

# PURCHASING POLICY



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# I. GENERAL

## A. 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.

## B. 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.

## C. Scope

These guidelines apply to purchases of:

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

The guidelines do not apply to the acquisition, sale, or lease of real property. If grant funding is involved in the proposed purchase, applicable requirements should be obtained from the funding agency. Such requirements may be more restrictive than the city's policy.

## D. Controlling Laws

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

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

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

## II. ETHICS OF PROCUREMENT

### A. Gifts and Conflicts of Interest

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

1. Reasonable Person Standard. The city seeks to avoid situations that involve conflicts of interests or the appearance of such conflicts based on inappropriate opportunities to influence the solicitation and/or award process. The city uses the measures of how a reasonable person would perceive the situation. A reasonable person standard might consider how the situation would appear if covered by a news story, or viewed from the perspective of a public interest group. Common questions to ask are: Could you comfortably explain your actions? Would taxpayers believe you were acting in their best interest?
2. Limitations on gifts. City staff should refuse gifts, meals and invitations to events such as concerts or sporting events, that could be reasonably perceived as: improperly influencing performance of your official duties; a reward for awarding a contract; or offered or given to influence, find favor, or with a reasonable expectation of creating an obligation to the giver.

Vendors are prohibited from offering gifts during the solicitation and ensuing contract award process.

Contact the Legal Department for assistance if you encounter unusual situations.

### B. Former Employees as Vendors/Consultants/Contractors

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

### III. ACCOUNTABILITY AND COMMUNICATIONS

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

#### A. Public Disclosure

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

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

#### B. Maintain Confidentiality

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

### C. Fair, Prudent and Thorough Evaluation

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

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

Use caution:

- a) when discussing any aspect or any opinion you might have of the solicitation process, vendors, bids or results until the award is complete.
- b) to avoid actions that give, or may be perceived to give, preferential treatment to any vendor.

## IV. GRANTS & FEDERAL FUNDING

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



Purchases or work that have received a grant or federal funding may not be covered by this manual. These types of purchases often have their own procurement requirements.

ALL GRANTS ARE DIFFERENT, so one size does not fit all. Some grants simply require you to use your own procurement rules, while others require you to insert their contracting clauses into your contract. Contact Legal for advice on how to proceed. We will review your specific grant and guide you on what the next steps are.

The City of Anacortes' internal controls for Federal Awards are detailed in the [Federal Award Standards](#) document.



## V. CONTROLLED COMMODITIES

The following items require approval from designated people. They are:

- Cell phones, telephone equipment - **IT Manager**.
- Computers and related equipment, printers, scanners and copiers, software or systems - **IT Manager**.
- Anything purchased using Equipment Rental and Revolving (ER&R) funds – **Fleet Services Manager**.

## VI. DETERMINING CONTRACT VALUE

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

- Example #1: A three year contract for \$40,000 per year is considered a \$120,000 contract.
- Example #2: A contract originally routed as a one year \$25,000 contract. If a renewal is negotiated for an additional year for another \$25,000, the aggregate value of the contract becomes \$50,000, which will require City Council authorization.
- Exception: Hardware/software maintenance agreements are treated as stand-alone agreements and do not need to be aggregated to the original hardware/ software purchase agreement.

## VII. BID SPLITTING

The breaking of any project into units, or accomplishing any projects by phases, is prohibited if it is done for the purpose of avoiding compliance with bidding statutes<sup>1</sup>.

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

To avoid bid splitting:

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

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<sup>1</sup> [RCW 35.23.352\(1\)](#)

## VIII. SIGNATURE AUTHORITY AND APPROVAL

Per [RCW 35A.11.010](#), the City's authority to contract, and be contracted with, is vested in the City Council. City Council has delegated authority to the Mayor to execute contracts and modifications that meet the criteria of Anacortes Municipal Code Chapter 1.30<sup>2</sup>. **Only the Mayor has the designated signature authority to sign contracts and binding agreements for the City.**

City Council approval is required for goods or services contracts that:

- A. Are contracts with a total aggregate value of \$45,000 or more  
or
- B. Are cost modifications that, either singly or combined with all previous modifications, pushes the total contract amount from under to over the \$45,000 signature threshold  
or
- C. Are cost modifications for contracts with an original value between \$45,000-\$99,999 that results in a new total contract amount \$10,000 or more over the original contract amount.  
or
- D. Are cost modifications for contracts with an original value \$100,000 or more that results in a new total contract amount 110% over the original contract amount

Example 1: a \$200,000 contract has a modification for \$18,000 for a new contract amount of \$218,000. The original contract amount is over \$100,000 so the next step is to figure out if the new total contract amount is 110% over the original value(D). 110% of \$200,000 would be \$220,000, so this modification does not result in a new total contract amount 110% over the original contract amount and does not need to be approved by Council.

Example 2: a \$50,000 contract already had modification #1 for \$5,000 approved and executed. Now there is a new modification #2 for \$6,000. The original contract amount is between \$45,000-\$99,999, so the next step is to determine if this modification results in a new contract amount \$10,000 or more over the original contract value(C). Adding together Mod 1 and Mod 2 equals \$11,000 which is over \$10,000, so modification #2 does need to be approved by Council.

