

Att-4



City of Bothell™

City of Bothell
PROCUREMENT POLICY
Purchasing Guidelines

Effective Date: October 14, 2006
Amended Date: March 15, 2008
Amended Date: April 17, 2010



City of Bothell™

**Prepared by the Finance Department
In Coordination with the
Purchasing Policy Committee**

Community Development
Julie Ewijk

Executive Department
Cecelia Duncan
JoAnne Trudel
Joe Sherman

Finance Department
Dave Buzard
Donna Bartholomew
Joe Kinney
Laura Princic
Maureen Werts
Tami Schackman
Ted Reijonen

Fire Department
Frank Shasky

Human Resources Department
Sue White

Legal Department
Michael Weight

Police Department
Laura Wood

Public Works Department
Amanda Emerson
Clark Meek
Debbie Anspaugh
Eddie Low
Pat Parkhurst

Table of Contents

SUBJECT MATTER	EXPECTED TOTAL COST (including sales tax, freight)	SECTION
General - Purpose, Objectives, Scope, Controlling Laws		1.0
Determining Total Purchase Cost		2.0
Contract Approval Levels:		3.0
<ul style="list-style-type: none"> ▪ Supplies, Equipment, Non-Professional Services, and Information Services 	Less than \$30,000 - Department Director \$30,000 to less than \$100,000 - City Manager \$100,000 or more - City Council	3.1
<ul style="list-style-type: none"> ▪ Legal Services 	Less than \$30,000 - City Manager \$30,000 or more - City Council	3.2
<ul style="list-style-type: none"> ▪ Public Works and Professional Services (non-legal) 	Less than \$50,000 - City Manager \$50,000 or more - City Council	3.3
Cost Threshold Requirements - Supplies, Equipment, Non-Professional Services, and Information Services		4.0
	Less than \$10,000	4.1
	\$10,000 or more, less than \$30,000	4.2
	\$30,000 or more, less than \$200,000	4.3
	\$200,000 or more	4.4
	Purchasing from auctions	4.5
	Surplus items from other agencies	4.6
	Services from other agencies	4.7
Public Works Projects		5.0
Professional Services		6.0
Architectural, Engineering, & Design Services		7.0
Competitive Bidding Procedures		8.0
Emergency or Sole Source Purchases		9.0
Intergovernmental Cooperative Purchasing Agreements (“Interlocals”)		10.0
Vendor Relations		11.0
Vendor Appeals		12.0
Sale or Disposal of City Property		13.0
Compliance with Policy		14.0
Summary of Purchasing Guidelines		15.0
Glossary		16.0

*Definitions for *italic colored* text can be found behind the Glossary tab.

1.0 GENERAL

1.1 Purpose

This document is intended to direct the purchase of goods and services at a reasonable cost. An open, fair, documented, and competitive process is to be used whenever reasonable and possible. The purchasing function's integrity, efficiency, and effectiveness are critical elements of sound government.

1.2 Objectives

The objectives of the City's purchasing program are as follows:

- To provide a uniform system to obtain supplies, materials, equipment, and services in an efficient and timely manner;
- 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;
- To comply with the comprehensive State procurement statutes which govern expenditures of public funds;
- To promote use of recycled materials and products, and dispose of surplus and scrap materials with regards to cost savings and the environment.

1.3 Scope

These guidelines apply to purchases of:

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

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.

1.4 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.

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

2.0 DETERMINING TOTAL PURCHASE COST

2.1 Use Anticipated Cost

The anticipated annual need for a good or service (when it can reasonably be projected) shall be used to determine the cost of that good or service, and thus which contract approval level, cost threshold, and other related purchasing requirements apply.

2.2 No "Bid Splitting"

Requirements shall not be divided to come up with a lower total cost to avoid contract approval levels or competition requirements. If one item being purchased requires another item to "make a whole", the total accumulated costs of the two items (when they can reasonably be projected) should be considered together to determine which approval level and cost threshold apply, unless the two items are not available from a single supplier.

Example: Replacement carpeting is being purchased for a conference room. The cost of the carpet **and** the pad (and installation, if applicable) would be considered together to compute the cost of the replacement.

2.3 Costs to Include

Include costs such as taxes, freight, and installation charges when determining which cost threshold applies. Do not include the value of a trade-in. (Trade-in value should be considered, however, to determine the lowest bid when competitive bidding is used.)

2.4 Include Total Quantity Needed

Requirements for the total quantity of an item (when they can reasonably be projected) should be considered when determining which cost threshold and related purchasing requirements apply.

2.5 Multiphase Programs

If a project is to be completed in phases, the total accumulated cost for all phases should be considered when determining which cost threshold applies.

3.0 CONTRACT APPROVAL LEVELS

These approval levels are designed for contracts whose costs are covered by budget appropriations previously approved by the City Council. Contracts requiring additional appropriations must be approved by the Council.

3.1 Supplies, Equipment, Non-Professional Services, and Information Services

3.1.1 Less Than \$30,000

Contracts in this price range are to be approved by the Department Director.

