailing wages.**

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

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

- In the context of regulations enforcing chapter 39.12 RCW, WAC 296-127-010(7) (a)(iv) states that a public work includes “maintenance…when performed by contract.”

- So clearly, both public works and maintenance by contract are subject to payment of prevailing wages.

- But, should all the other “baggage” (bid bonds, performance and payment bonds, retainage, bid limits, etc.) of public works contracts apply to maintenance by contract?

- Did Labor & Industries exceed their authority in developing the WAC definition of a public work?

- The important court case (*City of Spokane v. Department of Labor and Industries*, 100 Wn. App. 805 (2000) states:

  Upon certification of the case to the Court of Appeals for direct review, the court affirms the Director’s decision, holding that the maintenance work was "public work" within the meaning of the prevailing wage law and that it did not fall within the statutory exception for "ordinary maintenance."

- This statement seems to support the supposition that maintenance is subject to prevailing wages, but not necessarily to other public works requirements, except that a subsequent passage states:

  We hold that the Director did not err in deciding that AMS work [maintenance] is "public work" subject to prevailing wage law.

- So what is the safest bet for agencies?

  Treat any maintenance performed by contract (even though it is work that an agency may traditionally do), as a public work subject to both bid laws and prevailing wages.

It should be noted that sometime there is a fine line between what is considered maintenance and things that are considered a service (not subject to public works or prevailing wage statutes). MRSC’s *Contracting for Services* publication has more detailed information under the *Purchased Services Definition* heading (page 29).
As noted in the previous section, SWRs may be used “by state agencies and by any local government that is expressly authorized.” RCW 39.04.155(1). The initial step in using a small works roster is to determine if your agency is the type of agency that may use a small works roster process. A small works roster may be used by jurisdictions that are expressly authorized to use a small works roster in lieu of bidding requirements or jurisdictions that do not have bid law requirements for public works projects. Of course, each agency must also comply with any locally adopted procedures for public works projects. If you are not certain if you can use a small works roster, check with your own legal counsel or the legal consultants at MRSC.

If a project is estimated to cost over $300,000, a formal competitive bid process is required. If a project is estimated to cost under $300,000, an authorized local government may use the SWR process. If the estimated project cost is below the agency’s bid limits, the agency may construct the project (subject to individual agency purchasing policies):

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

### Public Works Bid Limit Summary for Authorized Agencies

<table>
<thead>
<tr>
<th>Bid Advertisement Required</th>
<th>Formal Public Bid Opening Required</th>
<th>Bidding Open To</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bids – $300,000 and over</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Quotes – Bid limits to $300,000 (if SWR is used)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Quotes – Below bid limits</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

All licensed contractors

Licensed contractors on SWR

Selected licensed contractors
Contracting bid limits and day labor limits for selected agencies are shown below:

<table>
<thead>
<tr>
<th>Agency</th>
<th>RCW Number</th>
<th>Contracting Bid Limits</th>
<th>Day/Agency Labor Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>First class cities</td>
<td>RCW 35.22.620</td>
<td>None, see <em>City Bidding Book</em>, page 7</td>
<td>$45K, $90K</td>
</tr>
<tr>
<td>Code cities, second class cities and towns</td>
<td>RCW 35.23.352</td>
<td>$40K, $65K</td>
<td>$40K, $65K</td>
</tr>
<tr>
<td>Counties over 400K</td>
<td>RCW 36.32.235 and .250</td>
<td>$40K</td>
<td>$45K, $90K, (see <em>County Bidding Book</em>, page 6)</td>
</tr>
<tr>
<td>Counties under 400K</td>
<td>RCW 36.32.240 and .250</td>
<td>$40K</td>
<td>None (see <em>County Bidding Book</em>, page 6)</td>
</tr>
<tr>
<td>Water and sewer districts</td>
<td>RCW 57.08.050</td>
<td>$20K</td>
<td>$20K</td>
</tr>
<tr>
<td>Fire districts</td>
<td>RCW 52.14.110</td>
<td>$20K</td>
<td>Not allowed</td>
</tr>
<tr>
<td>Port districts</td>
<td>RCW 53.08.120</td>
<td>$300K</td>
<td>Agency policies</td>
</tr>
<tr>
<td>Public utility districts</td>
<td>RCW 54.04.070</td>
<td>$25K</td>
<td>$150K of material</td>
</tr>
<tr>
<td>Public hospital districts</td>
<td>RCW 70.44.140</td>
<td>$75K</td>
<td>$75K</td>
</tr>
<tr>
<td>Housing authorities</td>
<td>RCW 35.82.070</td>
<td>Agency policies</td>
<td>Agency policies</td>
</tr>
<tr>
<td>School districts</td>
<td>RCW 28A.335.190</td>
<td>$100K</td>
<td>$75K</td>
</tr>
<tr>
<td>Metropolitan park districts</td>
<td>RCW 35.61.135</td>
<td>$20K</td>
<td>$20K</td>
</tr>
</tbody>
</table>
Small Works Rosters