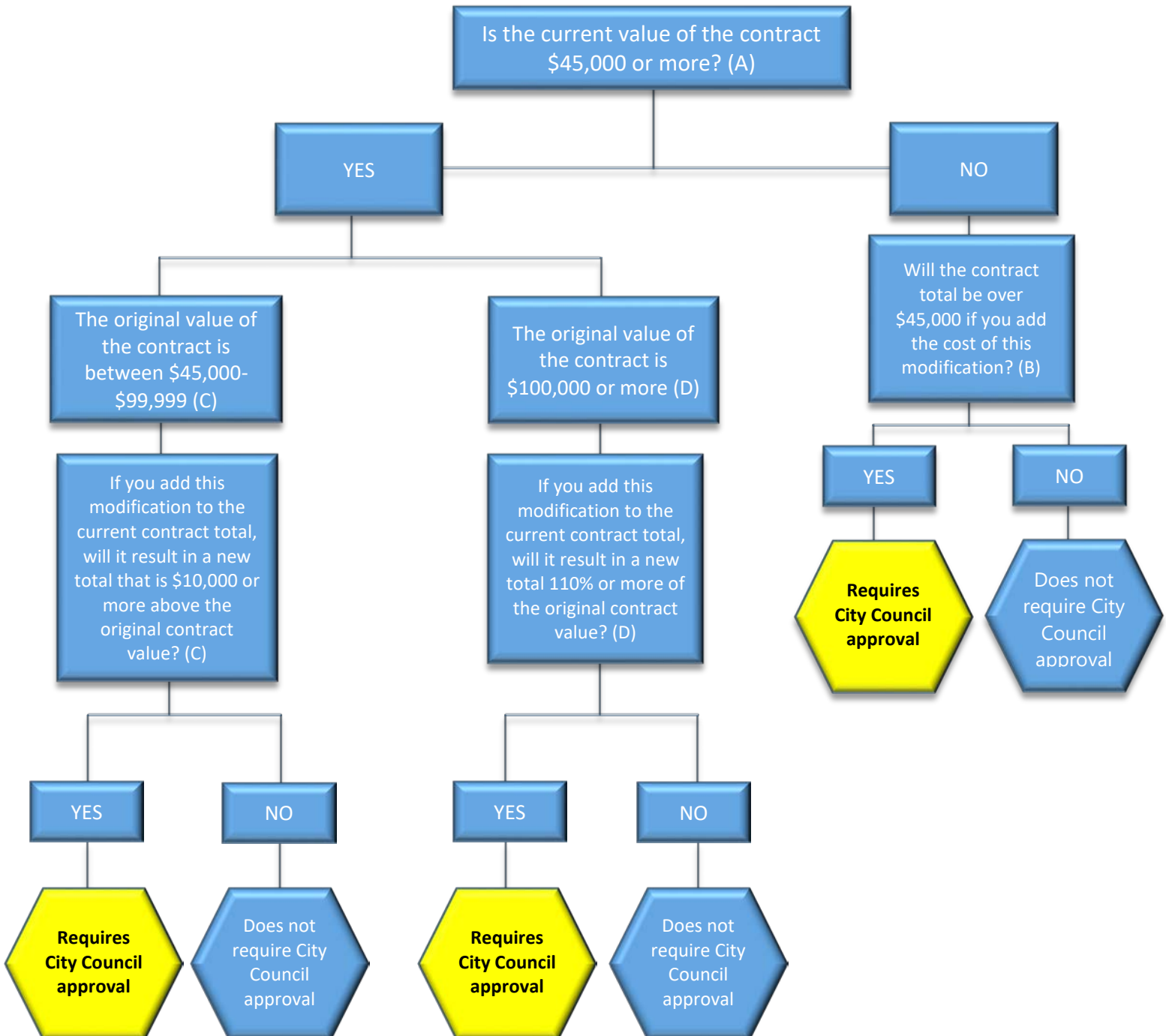
Example 3: a \$10,000 contract has a modification of \$1,500 for a new contract amount of \$11,500. The modification does not push the total contract amount over the \$45,000 threshold(B), and is not for a contract with an original value between \$45,000-\$99,999(C) or \$100,000 or more(D), so it does not need to be approved by Council.

Example 4: a \$40,000 contract has already had a modification #1 of \$1,000 and now has a modification #2 of \$5,000 for a new contract amount of \$46,000. Modification #1 did not meet any of the requirements of B, C, or D so it did not need to be approved by Council. Combined with the previous modification, modification #2 does push the total contract amount from under to over the \$45,000 signature threshold(B) and so it does need to be approved by Council.

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<sup>2</sup> Ordinance 3036

# Contract Modification Approval Requirements



## IX. ELECTRONIC SIGNATURES

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

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

- (a) Whether the transformation was created using the private key that corresponds to the signer's public key; and
- (b) Whether the initial message has been altered since the transformation was made."

The City, pursuant to [RCW 19.360.020\(5\)](#), declares DocuSign as the electronic signature provider for the City. Specifically, the Mayor, City Attorney, and Finance Director, and their designees, are authorized to use DocuSign, or any future replacement of such platform, to affix electronic signatures to electronic records. A City document that is required by law to be signed in non-electronic media may not be digitally or electronically signed. This Section does not supersede the requirements detailed in Section VIII or Ordinance 3036.

## X. TYPES OF PROJECTS

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

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

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

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

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

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





# PUBLIC WORKS





## XI. PUBLIC WORKS

### A. Definition: What is a Public Work?

**This covers more than you think:** “all work, construction, alteration, repair or improvement other than ordinary maintenance”<sup>3</sup> to pretty much any structure or facility the city owns. L&I considers “ordinary maintenance” to be that performed by your own staff, so that means every time you call in a carpenter, plumber, electrician, painter, roofer, elevator repair technician, tree trimmer, fencing company, HVAC repair technician, equipment operator or other person wearing tools who isn’t city staff, the purchase falls under public works procurement rules.