3.1.2 \$30,000 or More, but Less Than \$100,000

Contracts in this price range are to be approved by the City Manager.

3.1.3 \$100,000 or More

Contracts in this price range are to be approved by the City Council.

3.2 Legal Services

3.2.1 Less than \$30,000

Contracts in this price range are to be approved by the City Manager.

3.2.2 \$30,000 or more

Contracts in this price range are to be approved by the City Council

3.3 Public Works Projects and Professional Services (except legal services)

(See section 5.0 for information on what constitutes a public works project, and section 6.0 for information on what constitutes a professional service.)

3.3.1 Less than \$50,000

Contracts in this price range are to be approved by the City Manager. The City Manager will give the City Council the scope of services for contracts between \$30,000 and \$50,000.

3.3.2 \$50,000 or more

Contracts in this price range are to be approved by the City Council.

4.0 COST THRESHOLD REQUIREMENTS - SUPPLIES, EQUIPMENT, NON-PROFESSIONAL SERVICES, AND INFORMATION SERVICES

The following cost thresholds apply for purchases of supplies, equipment, non-professional services, and information services.

They do not apply to the purchase of services that are considered to constitute a *public work* - see section 5.0 on public works projects.

They also do not apply to the purchase of *professional services* (including architectural or engineering services) - see section 6.0 on professional services and section 7.0 on architectural and engineering services.

Refer to section 9.0 in situations involving *sole source* or *emergency* purchases.

4.1 Less Than \$10,000 - Direct Negotiation

Purchases in this price range may be entered into through direct negotiation. Competition is not required, though departments should still make every effort to receive the best price possible.

4.2 \$10,000 or More, but Less Than \$30,000 - 3 Quotes Needed

For purchases in this price range, at least three quotes shall be obtained. Quotes may be obtained by telephone or in writing.

4.3 \$30,000 or More, but Less Than \$200,000 - Competitive *Bids*

For purchases in this price range, competitive bids shall be obtained from an adequate number of sources so as to ensure competition. Bids do not need to be sealed, but shall be in writing. See section 8.0 on competitive bidding for a detailed description of the procedures to be followed.

4.4 \$200,000 or More - Competitive *Sealed Bids*

For purchases \$200,000 and up, competitive bids shall be obtained from an adequate number of sources so as to ensure competition. Bids for purchases at this level shall be sealed. See section 8.0 on competitive bidding for a detailed description of the procedures to be followed.

4.5 Auctions

RCW 39.30.045 allows for the purchase of any supplies or equipment at auctions rather than through competitive bidding, if the items can be obtained at a competitive price.

4.6 Purchasing Surplus Property from Other Governmental Agencies

RCW 39.33.010 allows for the purchase of surplus property from other governmental agencies without regard to bid laws.

4.7 Contracting For Services with Other Governmental Agencies

RCW 39.04.080 authorizes one public agency to contract with another public agency to perform any function which each agency is authorized by law to perform itself.

5.0 PUBLIC WORKS PROJECTS

As defined in RCW 39.04.010, *public works* include (but are not limited to) all work, construction, alteration, repair, or improvement (other than *ordinary maintenance*, engineering analysis, and design and other professional services) executed at the City's cost, or which is by law a lien or charge on any property therein.

5.1 Defining Project Cost

RCW 35.22.620 defines the cost of a public works project as "the costs of materials, supplies, equipment, and labor on the construction of that project."

5.2 Small Works Roster

RCW 39.04.155 authorizes cities to use a small works roster to award public works contracts of less than \$300,000.

Using a small works roster provides a streamlined method for soliciting competitive bids for public works projects costing less than \$300,000.

A small works roster consists of all responsible contractors who have requested to be listed, and that (where required by law) are properly licensed or registered to perform such work in Washington.

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

5.3 Cost Thresholds - Public Works (Using Small Works Roster)

All contracts are to be awarded to the lowest responsible bidder. RCW 39.04.350 outlines criteria that a bidder must meet in order to be considered responsible.

5.3.1 Less Than \$35,000: Solicit quotes from a minimum of three contractors appearing on the roster.

5.3.2 \$35,000 or More, But Less Than \$150,000: Solicit quotes from at least five contractors on the roster, in a manner that will equitably distribute opportunities among contractors on the roster.

"Equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

5.3.3 \$150,000 or More, But Less Than \$300,000: Solicit quotes from at least five contractors on the roster, and notify the remaining contractors on the roster that quotes on the work are being sought. This notice can be made by:

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

5.4 Cost Thresholds - Public Works (NOT Using Small Works Roster)

Public works projects shall be awarded by competitive sealed bidding if the small works roster is not used. City employees may perform public works projects in accordance with the limitations outlined in section 5.5.