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

Exemption from Advertisement Requirements
Public works projects awarded under SWR and Limited Public Works Projects (LPWP) processes are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

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

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

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

Keeping Your Roster Up-to-Date

After contractors submit an initial application, an agency should require them to update their information yearly. The agency also may want to “purge” contractors that do not respond within a given time frame (say 30-60 days) after the updated information is requested. To avoid undue paperwork, the agency can limit the number of times a year that it sends out the request for updated information to every quarter or semiannually, for those contractors whose anniversary date falls within the past three or six months.

Before awarding a contract, an agency should check to see if the contractors still meet the minimum requirements of RCW 39.04.350(1):

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
   (a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
   (b) Have a current state unified business identifier number;
   (c) If applicable, have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and
   (d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
   (e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

Supplemental Criteria for a Small Public Work

RCW 39.04.350(2) allows an agency to establish relevant supplemental bidder responsibility criteria if warranted. Most small public works roster projects do not warrant development and use of supplemental criteria. For more information and sample criteria contact the MRSC Public Works Consultant and/or go to Suggested Guidelines to Bidder Responsibility/Approved by CPARB 10/11/07.

• RCW 39.04.155(2)(a) allows agencies to establish “master” contracts with one or many contractors that become effective when a specific award is made using a small works roster. The master contract would have general and special conditions, with the scope and dollar amounts added at the time of
Sealed bids are not required. Most agencies do not accept electronic quotes, however, because there is no formal signature on the bid unless a certified digital signature is required. One way around that issue is to have the contractor create a PDF file and include a signature. If the contractor has the apparent low quote, the agency can then ask the contractor to submit a signed paper copy prior to its notice of award.

All of the bids should be collected and presented at the same time to the appropriate agency person(s) for consideration, determination of the lowest responsible bidder, and award of the contract.

The governing body may delegate authority to award bids of certain amount(s) to an officer of the agency. Most often, there is a requirement that the municipality ratify the officer’s approval at the next scheduled governing body meeting.

Statutory requirements for advertising for a public works project in formal bid processes (typically 13 days in advance of bid opening) do not apply to a small works roster or limited public works process. Advertising is not required. However, depending on the complexity of the project, 7 to 14 days (or longer) should be allowed for contractors to submit a proposal so that they have adequate time to properly research the specifications.

ITBs may be sent to all contractors in the appropriate small works roster category. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. “Equitably distribute” means that an agency soliciting quotes may not favor certain contractors over other contractors who perform similar services.

However, if the estimated cost of the work is from $150,000 to $300,000, an agency that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the roster that quotations on the work are being sought. At the agency’s sole option, it can accomplish this notice by: publishing notice in a legal newspaper in general circulation in the area.
where the work is to be done; mailing a notice to these contractors; or sending a notice to these contractors by fax or other electronic means. If a contractor is not on an original (short) solicitation list and hears about a project that is estimated at more than $150,000 through the notification process above, the agency is obligated to accept his/her bid.

Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

Limited Public Works Projects
RCW 39.04.155

- An authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than $35,000 using the limited public works project (LPWP) process provided under this statute.

- For LPWPs, an agency is to solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and must award the contract to the lowest responsible bidder as defined under RCW 39.04.010.

- An agency is to attempt to distribute opportunities for LPWPs equitably among contractors willing to perform in the geographic area of the work.

- After an award is made, the quotations must be open to public inspection and available by electronic request.