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

### B. THRESHOLDS:

Public Works			
	DOLLAR LIMIT	FORMAL BID PROCESS	APPROVAL
Single Trade or Craft	\$0-\$75,500	Optional	\$40,001-\$44,999 = Mayor \$45,000+ = City Council
	Over \$75,500	Required	City Council
Multi Trade or Craft	\$0-\$116,155	Optional	\$0-\$44,999 = Mayor \$45,000+ = City Council
	Over \$116,155	Required	City Council
	DOLLAR LIMIT	QUOTES	APPROVAL
Using MRSC Small Works Roster	\$0-\$49,999	Minimum 3 quotes requested	\$0-\$44,999 = Mayor \$45,000+ = City Council
	\$50,000-\$249,999	Minimum 5 quotes requested	City Council
	\$250,000-\$350,000	Minimum 5 quotes requested Must notify all contractors on roster	City Council

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

“Craft” or “trade” means a recognized construction trade or occupation for which minimum wage categories are established by the Department of Labor and Industries of the State of Washington in the locality of the city’s projects or purchases.

<sup>3</sup> [RCW 39.04.010](#)

### C. Day Labor

The city may use our own employees to perform public works projects with an estimated cost up to \$75,500 (single craft) or \$116,155 (multiple craft). For larger projects, you must contract with a responsible contractor. However, the city must provide a report to the state auditor of the costs of all public works in excess of \$5,000 that are not let by contract. For any project using city workers that costs in excess of \$25,000, the city must publish a description of the project and its estimated cost in its official newspaper at least fifteen days before beginning the work<sup>4</sup>.

### D. Determining the Cost of a Public Work

The total construction cost of each **project** must be estimated in order to correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid. The estimate shall include all phases and anticipated contracts for the entirety of the project, and include materials, supplies, equipment, and labor on the construction of that project AND applicable sales and use taxes. However, the value of volunteer labor, material, or equipment need not be included in the cost estimate for a public works project, as these are not a cost to the agency. If the total project amount is over the bid thresholds then all contracts, no matter the individual dollar amount, must be procured through the bid process. The estimate may be prepared by an outside third party, however the final cost estimate must be validated by the city. The estimate needs to be prepared before any work begins and should be sent to the Contract Specialist.

### E. Procuring Through Quotes

Projects for single craft or multiple crafts with a reasonably anticipated price equal to or less than the dollar thresholds do not require the use of competitive quotes or bids.

- It is recommended the Project Manager make every effort to obtain more than one quote.
- The Project Manager forwards solicitation, quotes, and project information to the Contract Specialist who administers the contract process.

### F. Small Works Roster (SWR)<sup>5</sup>

When the estimated cost of a public works project is \$350,000 or less, the city may follow the Small Works Roster (SWR) process<sup>6</sup> for construction of a public work or improvement as an alternative to the general competitive bidding requirements. The City of Anacortes has contracted with the Municipal Research and Services Center of Washington (MRSC) for the city use of a statewide electronic database for small public works roster and consulting services developed and maintained by MRSC.

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<sup>4</sup> [RCW 39.04.020](#)

<sup>5</sup> [RCW 39.04.155](#)

<sup>6</sup> [Resolution 1836](#)

### *Publication:*

At least once a year, on behalf of the city, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to the appropriate MRSC roster or rosters at any time that they submit a written request and necessary records.

### *To use the SWR:*

- Notifications and postings must emphasize that bids will be accepted only from contractors on the small works roster.
  - Sample text: *In accordance with competitive bid requirements set forth under RCW 39.04.155, Small Works Roster Contract Procedures, the City of Anacortes is pleased to invite you to submit a bid under the subject solicitation. Contractors who bid on this project must be registered on the Small Works Roster by the time that bids are due.*
- Notifications and postings should list if bonds and prevailing wage will be required.
- Project Manager or Contract Specialist contacts contractors off the Small Works Roster. Invitation for quotations shall include an estimate of the scope and nature of the work to be performed, materials and equipment to be furnished, and the date, time and location to return quote. However, detailed plans and specifications need not be included in the invitation.
- At the time bids are solicited, the city shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.
- No city employee may negotiate with any of the bidders. Some submissions may involve errors, omissions, or other irregularities; contact Legal to decide how to handle them.
- The Project Manager or Contract Specialist shall make a written record of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.
- The Project Manager forwards solicitation, quotes, and project information to the Contract Specialist who initiates the contract process.
- Formal bids are not required.
- Advertising is not required.
- Bid bonds are not required.
- A signed contract IS required.
- Prevailing wage IS required.
- Insurance IS required.
- Retainage may be waived.

### *Small Works Roster “Limited Public Works Process” – up to \$49,999*

- If a work, construction, alteration, repair, or improvement project is estimated to cost less than fifty thousand dollars (\$50,000), the city may award such a contract using the limited public works process.<sup>7</sup>
- A minimum of three electronic or written quotations from the appropriate small works roster is to be solicited and the contract shall be awarded to the lowest responsible bidder<sup>8</sup>.
- The city will maintain a list of the contractors contacted and contracts awarded during the previous 24 months under the limited public works process, including contractor name, registration number, amount of contract, brief description of work and date contract awarded.
- The Contract Specialist administers the contract process and if the contract is \$0-\$44,999 it is under the Mayor’s signature authority threshold. If it is \$45,000 or more it is required to be approved for award by City Council.

### *Small Works Roster Process - Between \$50,000 and \$249,999*

- Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.
- The Contract Specialist administers the contract process and if the contract is required to be approved for award by City Council.

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

- Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the city chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster the city must also notify the remaining contractors on the roster that quotations on the work are being sought. The city has the sole option of determining whether this notice to the remaining contractors is made by:
  - publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
  - mailing a notice to these contractors; or
  - sending a notice to these contractors by facsimile or email
- The Contract Specialist administers the contract process and the contract is required to be approved for award by City Council.