5.5 Public Works Performed By City Employees

RCW 35.22.620 allows City employees to perform public works projects, but the amount they are allowed to perform is limited in two ways:

- The total amount of public works performed by City employees is limited to 10% of the City’s total Public Works construction budget during a given budget period; and
- City employees are not permitted to perform projects exceeding \$45,000 (single craft/trade) or \$90,000 (multiple crafts/trades).

Work performed within the City by other public employees under an interlocal agreement shall also be included in these limits.

RCW 35.22.620 also requires the City to prepare a report for the State Auditor’s Office each budget period that indicates:

- The total Public Works construction budget;
- The total construction costs of public works performed by public employees;
- The amount of public works that is performed by public employees above or below 10% of the total construction budget.

5.6 Prevailing Wages

The City is required by RCW 39.12.040 to require contractors to pay *prevailing wages* on all public works contracts.

A “Statement of Intent to Pay Prevailing Wages” must be received from a contractor before any payment is made, and an “Affidavit of Wages Paid” must be received following final acceptance of the work.

5.7 Performance and Payment Bonds

RCW 39.08.010 mandates that the City require a performance bond for every public works contract. This ensures that the job will be completed and that all workers, suppliers, and subcontractors will be paid.

The bond shall be executed by a surety company authorized to do business in Washington State, in an amount equal to 100% of the price specified in the contract.

For contracts of \$35,000 or less, the City is allowed (at the option of the contractor) to forego requiring a performance bond. Instead, the City may retain 50% of the contract for 30 days after final acceptance, or until receipt of all necessary releases from the Department of Revenue, Department of Labor & Industries, and Employment Security Department, and settlement of any liens filed under RCW 60.28 (whichever is later). The intent of this exception is to assist small contractors who may have difficulty securing a bond.

RCW 39.08.015 subjects the City to claims of "laborers, materialmen, subcontractors, and mechanics" if the required performance bond is not obtained.

5.8 Public Works Contracts over \$1 Million

RCW 39.30.060 specifies that in order for their bid to be considered responsive, every bidder for a public works contract of over \$1 million must submit (either with their bid or within one hour of the bid submittal time) the names of all subcontractors that will be used for heating, ventilation and air conditioning, plumbing, and electrical work.

5.9 Change Orders

Change orders are to be approved in accordance with the cost thresholds outlined in this section, provided that the changes do not increase the project's cost in excess of previously approved budget appropriations.

The City Council must approve any change order that increases a project's cost beyond previously approved budget appropriations.

Contract total remains below \$300,000 - Change orders are to be approved by the City Manager.

Contract total moves to \$300,000 or more, but the total cumulative amount of change orders is 10% or less - Change orders are to be approved by the City Manager.

Contract total moves to \$300,000 or more & the total cumulative amount of change orders is more than 10% - Council must authorize the City Manager to approve the revised contract.

6.0 PROFESSIONAL SERVICES

Professional services are services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement.

They include, but are not limited to:

- Architectural, engineering, or design services
- Accounting and auditing
- Bond or insurance brokerage
- Consulting services
- Legal services
- Real estate appraisal or title abstracts
- Relocation assistance
- Surveying
- Soils analysis or core testing

6.1 Competitive Process

A competitive process is not required for professional services, other than professional architectural or engineering services for the design of City improvements (see section 7.0 for procedures to be followed when obtaining these services). The contract approval levels outlined in section 3.0 still apply.

6.2 Contract Amendments

The City Manager may execute an amendment to a professional services agreement without City Council approval, provided that the amendment:

- Simply extends the time of completion for a project. Such an extension can be for up to six months.
- Provides for a cost increase that does not exceed 10% of the original contract cost (or \$50,000, whichever is greater), and is supported by the City's budget.
- Is solely for "On-Call" services to ensure compliance with City Codes and Regulations by development applications and studies associated with development applications, when the cost of the work performed is recovered from applicant reimbursements or application fees.

7.0 ARCHITECTURAL, ENGINEERING, AND DESIGN SERVICES

RCW 39.80 outlines the requirements for obtaining professional architectural or engineering services. The requirements outlined in RCW 39.80 as stated in these guidelines, or as may be amended by the State Legislature, must be carefully followed.

7.1 Advertisement

Professional engineering or architectural services requirements should be published in the City's official newspaper, and in any other media reasonably likely to attract sufficient numbers of potential service providers.

The announcement should state concisely the general scope and nature of the project or work for which the services are required, and the contact information for a City representative who can provide further details.

Announcements should occur either by:

- Advertising an announcement for a specific project on each occasion when professional engineering or architectural services are required.
- Advertising a general announcement for the City's projected requirements for any category or type of engineering or architectural services.

The City encourages architectural and engineering firms to submit a statement of qualifications and performance data annually. When services are needed, the City will evaluate current statements of qualifications and performance data on file along with those submitted by other firms regarding a proposed project.

7.2 Contract Negotiations

Discussions will be conducted with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Using criteria established by the City for the project, category, or type of services needed, a professional services contractor will be selected that is deemed to be the most highly qualified to provide the services required for the proposed project.