- An agency is to maintain a list of the contractors contacted and the contracts awarded during the previous 24 months under the LPWP process, including the name of the contractor, the contractor’s registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

- For LPWPs, an agency may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor’s nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the LPWP.

- However, the agency has the right of recovery against the contractor for any payments made on the contractor’s behalf.

Small Business Incentives
RCW 39.04.155

- An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

- A agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under $250,000 annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

Practical Considerations

1. If an agency contacts five firms on its small works roster, but receives less than five quotes, it is acceptable to award to the contractor with the lowest of those quotes received.

2. Bid guarantees are not required for SWR projects, but may be desirable for larger projects as the firm with the low quote may refuse the work after the bids of the other contractors are known, or fail to put reasonable effort into the bid preparation.

3. A small works roster does not eliminate the need for contract documents, performance and payment bond, contract, specifications, retainage, etc., unless the agency is using the LPWP process provided under RCW 39.04.155(3).
Shared Small Works Rosters

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

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

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

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

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

Bid Guarantees
A bid guarantee is used to discourage bidders from failing to enter into a contract if it is awarded to them. The awarded bidder forfeits the guarantee amount should they decline to enter into a contract. Unlike performance and payment bonds, which are required uniformly of all agencies for all public works contracts, bid guarantee requirements are set in an agency’s enabling statutes, many of which do not require a bid guarantee. For cities and counties, for example:

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

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

- First class cities do not have a direct requirement for bid bonds in their statutes (RCW 35.22.620), but almost all cities require them.

- Port districts, in RCW 53.08.130, are required to request a five percent proposal deposit, as are water/sewer districts in RCW 57.08.050.

- School districts and fire districts have no apparent bid bond requirement.

MRSC has advised that bid guarantees are not required for SWR contracts by either cities or counties, but has not done a similar analysis for other types of agencies.

Retainage and Performance Bonds
Retainage is that amount of money withheld from a contractor for a public improvement or work until completion and/or acceptance of the contract. A performance bond is a guarantee by a surety that the contractor, or the surety itself, will complete a project. Similarly, a surety is to guarantee payment of laborers, materialmen, etc., under the contract.

For public works projects, a municipal government must withhold retainage and must also have a contractor’s performance and payment bond on file. For public works contracts under $35,000, these requirements may be waived completely under the limited public works process in RCW 39.04.155(3).
• RCW 60.28.011 requires municipal governments to withhold five percent of money due the contractor – exclusive of sales taxes, per a DOR Tax memo – for a public improvement or work until completion and/or acceptance of the contract. This money is to be set aside as a trust fund for the protection and payment of anyone who performs labor, provides materials, supplies, or equipment or subcontracts to the prime contractor. In addition, the state Department of Revenue (DOR), state Employment Security Department (ESD), and state Department of Labor and Industries (L&I) all have lien rights against this fund for payment of unpaid taxes under Titles 82 (excise taxes), 50 (industrial insurance), and 51 (unemployment compensation) RCW, respectively. Priority of claims against the retainage is:

1. Workers not paid prevailing wages
2. Department of Revenue – taxes due on the public works project
3. Department of Revenue – taxes due on other public works projects
4. ESD and L&I for taxes due on the public works project
5. Subcontractors and suppliers on the public works project
6. Other taxes due (ESD, L&I for taxes due on other projects and/or other taxes)
7. The agency

• Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

• RCW 60.28.011(4) describes three options for placement of retained funds until they are released to the contractor. Most agencies require the contractor to indicate his/her preference on a form at the time the contract is signed.

• RCW 60.28.011(6) allows a contractor to submit a retainage bond for all or any portion of the contract retainage in a form acceptable to the agency and from a bonding company meeting standards established by the public body.

• An agency normally withholds funds in the amount of five percent of each partial payment or monthly progress payment, which are then deposited in the designated account. Note that the maximum retainage is five percent. If it becomes obvious, during the contract, that subcontractors, materialmen, or laborers are not being paid appropriately and that liens are filed in amounts exceeding the retained amount, the agency cannot withhold additional retainage.

• At any time (RCW 60.28.011(3)), the contractor may request that the contract retainage be reduced to 100 percent of the remaining contract.

- After completion of all contract work, other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract. Sixty days thereafter, the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.
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.