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<sup>7</sup> [RCW 39.04.155\(3\)](#)

<sup>8</sup> [RCW 39.04.350](#)

## G. Formal Bid Process – Public Works

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

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

## H. Requests for Bid Documents

The City of Anacortes Purchasing Policy requires that the City maintain the integrity of official bid documents sets, provide swift response when incorporating addenda changes, and communicate in a singular, fair, and equitable manner to registered bidders.

Builders Exchange of Washington (BXWA) provides prime bidders, subcontractors, suppliers, and other interested parties, virtual free-of-charge access to a complete set of project bid documents, including the ability to download, view, print, order full/partial plan sets from numerous reprographic sources, and free access to an on line digitizer/take-off tool.

Therefore, the City designates BXWA as the official source of bid packages for most capital public work projects, which insures that all bidders receive complete documentation, including all addendum, changes, and clarifications.



## I. Unit-Priced Contracts – On-Call and Systemwide Maintenance

Effective June 7, 2018, all cities, towns, and port districts are authorized to use unit-priced contracts<sup>9</sup>. A unit-priced public works contract, sometimes called an “on-call” public works contract, is when a local government contracts for an unknown number of small public works projects over a fixed period of time (“indefinite quantity, indefinite frequency”). State statute defines a unit-priced contract as:

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

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

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

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

When a specific project is identified, individual work orders are authorized based upon either a “not-to-exceed” time and materials basis or a negotiated lump sum amount using the previously established unit prices.

### *COA Unit-Priced On-Call Contract Requirements:*

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

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<sup>9</sup> [RCW 35.23.352](#)

#### *To Bid a Unit-Priced On-Call Contract:*

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

#### *Unit Priced Systemwide Maintenance and Repair Contracts:*

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

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

Examples include:

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

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

#### **J. Withdrawal of Bids – Cancellation of Awards**

Bids may be modified or the bid may be withdrawn by written notice received prior to the time set for opening in the office designated in the invitation for bids. After bid opening, withdrawal of bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence presented in a sworn affidavit or declaration submitted no later

than 5:00 p.m. on the first business day after bid opening, that a clerical mistake was made and not a mistake in judgment, and the bid price actually intended. All decisions to permit the withdrawal of bids after bid opening, or to cancel awards or contracts based on bid mistakes, shall be made by the Mayor after consulting with legal counsel.

#### K. Cancellation of Invitations for Quotations or Bids

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

#### L. Responsive Bid

What is a Responsive Bid?

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

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

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

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

Additional items may be required shortly after bid opening:

- If supplemental bidder responsibility criteria are required (see below), a separate questionnaire must be filled out and submitted within 72 hours after bid opening. However, this questionnaire should only be required of the apparent low bidder and the next two lowest bidders

- For projects that cost an estimated \$1 million or more, a list of all subcontractors for HVAC, plumbing, or electrical work must be submitted<sup>10</sup>. The bidder may also submit itself for any of these categories. This list may either be submitted within one hour after the bid opening (the preferred method) or at the time the bid is submitted.

In addition, [RCW 39.04.350\(2\)](#) allows agencies to adopt additional relevant responsible bidder criteria for individual projects. Supplemental criteria may be on two levels:

- A basic level that may include such things as no delinquent state taxes, no federal debarment, minimal prevailing wages violations, no excessive claims against retainage and bonds, no public bidding violations, no termination for cause or default, and unwarranted lawsuits with respect to public contracting.
- A secondary level whose criteria relate to the nature of a specific project. For example, the city may require that a contractor must have completed three projects of a similar scope and dollar volume within the past five years.

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

### M. Responsible Bidder

The city is required to award public works contracts to a responsible bidder with the lowest responsive bid<sup>11</sup>. This applies to informal bidding, such as a small works roster, as well as formal competitive bids.

Responsible bidders<sup>12</sup> must meet a number of mandatory criteria. The bidder must:

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

<sup>10</sup> [RCW 39.30.060](#)

<sup>11</sup> [RCW 39.04.010](#)

<sup>12</sup> [RCW 39.04.010](#), [RCW 39.04.350](#)

## N. Bid Deposit, Performance Bond, and Payment Bond for Public Works Improvement Projects

Whenever competitive quotes or bids are required, a bidder may be required to make a deposit in the form of a certified check or bid bond in an amount equal to not less than five percent of the total bid, which percentage shall be specified in the call for bids. As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid, and that he/she has not entered into collusion with any other bidder or any other person. All public works contractors shall furnish a performance bond and a payment bond in an amount equal to the total amount of the contract on a form approved by the City Attorney. In lieu of a performance bond on contracts of \$150,000 or less a contractor may request to have 10 percent of the contract retained for a period of 30 days after the date of final acceptance<sup>13</sup>. The request will be evaluated and accepted or rejected by Legal.

## O. Retainage

State law<sup>14</sup> requires the city to withhold up to five percent (5%) of the contract price earned by the city's contractor during performance of public work and construction contracts. The withheld amount, known as "retainage," is for the benefit of laborers and material suppliers in the event the contractor fails to pay them. Retainage may also be used to satisfy tax claims by the Department of Revenue and/or the city, prevailing wage related claims by the Department of Labor and Industries, unemployment compensation related claims by the Employment Security Department, and contract performance claims by the city itself. Retainage is not paid ("released") to the contractor until appropriate releases are received from the involved state agencies and city departments/divisions.