The City will negotiate a contract with the most qualified firm at a price that the City determines is fair and reasonable. In making its determination, the City will take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the service to be provided. If the City is unable to negotiate a satisfactory contract with the firm selected at a price that is determined fair and reasonable, negotiations with that firm will be formally terminated. Another firm will then be selected and the process continued until an agreement is reached or the process terminated.

Contracts for these services will be approved in accordance with the contract approval levels outlined in section 3.0.

8.0 COMPETITIVE BIDDING PROCEDURES

8.1 Public Notice

While state law does not contain any detailed requirements for public notice, good business practice calls for using a notification process that will reach the most contractors and allow enough time for responsive bids to be prepared.

Advertisements for bids should include the following items:

- Title of the project
- Nature and scope of the work
- Where contract documents (plans, *specifications*) may be obtained
- Cost to obtain a set of contract documents
- Place, date, and time that bids are due
- Statement that a *bid bond* must accompany the bid
- Statements that the City retains the right to reject any or all bids, and to waive minor irregularities in the bidding process

8.2 Bid Specifications

Bid *specifications* should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. Such descriptions should not contain features that unduly restrict competition.

When it is impractical or uneconomical to make clear and accurate description requirements, a “brand name or equal” description may be used. The responsibility of demonstrating to the City’s satisfaction that a product is “equal” to that specified shall be on the vendor proposing the substitution.

Requests for approval of substitutions must be made with sufficient time to allow the City to adequately review the proposal, including time for vendors to respond to questions and requests for additional information or clarification. **The City has no obligation to accept proposed substitutions.**

Acceptance of a substitute product proposed as an “equal” to that specified will be made in writing. If this acceptance occurs prior to the bid, other bidders will be notified to the extent practical.

8.3 Award

The contract will be awarded to the lowest *responsive* and *responsible bidder* whose bid meets the requirements and criteria included in the invitation for bids. RCW 39.04.350 outlines criteria that a bidder must meet in order to be considered responsible.

When a trade-in option exists and is in the City’s best interest, the price offered on the trade will be considered when determining the lowest responsive and responsible bid.

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. Other preferences favoring local businesses are not permitted.

8.4 Cancellation

An invitation for bids may be cancelled. Additionally, the City (at its sole discretion) may choose to reject any or all bids, in whole or in part.

8.5 Submittal of Bids

Bids will be submitted as specified in the invitation for bid by the appointed date and time listed in the invitation. Each bid will be date and time stamped as it is received. Late bids will not be accepted. If the bid is a sealed bid, all qualified bids will be opened and read aloud publicly at the appointed time.

No City representative shall inform a contractor of the terms or amount of any other contractor's bid for the same project prior to the bid opening date and time. Once bids have been submitted (and opened, if the bids are sealed), the City may not negotiate with bidders. The contract must be awarded to the lowest responsive and responsible bidder, or else all bids must be rejected.

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

Original specifications and the original bid responses will be retained for review and audit as required.

8.6 Bid Security

Bid security shall be required for all competitive bidding for public works contracts, and shall be included in the bid package. Security shall be in the form of a bond with a value of at least 5% of the amount of the bid, provided by a surety company that is authorized to do business in Washington State, or the equivalent in cash or certified check.

Bid security shall be required on bids for materials, supplies, and equipment only if it is determined to be necessary.

When the invitation for bids requires submittal of bid security, noncompliance will result in rejection of the bid.

If a bidder is permitted to withdraw a bid before award, its bid security shall be returned.

8.7 Non-Collusion Affidavit

Each bidder shall be required to warrant that their bid is genuine, and that they have not entered into collusion with other bidders, by submitting with their bid an executed and notarized affidavit on a form approved by the City Attorney.

8.8 Insurance

Contracts for public works and professional services shall contain requirements for contractor-provided insurance, as deemed necessary by the City Attorney.

9.0 EMERGENCY OR SOLE SOURCE PURCHASES

Situations may occur when competition among multiple vendors is not practical.

These situations, as outlined in RCW 39.04.280, include:

- There is clearly and legitimately only one source capable of supplying the good or service in a timely fashion.
- There are special circumstances or market conditions that result in only one appropriate source. (This includes parts and services for equipment, and technical support for computer software or hardware, that the City is already using. Other costs associated with a potential purchase, such as the need for additional staff training, may also be considered.)
- Purchases of insurance or bonds.
- In the event of an *emergency*.

Purchases may be made from a *sole source* vendor without soliciting other quotes or bids. In non-emergency situations, written documentation demonstrating the appropriateness of a sole source purchase shall be submitted to the Finance Department in advance of the purchase. Finance (and the City Attorney, when needed) will evaluate whether a vendor can legitimately be defined as a sole source.

If an emergency exists, the City Council or the person(s) designated by the Council to act in the event of an emergency may:

- Declare that an emergency situation exists.
- Waive competitive requirements.
- Award, on behalf of the City, contracts necessary to address the emergency situation (including, but not limited to, contracts for architectural and engineering services).