Subcontractor Payment

If an agency hears that subcontractors haven’t been paid, it should listen sympathetically and bring this knowledge to the attention of the contractor. As the agency has no contractual relationship with subcontractors, etc., it cannot pay them directly. At this point, consultation with the agency’s legal counsel is essential. One tactic is to have the contractor deliver cashier’s checks to the agency, to be mailed to claimants at the same time the contractor receives his progress payments. This should assure that subcontractors receive timely payment.

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

- The penalty for failure to call for a performance and payment bond (RCW 39.08.015) is that the municipal corporation is liable to the persons mentioned in RCW 39.08.010 to the full extent and for the full amount of all such debts so contracted by such contractor.

- Required performance and payment bonds are normally furnished on agency supplied forms. This form, or any proposed substitute form, should be reviewed by the agency’s legal counsel and risk manager before the contract is signed.

- RCW 39.08.010 states that on contracts of $35,000 or less – at the option of the contractor – the agency may, in lieu of a performance and payment bond, retain 50 percent of the contract amount for a period of 30 days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

- RCW 39.08.030 provides that the performance and payment bond will be in the amount of 100 percent of the contract amount, except that cities and towns may, by ordinance, fix and determine the amount of the bond. However, the bond set by ordinance cannot be for less than 25 percent of the contract amount.

- RCW 39.08.030 also provides that anyone who has a claim against the bond must file such a claim within 30 days from, and after, the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, officer, or body acting for the agency.
Sales Tax Issues

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

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

- Labor and services for the processing and handling of sand, gravel, and rock taken from city and/or county pits and quarries when the material is for public road projects. RCW 82.08.0275.

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

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

Practical Considerations

1. When developing contract documents, it may be useful, in the bid proposal (bid item listing), to group those items that are subject to sales tax. Then, in a separate line item labeled “sales tax,” reference that group, making it clear that in all other bid items, sales and use taxes, as applicable, are to be included in the unit price or lump sum bid.

2. If an agency furnishes materials to a contractor for use in public works contract, it either must have paid applicable sales tax on the items furnished, or must specifically instruct the contractor to pay use taxes on the items.

3. Labor and services in the construction of a pedestrian pathway in a park are probably not exempt from sales and use tax. RCW 82.04.050(7) does exempt any "street, place, road . . . easement, right of way . . . which is used or to be used primarily for foot or vehicular traffic." However, the Department of Revenue believes that any such path or sidewalk must be in the street right-of-
way to qualify for the exemption. Similarly, unless a public parking lot is used for mass transit, it is not exempt.

The Department of Revenue has a very good online discussion of taxes due on public roads construction at http://dor.wa.gov/content/doingbusiness/businesses/types/industry/construction/default.aspx#PublicRoadConstruction.
Prevailing Wages

Payment of prevailing wages under chapter 39.12 RCW in Washington State applies to all public works contracts accomplished through competitive bidding or the small works roster. It also applies to smaller public works contracts for which the contractor was simply chosen for any number of good reasons, and to maintenance contracts of any nature and for any amount.

Prevailing Wage Principles

- Contractor must be told in advance that prevailing wages must be paid to all employees who work on the contract.

- Prevailing wages in effect for the contract must be included in the contract documents.

- Contractor must file a Statement of Intent to Pay Prevailing Wages with the Industrial Statistician of the Department of Labor and Industries (L&I). The agency must have a copy of the L&I-approved Statement of Intent before it can make payments under the contract.

- After completion of the contract, the contractor must file an Affidavit of Wages Paid with L&I’s Industrial Statistician. The agency must have a copy of the L&I-approved Affidavit before it can release the contract retainage. DLIS has automated this process so that Intents and Affidavits can be filed online and an agency can be notified automatically if desired. An agency can check the contractor’s filing status online at any time.

- For contracts under $2,500, RCW 39.12.040 and WAC 296-127-050 provide that the Statement and Affidavit (no fees) may be combined and payment made by the agency without prior DLIS approval. For contracts under $35,000 where the limited public works process under RCW 39.04.155(3) is followed, a different combined form (for which fees are required) can be used.

- If a contract’s funding includes both state and federal funds, both sets of prevailing wage rates and reporting requirements must be met. The higher of the two wage rates must be paid. Do not assume that L&I and the U.S. Department of Labor will accept each other’s paperwork, or that they coordinate their efforts.