A contractor has several options in how retainage will be held<sup>15</sup>:

1. The most common is to have the city withhold and retain five percent (5%) from each payment made during performance of the contract in a non-interest bearing fund.
2. A bond in-lieu-of retainage (aka "retainage bond") may be submitted by the contractor on the city's standard form or one that is acceptable to the city for all or any portion of the contract retainage amount.
3. The amount(s) retained may be deposited by the city in an interest bearing account. Interests on such monies shall be paid to the contractor and is not subject to withdrawal until after final acceptance of the work.
4. An escrow account may be jointly established by the contractor and the city with a bank. This escrow option must utilize the city's standard forms. The monies placed in escrow must be converted into bonds and securities approved by the city and any interest is paid to the contractor as it accrues.

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<sup>13</sup> [RCW 39.08.010](#)

<sup>14</sup> [Chapter 60.28 RCW](#)

<sup>15</sup> [RCW 60.28.011](#)



Retainage requirements are not mandatory for non-public works supplies or services, but may be used in the discretion of the department/division. Note that even when the city has required a performance bond for these types of contracts, retainage is not held unless specified in the solicitation and contract. This is rare.

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

## P. Prevailing Wages

- State law requires prevailing wages to be paid by the contractor on all public works projects and all public building service maintenance contracts<sup>16</sup>. To see the list of applicable labor categories go to State of Washington Department of Labor and Industries [website](#). Prevailing wage questions may be directed to the Department of Labor and Industries (L&I), Prevailing Wage Section, 360-902-5335.
- Public works contracts require that each and every employer on the project file a Statement of Intent to Pay Prevailing Wages (Intent), and Affidavit of Wages Paid (Affidavit), regardless of the size of the contract. The forms are filed with L&I and, once they are approved, are submitted by the employer to the city's Contract Specialist.
- Owner/Operators that do not have any employees do not need to pay themselves prevailing wages, however, they do still need to file Intents and Affidavits with the Department of Labor and Industries and list in section 3 of the form that they are Owner/Operator.
- For all public works contracts, except janitorial and building service maintenance contracts, the applicable prevailing wage rates shall be those in effect on the submittal due date. These rates shall remain in effect throughout the duration of the contract. If a contract is not awarded within six months of the submittal due date, the applicable prevailing wage rates shall be those in effect on the date the contract is awarded, and shall remain in effect for the duration of the contract<sup>17</sup>.
- For janitorial, building service maintenance contracts, and unit-priced contracts, the prevailing wage rates in effect on the submittal due date are the minimum rates that must be paid for the first year of such contract and thereafter. However, any janitorial, building service maintenance contract, and unit priced contract, of more than one year in duration must include wage increase language specifying that wages will be altered annually to follow the most recent publication of prevailing wage rate<sup>18</sup>.

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<sup>16</sup> [RCW 39.12](#)

<sup>17</sup> [WAC 296-127-011](#)

<sup>18</sup> [WAC 296-127-023](#)

- Specification documents must state that workers shall receive the prevailing rate of wage. The specifications must either list all of the applicable prevailing wage rates, or else provide the URL address for L&I's [Prevailing Wage Rates for Public Works Contracts](#) with the exact wage publication date and county. NOTE: Prevailing wage rates are adjusted twice annually – usually in the spring and fall.
- Payments by the city are not allowed when contractors have not submitted an Intent form that has been approved by the L&I industrial statistician. The city may not release retainage until all contractors and subcontractors have submitted an Affidavit form that has been certified by L&I. The requirement to submit these forms should also be stated in the contract.
- There is no minimum dollar amount for public work or prevailing wage. Prevailing wages must be paid for any work, construction, alteration, repair or improvement, other than ordinary maintenance, that the city causes to be performed by a private party through a contract.
- Should the city fail to comply the city can be held responsible for any unpaid prevailing wages.

#### **\*\*Federal Prevailing Wage Requirements**

The federal government has its own public works prevailing wage requirements, or wage decisions, established by the Davis-Bacon Act (DBA). For any public works project receiving federal funding, contractors must pay the higher of the state or federal wage rates<sup>19</sup>. This should also be stated in the bid specifications and contracts.

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

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<sup>19</sup> [WAC 296-127-025](#)



# SERVICES



## XII. SERVICES

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

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

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

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

#### *Purchases of A & E Services*

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

1. Procure using a request for proposals (RFP) process. This process requires the city representative to develop a written scope of the project and any criteria used to select the service provider and then select a qualified contractor from the city's MRSC architectural, landscape architectural, and engineering service roster, following the procedures of [39.80 RCW](#).
2. If the Project Manager does not choose to use the appropriate roster, then a formal Request for Qualification (RFQ) process must be followed, following the procedures of [39.80 RCW](#). Contact the Contract Specialist for assistance.

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

## B. Personal Services

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

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

### *Purchases of Personal Services*

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

## C. Purchased Services

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

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

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

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



### *Purchases of Purchased Services*

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

### **D. Publication**

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



# MATERIALS, SUPPLIES, AND EQUIPMENT



### XIII. PURCHASING MATERIALS, SUPPLIES, EQUIPMENT

(Unrelated to Public Work/Construction, Services, A&E)

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

Distinguishing between public works and materials, supplies and equipment not used in a public work is important, as different bidding requirements apply to each.