In non-emergency situations, RCW 39.04.280 states that the contract and the basis for the exception from competitive procurement shall be recorded and open to public inspection immediately after the purchase.

In emergency situations, RCW 39.04.280 requires that a written finding of the existence of an emergency be made and entered into the public record no later than two weeks following the award of the contract.

10.0 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS

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").

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 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 Bothell's contracts or purchase orders, provided that other agencies provide similar rights and reciprocal privileges to the City of Bothell.

The City Council shall approve all Intergovernmental Cooperative Purchasing Agreements. The City Attorney shall approve all such agreements as to form.

11.0 VENDOR RELATIONS

11.1 Code of Ethics

Employees will follow applicable personnel policies in this subject area.

11.2 Quote or Bid Revisions

If a supplier is permitted to submit a revised quote or bid, other competitors will be given the same opportunity. Bidders are expected to offer their best bid first, and offering an opportunity to re-quote should be done only when absolutely necessary.

11.3 Samples

When vendors offer samples for evaluation, they will be accepted only under the following conditions:

- The sample is accepted as property of the City.
- The product is of a type presently in use by the City, or is of potential use. Samples of goods not likely to be purchased are not to be accepted.
- The quantity or size of the sample is relatively small and of minimal value.
- Any chemicals offered as vendor samples shall not be accepted unless accompanied by an OSHA product safety data sheet or material safety data sheet (MSDS).
- If vendor samples are accepted, they must be sent to the appropriate location or department for testing.
- Samples that are requested for evaluation must be purchased.

11.4 Minority and Women-Owned Businesses

The City shall neither discriminate against, nor give preferential treatment to, minority and women-owned businesses.

11.5 Local Business Participation

The City will take affirmative steps (to the extent permitted by all applicable laws and regulations) to ensure that businesses located within the Bothell city limits are encouraged to participate in the City's procurement process.

12.0 VENDOR APPEALS

Vendors may appeal or protest a proposal solicitation or award of contract issued by the City of Bothell, provided that the vendor strictly follows the procedures described below.

Prior to the deadline for submitting bids or proposals, vendors may appeal or protest specifications, terms, or requirements. After the deadline for submission of bids or proposals, vendors may appeal or protest the award or pending award to the apparent low bidder, or the selection of the apparently most advantageous proposal.

12.1 Procedures for Initial Appeal or Protest

The appeal or protest must:

- Be submitted in writing;
- Explicitly identify itself as an appeal or protest;
- Explicitly identify the bid/project/request for which the appeal or protest is made;
- Explicitly state all reasons and bases in law and fact supporting the appeal or protest (including, but not limited to, identification of any and all specifications, terms, requirements, or conditions to which the vendor objects);
- Include any and all supporting documents; and
- Be filed with the City Clerk within the following deadlines:
 - ♦ For appeals or protests involving specifications, terms, conditions, or requirements - no later than 7 business days prior to the bid deadline.
 - ♦ For appeals or protests involving an award or pending award - no later than 5 business days after the award is made.

12.2 Consideration of Initial Appeal or Protest

A vendor's initial appeal or protest will be reviewed by the City Manager, the City Attorney, the Director of the procuring department, and the Finance Director, or their designees.

The initial appeal or protest will be decided based upon the written materials, supporting documents, and other information obtained by those reviewing the appeal or protest. A meeting or conference with the appellant or protestor will occur only if the City Manager, at his or her sole discretion, determines that a meeting or conference with the appellant or protestor would materially assist the City in making its decision.

Only those issues identified by the appellant or protestor in the initial written appeal or protest filed with the City Clerk will be considered. The City Attorney or designee will issue a written decision no later than 10 business days after the filing of the initial appeal or protest with the City Clerk.

12.3 Appeals from Denial of Initial Appeal or Protest

A vendor may only appeal the City's decision by following the procedures described in this section. The appeal will be decided by the City Council.

The appellant or protester must file the appeal or protest in writing with the City Clerk no later than 7 business days after the date of the City's written decision. The appeal must state the basis in law or fact for the appeal, include a copy of the initial appeal or protest and the decision from which the appellant or protestor appeals, and state whether the appellant requests time to appear before the Council to present the appeal.

Council will not consider any issues that were not raised in the initial appeal or protest. At its sole discretion, Council may decide to allow the appellant to make any presentation other than the written submission if the Council finds that such a presentation would materially aid its decision.

Council may form a committee of less than the entire Council to consider the appeal and recommend a decision to the entire Council.

The Council's decision shall be final and binding.

13.0 SALE OR DISPOSAL OF CITY PROPERTY

13.1 Authorization

The City Manager may authorize the sale or disposal of City property, provided that the property is no longer needed and that notice of intention to sell is given as provided in this section. The property will be deemed as *surplus* or *scrap*.

Permission must be obtained from the grantor before selling or disposing of any property which was purchased with grant funding. Failure to obtain permission could obligate the City to repay grant funding used to purchase the property.