- Have your field inspectors note all employees, by name and work performed, who appear on the job site. Have them ask to see apprenticeship cards and note if journeymen are present. Have someone meet, at least monthly, on a random basis with contractor/subcontractor employees to check
payroll stubs against the prevailing wage rates.

Note the MRSC Project Closure/Retainage Release Guidelines in Appendix E and sample Retainage Release Checklist in Appendix F. Also, note Appendix I: April 2013 Notice of Completion for Projects Over $35,000.

Prevailing Wage Program Changes Effective April 1, 2013

If all of the affidavits are not listed on the NOC, the NOC will be returned to the public agency. Previously, if L&I received a NOC and could not find an Affidavit of Wages Paid on file for all contractors, L&I would attempt to reach the contractors and remind them to file. This time-consuming effort caused significant delays for other customers.

In an effort to speed up the process, L&I changed its practice on April 1, 2013, and returns any NOC that does not list all corresponding affidavit numbers for the project. L&I will notify the public agency and provide information as to what the problem is, how to resubmit the NOC, and request they inform the general contractor of the issue.
Small Works Contracting in an Emergency

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

**Washington State Statutes**

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

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

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

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

Note the following scenario:

Late Friday afternoon, Paul McCartney, your Sewer Superintendent, reports a serious sewer main break on Penny Lane. It needs to be fixed immediately to protect the Yellow Submarine deli, and other businesses, from obvious health threats. The estimated cost, including applicable sales and use taxes, is $65,000. (What if the estimated cost is $305,000?) Led Zeppelin Construction (LZC) and his utility subcontractor, Gary Puckett, are working nearby on a private project, and are willing and able to help.

**Even though LZC is close, you may want to see if there are contractors on your SWR who can mobilize almost as fast, as they may already have insurance certificates, etc. on file.**
What things do not need to happen before LZC begins work?

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

Do you need to get bids before they start?

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

If not, how do you track and pay for force account work?

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

Should you have a contract in place beforehand?

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

Do you need a performance and payment bond?

Yes, just as soon as you can get one!

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

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

How much insurance do you need?

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

Do prevailing wages apply?

Yes!

When do you tell the contractor prevailing wages need to be paid and how much need to be paid?

Before the contractor starts work. Download prevailing wages for anticipated worker classifications from the L&I website.

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

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

Do you need to withhold retainage?

Yes.

Do you need to notify the Department of Revenue, Employment Security Department, and Industrial Insurance Division?

You need to send a Notice of Completion (NOC) to all three agencies if the contract is over $35,000. Use the most current version of the NOC.

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

RCW 39.04.280(2)(b) says:

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

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

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

Local officials, by resolution, make a local proclamation or declaration of emergency to authorize use of local resources, the expenditure of local funds, and to waive the usual bidding process for goods and services.
The term “Really Small Public Works Projects” is an MRSC convention. There are no statutory references. See Bid Limit Numbers table. For projects less than the bid limits, there is no requirement to seek multiple quotes, but most agencies do so anyway – down to some practical limit, which varies by agency. Kirkland, for example, allows informal (single) bids for projects less than $7,500, as does Woodland. Certainly, for projects less than $2,500, all but the most conservative agencies should allow their staff to simply call up someone, get a quick written or documented telephone bid, and, if the bid is reasonable, tell them to go do the work.

<table>
<thead>
<tr>
<th>Bid Limit Numbers</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Competitive Bids</td>
<td>Over $300K</td>
</tr>
<tr>
<td>Small Public Works Roster (SWR) Bids</td>
<td>Under $300K</td>
</tr>
<tr>
<td>Multiple Craft Bid Limit (SWR Optional)</td>
<td>See Bid Matrix</td>
</tr>
<tr>
<td>Single Craft Bid Limit (SWR Optional)</td>
<td>See Bid Matrix</td>
</tr>
<tr>
<td>Practical No Bid Limit</td>
<td>Under $10K? $20K?</td>
</tr>
<tr>
<td>Really Practical No Bid Limit</td>
<td>Under $2,500</td>
</tr>
<tr>
<td>Intents and affidavits required for all contracts, regardless of size.</td>
<td></td>
</tr>
</tbody>
</table>

The above discussion covers only the methods of getting (or not getting) bids or quotes. The other element to consider is whether to require performance and payment bonds and retainage for all contracts. Above $35,000, a city has no choice: it must require both. The two statutory allowances for not requiring one or the other for projects less than $35,000 are shown in the table called Retainage/Bonding/Closeout for Projects Less Than $35K.