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

#### A. THRESHOLDS and LOCAL PREFERENCE:

DOLLAR LIMIT	PROCUREMENT PROCESS	APPROVAL*	LOCAL PREFERENCE
<b>\$ -0- to \$2,500</b>	<b>Competition not required</b> Departments encouraged to determine price is fair and reasonable and document in department files.	Department Head	All departments shall make a good faith effort to purchase goods within the City of Anacortes when they are available and suitable to city needs at a price that is competitive.  <u>Legal Restrictions:</u> Even below bid threshold, City has obligation to procure goods at the best price as steward of public funds. Therefore, City may not require only local purchases.
<b>\$2,501 to \$7,500</b>	<b>3 Quotes Requested</b> Must be attached to the electronic invoice	Department Head	Departments are encouraged to attempt to obtain at least one quote from a local business when procuring under the bid threshold. Staff should take into account price, delivery times, and return policies when evaluating quotes.  <u>Legal Restrictions:</u> Even below bid threshold, City has obligation to procure goods at the best price as steward of public funds. Therefore, City may not require only local purchases.
<b>\$7,501 to \$15,000</b>	<b>MRSC Vendor Roster or Formal Sealed Bid Process</b> (Contact Contract Specialist)	Department Head	<a href="#">RCW 39.30.040</a> allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Any other preferences favoring local businesses are not permitted during any formal bid process.  <u>Legal Restrictions:</u> Over bid thresholds, Cities are only allowed to procure goods as expressly provided by state law. The only allowance for local preference in state law is as provided in RCW 39.30.040, which allows jdx to take sales tax revenue into account.
<b>\$15,001+</b>	<b>Must use Formal Sealed Bid Process</b> (Contact Contract Specialist)	Department Head if under \$45,000; City Council if \$45,000+	<a href="#">RCW 39.30.040</a> allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Any other preferences favoring local businesses are not permitted during any formal bid process.  <u>Legal Restrictions:</u> Over bid thresholds, Cities are only allowed to procure goods as expressly provided by state law. The only allowance for local preference in state law is as provided in RCW 39.30.040, which allows jdx to take sales tax revenue into account.

**\*Approval:** The Department Head may only approve purchases that are provided for in the city budget and are under \$45,000.00. Any contracts for goods must be managed by the Contract Specialist and can only be signed by the Mayor.

All dollar limits include freight, handling, set-up cost, and appropriate sales tax.

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

## **B. Informal Competitive Quotes - Materials, Supplies or Equipment between \$2,501-\$7,500**

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

### **Notes:**

- If your quote is of a complex nature, let the Contract Specialist obtain the quotes for you to ensure everything is apples-to-apples.
- In the request for quotes, be sure technical information defines acceptable quality and insure vendors are quoting on equal and comparable items. All vendors must be provided the same information. If one vendor offers an acceptable alternate, it must be re-quoted using the alternate specifications.
- The city will not pay for any technical information from the vendor. If the information is to be shared with other vendors, it must be stated so up front. If you use a vendor's technical information without their approval, you may find yourself in a legal tangle.
- Staff may arrange on-site demonstrations or delivery of preview/trial merchandise but must keep in mind that just because you have demoed

someone's product does not mean you will be able to buy it. Competition may still be required and it must be made clear to the vendor beforehand that no preferential treatment will be given.

- Obtain freight pricing (FOB Destination, Freight Prepaid).

### C. Vendor Roster – Materials, Supplies, or Equipment \$0 -\$15,000

When purchasing materials, supplies, or equipment not connected to a public works project in the amount of \$15,000 or less, the city may award purchasing contracts by a vendor list process<sup>20</sup>. The City of Anacortes has contracted with the Municipal Research and Services Center of Washington (MRSC) for the city use of a state wide electronic vendor roster developed and maintained by MRSC.

#### *Publication:*

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

#### *To use the Vendor Roster, the Project Manager:*

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

### D. Formal Bid Process – Materials, Supplies, or Equipment \$7,501+

Unless the Vendor Roster process is used, purchases of supplies, goods, materials, and/or equipment over \$7,500 that are not part of a public works and improvements contract must call for bids using the formal bid process, with price being the primary factor in the contract award decision. Purchases of custom or specialty goods, and/or products that are subject to proprietary design or similar rights, are sometimes conducted using the Request for Proposal (RFP) process, with price performance criteria as well as price being factors in the contract award decision. Contact the Contract Specialist to discuss whether the formal bid or RFP process best fits your situation.

- Unless otherwise specifically approved by the City Council, all contracts relating to the purchase of materials, equipment, or supplies shall be in accordance with

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<sup>20</sup> [RCW 39.04.190](#), Resolution 2030



the city budget.

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

#### E. Lowest Responsible Vendor

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

1. The ability, capacity, and skill of the vendor to perform the contract;

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

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

#### F. Life Cycle Costing

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

#### G. Telecommunications and Data Processing (Computer) Equipment or Software

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

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

## XIV. EXCEPTIONS TO THE COMPETITIVE PROCESS

The Washington State statutes<sup>21</sup> contain exceptions to the previously discussed bidding requirements. Exceptions, when exercised, should make good business sense and be in the best interest of the city.

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

*NOTE: If you think your project or purchase falls under one of the exceptions to the bid law, think again. The bid laws are there for a reason – to try to ensure that cities get the best buy for their money. Many of the projects or purchases that a city might consider to fall within exceptions are in the “gray” area of the law. If there is any doubt, the Finance Director or Contract Specialist should check with the city’s auditor.*

Exemptions to the competitive bidding requirements:

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

### A. Brand Name and Sole Source Purchases

#### *Brand Name Bidding*

Cities may advertise for bids by specifying a particular brand name item as long as the responsible officials have exercised their judgment and determined that a certain brand name is of higher quality or is better suited to the municipality’s needs. In *Smith v. City of Seattle*, the city advertised for bids for incandescent lamps, specifying a particular brand. In a suit brought by a maker of a similar lamp, the court stated that as long as the officials involved exercised their discretion in determining that a particular brand of lamps was more desirable, the city’s procedure was proper in the absence of abuse of

<sup>21</sup> [RCW 39.04.280](#), [RCW 39.34.030](#),  
[RCW 39.30.045](#), [RCW 35.21.278](#)

discretion or fraud. In this case, the fact that the city had used the specified lamps previously and they had performed satisfactorily provided a rational basis for city authorities to limit the bid advertisement to that specified brand of lamps, and the court found no abuse of discretion. There is no requirement that bid specifications naming a particular brand also include a phrase such as "or an equal brand." Contact the Contract Specialist for assistance in determining and documenting the brand name need, and preparation of bidding documents.