13.2 Sale Versus Disposal

Sales of surplus items to other governmental agencies may occur via private sale. Other sales of surplus items shall be sold via public auction. It is the City's policy to utilize third-party auction services rather than conduct the auction itself.

Scrap may be sold via public auction, via private sale at prices established by current market conditions, or may be disposed of if there is not a viable market.

13.3 Trade-Ins

Trade-in of old equipment to upgrade similar or reasonably related is permitted when it is in the best interest of the City. The requesting Department Director shall be responsible for the sale, trade, or other disposition of surplus property and scrap belonging to the City of Bothell when used for a trade-in.

13.4 Public Notice of Sale

If the City opts not to use a third-party auction service and instead chooses to conduct an auction itself, the notice of intent to sell surplus or scrap at a public sale shall be published once a week for two (2) consecutive weeks in the City's paper of record immediately prior to the sale. The notice shall state the time and place at which the property will be sold. Any other reasonable means to attract potential buyers to the sale may be used in conjunction with the notice posted in the official City newspaper.

13.5 Conflict of Interest

Because City employees have more information than the general public about City property to be auctioned and an appearance of fairness is necessary to maintain the public trust, employees, their spouses, and their agents are not permitted to bid on or buy property auctioned or sold directly by the City.

13.6 Inventoried Items

Surplus, scrap, or trade-in of any inventoried item will be confirmed by the employee responsible and approved by the Department Director. A Property Disposition form will be completed and submitted to the Finance Department.

Each Department will be responsible for storing and retaining an inventory of such property until issued disposition instructions.

14.0 COMPLIANCE WITH POLICY

A violation of any of the provisions of this policy may result in discipline to the individual involved where, in the opinion of the City Manager (in the case of employees) or the City Council (in the case of an elected official), such discipline is necessary in the interest of the public and good government.

Officers and employees should be aware of possible personal penalties, termination, and financial liability for intentional or willful violation of competitive bidding laws. RCW 39.30.020 states:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution, or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution, or other enactment requiring competitive bidding upon such contract shall be held liable to civil penalty of not less than three hundred dollars and may be held liable, jointly and severally, with any other such municipal officer for all consequential damages to the municipal corporation.

If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit their office. For purposes of this section "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020 (2). [Emphasis added.]

15.0 SUMMARY OF PURCHASING GUIDELINES

Type of Purchase	Dept Director Approves	City Manager Approves	City Council Approves
Supplies, Equipment, Non-Professional Services, Information Services	Less than \$30,000	\$30,000 or more	\$100,000 or more
Legal Services	N/A	Less than \$30,000	\$30,000 or more
Public Works Projects and Professional Services (non-legal)	N/A	Less than \$50,000	\$50,000 or more

COST THRESHOLDS - SUPPLIES, EQUIPMENT, NON-PROFESSIONAL SERVICES, & INFORMATION SERVICES			
Direct Negotiation	3 Quotes Required	Competitive Bids Required	Competitive SEALED Bids Required
Less than \$10,000	\$10,000 or more, but less than \$30,000	\$30,000 or more, but less than \$200,000	\$200,000 or more

COST THRESHOLDS - PROFESSIONAL SERVICES
Competitive process is not required, except for professional architectural or design services. RCW 39.80 <u>must</u> be followed for architectural or design services - see section 7.0 of purchasing policy.

COST THRESHOLDS - PUBLIC WORKS PROJECTS			
Employees Can Perform Work	Small Works Roster		Competitive SEALED Bids Required
	3 Quotes Required	5 Quotes Required	
Less than \$45,000 (single craft) or less than \$90,000 (multiple craft)	Less than \$35,000	\$35,000 or more, but less than \$150,000: 5 quotes \$150,000 or more, but less than \$300,000: 5 quotes, plus notification to remaining contractors on roster	\$300,000 or more

QUOTES:

- Get minimum # of quotes by phone, fax, or e-mail.
- Award contract to lowest responsive and responsible bidder.
- Document results.
- Do not reveal vendor prices to rival vendors prior to award.

COMPETITIVE BIDS:

- See section 8.0 for procedural requirements.

16.0 GLOSSARY

Appropriation

City Council authorization to expend funds for a specific purpose.

Bid

The executed document submitted by a bidder in response to a notice inviting bids (NIB), a proposal, 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

Written modification or addition to a purchase order or contract authorized by the appropriate authority.

Competitive Bidding

The submission of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services.

Contract

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

Designee

A duly authorized and appointed representative of an employee that holds a superior position to the person appointed to represent him or her.

Emergency

Unforeseen circumstances beyond the City's control that present a real, immediate threat to the proper performance of essential functions, or that will likely result in material loss to property, bodily injury, or loss of life if immediate action is not taken.

Lowest (Responsive and) Responsible Bidder

The bidder submitting the lowest price that is also capable of performing the proposed contract. See also "responsive bidder" and "responsible bidder."

Non-Responsive Bid

A bid that does not conform to the essential requirements of the notice inviting bids.