### Retainage/Bonding/Closeout for Projects Less Than $35K

<table>
<thead>
<tr>
<th>RCW 39.04.155(3)</th>
<th>Limited Public Works Project – Can waive Retainage and/or P/P Bonds*</th>
<th>Under $35K</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Must have and use SPWR</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| RCW 39.08.010    | Waive P/P Bonds and Hold 50% Retainage until 30 days after completion** | Under $35K |
| **At contractor’s option                               |

Notices of Completion to DOR, H, ESD are not required |

Under $35K

Again, there are practical thresholds of contract cost below which it is too cumbersome to ask for bonds and retainage. Very few agencies will waive both, except for really small contracts. Most contractors opt (for projects less than $35K) to waive the bond requirement and do 30 days and 50 percent retainage. This is the time frame in which most agencies actually process payments. Again, for projects less than $2,500, all but the most conservative agencies should allow their staff to simply call up someone, get a quick written or docu-
mented telephone quote, and, if the quote sounds reasonable, tell them to go do the work – and allow them to waive both bonds and retainage. The dollar volume of risk for these contracts is minimal to begin with, and there are safeguards (example: requiring paid invoices for supplies and materials to be attached to the project invoice) that an agency can use to protect itself.
Cost Estimates

Before a project is advertised, or quotes sought under SWR processes, an engineer’s (cost) estimate is needed. For larger projects this needs to be by a registered professional engineer. For smaller projects, an estimate by knowledgeable staff will suffice. For really small projects a tradesman’s estimate may suffice. Note that RCW 39.04.020 requires that “plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the director, supervisor, commissioner, trustee, board, or agency.”

RCW 39.04.040 requires that “work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.”

For bidding purposes, cost estimates should include all construction related work, but not engineering/architectural design fees, contract administration costs, and construction inspection/testing.

Also note these statutes:

RCW 39.04.050 Contents of original estimates.

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

RCW 39.04.060 Supplemental estimates.

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

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

Competitively Bid Public Works (CBPW) Projects
Also known as “Design-Bid-Build.”
- Over $300,000 (but can be for smaller projects)
- Formal advertisement
- Bid guarantees
- Sealed bids
- Public bid opening
- Formal award
- P/P bonds required
- Retainage required
- Payment of prevailing wages

Small Works Roster (SWR) Projects
- Under $300,000
- No advertisement required, just notice to SWR
- Bid guarantees optional
- Electronic, faxed, or telephone quotes allowed
- Informal bid opening(s)
- Award can be delegated
- P/P bonds required
- Retainage required
- Payment of prevailing wages

Limited Public Works (LPW) Projects
- Under $35,000
- No advertisement required, just notice to SWR
- Bid guarantees optional
- Electronic, faxed, or telephone quotes allowed
- Informal quote opening(s)
- Award can be delegated
- P/P bonds can be waived
- Retainage can be waived
- Payment of prevailing wages

Really Small Public Works Projects
Less than an agency’s bid limits.
- Under agency’s bid limits
- No SWR required
- No advertisement required
- Bid guarantees optional
- Electronic, faxed, or telephone quotes allowed
- Informal bid opening(s)
- Award can be delegated
- Payment of prevailing wages
- P/P bonds and retainage may not be needed
  - If single payment will be made after work is completed
PROJECT COST PARAMETERS
"Design – Bid – Build"

FROM Management of Public Works Construction, by James L. Martin, P.E., APWA, 1999

Used with Permission
Appendix A: Small Works Roster Statute

Legislative History
Appendix B: Port of Olympia Small Works Roster Checklist
Appendix C: Model Small Works Roster Resolution
Appendix E: MRSC Project Closure/Retainage Guidelines
Appendix F: Sample Retainage Release Checklist
Appendix G: WAC 458-20-171 Matrix
Appendix H: April 2013 Notice of Completion for Projects Over $35K
Appendix I: Sample SWR Notifications