### *Sole Source Purchases*

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

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

## B. Special Market Conditions

### *Special Market Conditions – What Are They?*

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

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

### *Auctions*

Sometimes the city will find exactly what it needs, at a favorable price, at an auction. Obviously, seeking bids would be impossible in an auction setting. [RCW 39.30.045](#) authorizes a city to acquire supplies, materials, and equipment through an auction conducted by the United States or any agency thereof, an agency of the state of Washington, a municipality or other government agency, or any private party, without bids, if the items to be purchased can be obtained at a competitive price. This authority, it would seem, would allow a city to make a purchase on an internet-based auction service, such as eBay, as well as through more traditional, in-person auctions. The Department Head must pre-approve an upper bidding limit, (which must be within the approved city budget), for the person doing the bidding.

## C. Emergency Purchases

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

1. Obtain concurrence of the Department Head or designee that a qualifying emergency requiring immediate acquisition of goods or services exists.
2. The Project Manager must inform the contractor that prevailing wage rates apply and the paperwork will be required as soon as possible, and before payment is made.
3. Promptly notify the Contract Specialist of emergency situations by submitting a memo describing the situation as soon as an emergency is known.
4. The Contract Specialist prepares the contract and City Council documents.
5. Once approved by City Council, the Contract Specialist sends the contract, bonds

and insurance requirements to the contractor. Work may begin without the required documents but the executed contract must be obtained, along with an executed bonds, and insurance documentation, as soon as possible, and before any payment is made.

State law requires that if a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract<sup>22</sup>.

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

#### D. Inter-Governmental Cooperative Purchases

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

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

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

The originating agency’s procurement, advertisement, contract documents, and the completed [Cooperative Purchasing Checklist](#) must be saved with the city’s contract documents.

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

The City Council must approve all Intergovernmental Cooperative Purchasing Agreements.

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<sup>22</sup> [RCW 39.04.280](#)



## E. Pollution Control Facilities

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

## F. Neighborhood “Self-Help” Projects

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

## G. State or County Construction or Repair of Streets<sup>23</sup>

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

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<sup>23</sup> [RCW 47.24.050](#)

## XV. ADDITIONAL/SPECIAL CONSIDERATIONS

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

### A. Certificates of Insurance

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

### B. Washington State Contractor's License

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

- [Department of Labor and Industries](#)
- [Department of Revenue](#)

### C. City of Anacortes Business License

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

## XVI. DISPOSAL OF SURPLUS PROPERTY

The city has a separate policy for the disposal of surplus property. Refer to the [Fixed Asset Policies and Procedures](#) for more information.

## XVII. TRADE-INS

Trade-Ins are allowed on new purchases if approved by Legal and Finance in advance. Trade-Ins must be negotiated, documented at "Fair Market Value" by the Project Manager, and declared surplus ahead of time.

Fair Market Value can be obtained by finding comparable units that have been sold at online auctions, e.g. [www.publicsurplus.com](http://www.publicsurplus.com), [www.ebay.com](http://www.ebay.com), [www.rockanddirt.com](http://www.rockanddirt.com), [www.ironplanet.com](http://www.ironplanet.com) or other online sources such as [Edmunds.com](http://Edmunds.com), [Kelley Blue Book](http://Kelley Blue Book), or [NADA](http://NADA). [www.govdeals.com](http://www.govdeals.com) is a good place to find auction results for comparables.

Trade-Ins may also be requested ahead of time in the Bid Specifications as a "Guaranteed Buy Back". Work with Legal if you would like to consider this option.

## XVIII. SALES TAX AND USE TAX

### A. Sales Tax

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

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

- Destination based tax does not apply to the sales of motor vehicles, trailers, semi-trailers, aircraft, watercraft, modular homes, manufactured and mobile homes, towing services, and florists. Sales tax is based on the seller's location even if the seller delivers the items to customers.
- Sales tax on services are coded to the location where they are performed.
- Over-the-counter (in person) sales are based on the location of the sale.

To look up tax rates, visit the Washington State Department of Revenue (DOR) [website](#).

### B. Use Tax

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

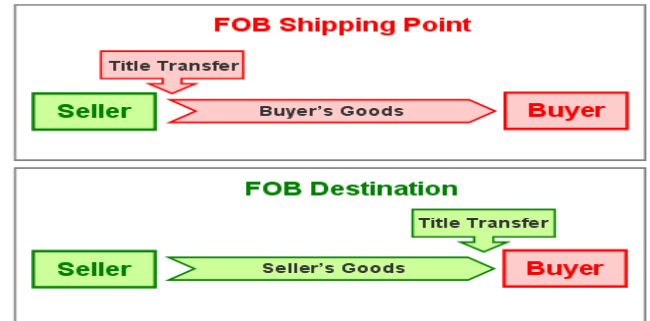
Use tax is due if:

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

## XIX. FREIGHT

### A. Shipping Terms

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



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

### B. Receiving Freight

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

#### *Get what you sign for*

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

#### *Damaged Cartons*

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

#### *Concealed Damage*

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

1. Call the carrier immediately upon discovery of the damage and request an inspection. Notate the date and the person contacted.
2. Notify the vendor to file a claim.
3. All shipping cartons should be retained for inspection on any damage.
4. When making a request for an inspection, advise the carrier whenever possible what the value of the damaged goods is. If the value is less than \$50.00, most

carriers will frequently waive inspection. Indicate person contacted on the claim form.