Ordinary Maintenance

Work not performed by contract and that is performed on a regular basis (daily, weekly, monthly - but not less than once per year) to service, check or replace items that are not broken. Also defined as work not performed by contract that is not regularly scheduled, but is required to maintain an asset so that repair does not become necessary.

Prevailing Wages

The hourly wages, usual benefits, and overtime paid in the largest city in each county to the majority of workers, laborers, and mechanics. Prevailing wages are established by the Washington State Department of Labor and Industries for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions.

Professional Services

Services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement. Examples include, but are not limited to:

- Architectural, engineering, or design services
- Accounting and auditing
- Bond or insurance brokerage
- Consulting services
- Legal services
- Real estate appraisal or title abstracts
- Relocation assistance
- Surveying
- Soils analysis or core testing

Public Work

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

Quotation

A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding. For professional service contracts, quotes would typically include the qualifications of the provider and may or may not include pricing information depending upon the situation.

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.

Responsible Bidder

A person or legal entity who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability which will assure good faith performance.

Responsive Bidder

A person or legal entity who has submitted a bid conforming in all material respects to the terms and conditions, specifications and other requirements in a request for bids.

Scrap

Any equipment or material which cannot serve its original purpose.

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.

Sole Source

An award for a purchase to the only reasonably known capable supplier due to the unique nature of the requirement, the supplier, or market conditions.

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.

Surplus property

Any tangible, personal property owned by the City that is no longer needed or usable, presently or in the foreseeable future.

17.0 RCW CITATIONS REFERENCED IN THIS DOCUMENT

RCW 35.22.620: Public works or improvements - Limitations on work by public employees - Small works roster - Purchase of reused or recycled materials or products.*

- (1) As used in this section, the term "public works" means as defined in RCW [39.04.010](#).
- (2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW [35.77.020](#) shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

- (3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city shall not have public employees perform a public works project in excess of ninety thousand dollars, if more than a single craft or trade is involved with the public works project, or a public works project in excess of forty-five thousand dollars, if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.
- (4) In addition to the accounting and record-keeping requirements contained in RCW [39.04.070](#), every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget. Each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW [43.09.205](#) to account and record costs of public works in excess of five thousand dollars that are not let by contract.
- (5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW [39.04.280](#) if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may let contracts using the small works roster process in RCW [39.04.155](#).

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW [39.35A.020](#)(4), that are negotiated under chapter [39.35A](#) RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

***RCW 35A.40.210 (1) requires all code cities with a population of 20,000 or more to follow the first class cities bid requirements in RCW 35.22.620.**

RCW 39.04.010: Public Works - Definitions.

The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is 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 any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include 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 the provisions of RCW [39.12.020](#). The term 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).

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster need not be advertised.

RCW 39.04.155: Small works roster procedures – Limited public works process.

- (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.
- (2) (a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters 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. At least once a year, the state agency or local government 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. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.
- (b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter [43.19](#) RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.
- (c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW [43.19.1911](#). Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. 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 estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government, other than a port district, 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 appropriate small works roster that quotations on the work are being sought.

The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

- (d) A contract awarded from a small works roster under this section need not be advertised.
 - (e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.
- (3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement project [projects] estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW [39.04.010](#).

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW [43.19.1911](#). After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter [39.08](#) RCW and the retainage requirements of chapter [60.28](#) RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title [82](#) RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

- (4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.
- (5) (a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section 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.
 - (b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax return to submit quotations or bids on small works roster contracts.
- (6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW [28B.10.016](#), and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

RCW 39.04.280: Competitive bidding requirements – Exemptions.

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

- (1) Competitive bidding requirements may be waived by the governing body of the municipality for:
 - (a) Purchases that are clearly and legitimately limited to a single source of supply;
 - (b) Purchases involving special facilities or market conditions;
 - (c) Purchases in the event of an emergency;
 - (d) Purchases of insurance or bonds; and
 - (e) Public works in the event of an emergency.
- (2) (a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

- (b) 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.
- (3) 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 39.04.350: Bidder responsibility criteria – Supplemental criteria.

- (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 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 39.16.010 or 39.12.065(3).
- (2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.
- (a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.
 - (b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.
 - (c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.
 - (d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.
- (3) The capital projects advisory review board created in RCW 39.10.800 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

RCW 39.08.010: Bond required – Conditions – Retention of contract amount in lieu of bond – Contracts of one hundred thousand dollars or less.

Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay 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, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW [39.08.010](#) through [39.08.030](#) shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from 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: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety

must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

RCW 39.08.015: Liability for failure to take bond.

If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be 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.

RCW 39.12.040: Statement of intent to pay prevailing wages, affidavit of wages paid – Duty of public agencies to require – Approval – Prerequisite to payment – Alternative procedure.

(1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

- (a) The contractor's registration certificate number; and
- (b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW [39.12.020](#) and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW [60.28.011](#) are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

- (2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less:
- (a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.
 - (b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW [60.28.011](#). Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

- (c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.
- (d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.
- (e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by RCW [39.12.040](#)(1).

RCW 39.30.020: Contracts requiring competitive bidding – Violations by municipal officer – Penalties.

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his office. For purposes of this section, "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW [42.23.020](#)(2).

RCW 39.30.040: Purchases – Competitive bidding – Local governments may consider tax revenues – Purchase of recycled or reused materials or products.

- (1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. The tax revenues which units of local government may consider include sales taxes that the unit of local government imposes upon the sale of such supplies, materials, or equipment from the supplier to the unit of local government, and business and occupation taxes that the unit of local government imposes upon the supplier that are measured by the gross receipts of the supplier from such sale. Any unit of local government which considers tax revenues it would receive from the imposition of taxes upon a supplier located within its boundaries, shall also consider tax revenues it would receive from taxes it imposes upon a supplier located outside its boundaries.
- (2) As used in this section, the term "unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes.

RCW 39.30.045: Purchase at auctions.

Any municipality, as defined in RCW [39.04.010](#), may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the

state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price.

RCW 39.30.060: Bids on public works – Identification, substitution of subcontractors.

- (1) Every invitation to bid on a prime contract that is expected to cost one million dollars or more for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW [39.04.010](#) or an institution of higher education as defined under RCW [28B.10.016](#) shall require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter [18.106](#) RCW; and electrical as described in chapter [19.28](#) RCW, or to name itself for the work. The prime contract bidder shall not list more than one subcontractor for each category of work identified, unless subcontractors vary with bid alternates, in which case the prime contract bidder must indicate which subcontractor will be used for which alternate. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.
- (2) Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract is prohibited and the originally listed subcontractor is entitled to recover monetary damages from the prime contract bidder who executed a contract with the public entity and the substituted subcontractor but not from the public entity inviting the bid. It is the original subcontractor's burden to prove by a preponderance of the evidence that bid shopping or bid peddling occurred. Substitution of a listed subcontractor may be made by the prime contractor for the following reasons:
 - (a) Refusal of the listed subcontractor to sign a contract with the prime contractor;
 - (b) Bankruptcy or insolvency of the listed subcontractor;
 - (c) Inability of the listed subcontractor to perform the requirements of the proposed contract or the project;
 - (d) Inability of the listed subcontractor to obtain the necessary license, bonding, insurance, or other statutory requirements to perform the work detailed in the contract; or
 - (e) The listed subcontractor is barred from participating in the project as a result of a court order or summary judgment.
- (3) The requirement of this section to name the prime contract bidder's proposed HVAC, plumbing, and electrical subcontractors applies only to proposed HVAC, plumbing, and electrical subcontractors who will contract directly with the prime contract bidder submitting the bid to the public entity.
- (4) This section does not apply to job order contract requests for proposals under RCW [39.10.130](#).

RCW 39.33.010: Sale, exchange, transfer, lease of public property authorized – Section deemed alternative.

- (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or

any political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

- (2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.
- (3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section.

RCW 39.34.030: Joint powers – Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies – Financing of joint projects.

- (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.
- (2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW [28A.320.080](#). Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.
- (3) Any such agreement shall specify the following:
 - (a) Its duration;
 - (b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter [24.03](#) or [24.06](#) RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter [25.04](#) RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;
 - (c) Its purpose or purposes;
 - (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore;
 - (e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
 - (f) Any other necessary and proper matters.
- (4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:
 - (a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

- (b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".
- (5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:
 - (a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility; and
 - (b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) 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, or (ii) provided an access link on the state's web portal to the notice.
- (6) Financing of joint projects by agreement shall be as provided by law.

RCW 39.34.080: Contracts to perform governmental activities which each contracting agency is authorized to perform.

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

RCW 39.80 RCW: Contracts for architectural and engineering services.

RCW 39.80.010: Legislative declaration.

The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

RCW 39.80.020: Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

- (1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.
- (2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

- (3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water-sewer districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.
- (4) "Agency" means both state and local agencies and special districts as defined in subsections (1), (2), and (3) of this section.
- (5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.
- (6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.
- (7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.
- (8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services.

RCW 39.80.030: Agency's requirement for professional services – Advance publication.

Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services.

RCW 39.80.040: Procurement of architectural and engineering services – Submission of statement of qualifications and performance data – Participation by minority and women-owned firms.

In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project.

Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms shall be consistent with their general availability within the professional communities involved.

RCW 39.80.050: Procurement of architectural and engineering services – Contract negotiations.

- (1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its

determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

- (2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW [39.80.040](#) and continue in accordance with this section until an agreement is reached or the process is terminated.

RCW 39.80.060: Procurement of architectural and engineering services – Exception for emergency work.

- (1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.
- (2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures.

RCW 39.80.070: Contracts, modifications reported to the office of financial management.

Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes.

RCW 39.80.900: Savings.

Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982.

RCW 39.80.910: Severability – 1981 c 61.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.