5. When an inspection is made, specific damages should be notated by both parties and signed by both on the inspection report. Send the report to the vendor and keep a copy for the city records.

## XX. PAYMENTS

Inform all vendors to send invoice(s) to:

City of Anacortes  
Accounts Payable  
PO Box 547  
Anacortes, WA 98221  
360-299-1962  
or by email to [accountspayable@cityofanacortes.org](mailto:accountspayable@cityofanacortes.org)

All questions regarding payments should be directed to the city Accounts Payable.

Invoices related to contracts are processed by the Contract Specialist.

The City of Anacortes offers EFT/ACH deposit for remittances. If a vendor would like to apply they need to complete the [EFT/ACH form](#) and return it to the City of Anacortes.

Accounts payable checks are paid on the next business day after approval at a regular City of Anacortes City Council meeting.

A P-Card is an alternate way to pay for something. See the City's [policy](#) for details and requirements.

## XXI. APPENDICES

### A. Glossary

#### **Bid**

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

#### **Bid Bond**

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

#### **Bidder**

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

#### **Change Order**

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

#### **Contract**

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

#### **Contract Modification**

Written modification to a contract (sometimes called an amendment). A modification may include one or more change orders, and must be fully executed by both parties before it obligates the contractor to render services, or the city to pay for services rendered, in excess to the original contract.

#### **Final Acceptance**

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

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

#### **Fully Executed**

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



**Notice of Completion**

After final acceptance of any public works project over \$35,000, a public agency must file a Notice of Completion with the Department of Revenue (DOR), Department of Labor and Industries (L&I), and Employment Security Department (ESD)<sup>24</sup>. Each state agency must approve the Notice of Completion separately, at which point each agency will send a certificate of release certifying that all applicable taxes, premiums, and penalties have been paid. If DOR, L&I, or ESD report that there are unpaid taxes or fees, the agency must pay the missing amount to the state within 10 days and subtract it from the retainage<sup>25</sup>.

**Request for Proposal (RFP)**

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

**Request for Quotation/Qualification (RFQ)**

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

**Payment Bonds**

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

**Performance Bonds**

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

**Sealed Bid**

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

**Specifications**

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

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<sup>24</sup> [RCW 60.28.051](#)

<sup>25</sup> [RCW 60.28.060](#)

B. [Matrix of Contract Requirements](#)

Yes = REQUIRED; No = OPTIONAL

City of Anacortes Contract Requirements

	Estimated Cost	Quotes	Formal Bids	Advertisement & Public Bid Opening	Bid Bond	Council Approval	Retainage	Performance / Payment Bonds	Intent & Affidavits	Notice of Final Acceptance	Notice of Completion
Public Works											
Single Trade or Craft	\$0-\$75,500	1+	No	No	No	If \$45K+	5%, or 10% with Bonds Waiver	Yes, or Waiver with 10% Retainage	Under \$2,500 use the no-fee Combined Form; \$2,500+ Yes	Yes	If \$35K+
	\$75,501+	Not allowed	Yes	Yes - 13 Days Before Bid Opening	Yes - 5% of Bid	Yes	5%, or 10% with Bonds Waiver if under \$150k	Yes, or Waiver with 10% Retainage if under \$150k	Yes	Yes	Yes
Multiple Trade or Craft	\$0-\$116,155	1+	No	No	No	If \$45K+	5%, or 10% with Bonds Waiver	Yes, or Waiver with 10% Retainage	Under \$2,500 use the no-fee Combined Form; \$2,500+ Yes	Yes	If \$35K+
	\$116,156+	Not allowed	Yes	Yes - 13 Days Before Bid Opening	Yes - 5% of Bid	Yes	5%, or 10% with Bonds Waiver if under \$150k	Yes, or Waiver with 10% Retainage if under \$150k	Yes	Yes	Yes
MRSC Small Works Roster (SWR)	\$0-\$49,999	3+	No	No	No	If \$45K+	5%, or 10% with Bonds Waiver	Yes, or Waiver with 10% Retainage	Yes	Yes	If \$35K+
	\$50,000-\$249,999	All on Roster list or 5+	No	No	No	If \$45K+	5%, or 10% with Bonds Waiver if under \$150k	Yes, or Waiver with 10% Retainage if under \$150k	Yes	Yes	Yes
	\$250,000-\$350,000	5+, must notify all contractors on the roster list	No	No	No	Yes	5%	Yes	Yes	Yes	Yes
	Over \$350,000	Can't use SWR - See bid requirements above									
Materials, Supplies, Equipment (Unrelated to Public Work/Construction, Services, A/E)											
	\$0-\$2,500	1+	No	No	No	No	No	No	No	No	No
	\$2,501-\$7,500	3+	No	No	No	No	No	No	No	No	No
	\$7,501+	Not allowed	Yes	Yes - No Min # of Days	No	If \$45K+	No	No	No	No	No
MRSC Vendor List	\$0-\$15,000	3+	No	No	No	No	No	No	No	No	No
	Over \$15,000	Can't use Vendor List - See bid requirements above									
Personal Services											
May Use MRSC Consultant Roster	Any Amount	1+	No	No	No	If \$45K+	No	No	No	No	No
Purchased Services											
	Any Amount	1+	No	No	No	If \$45K+	No	No	Possibly	No	No
Architectural and Engineering (A/E) Professional Services											
	Any Amount	Both a RFQ and RFP Required - NO Quotes or Bids Allowed		Yes - No Min # of Days	No	If \$45K+	No	No	No	No	No
MRSC Consultant Roster	Any Amount	RFP Required - NO Quotes or Bids Allowed		No	No	If \$45K+	No	No	No	No	No