

**Contract Administration Subcommittee (CASC)  
Municipal Research and Services Center)**

# **Bid Law Exemptions & Emergency Contracting**

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## **RCW 39.04.280**

### **Competitive bidding requirements -- Exemptions.**

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

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

- (a) Purchases that are clearly and legitimately limited to a single source of supply;
- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

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

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

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

[1998 c 278 § 1.]

## **RCW 39.30.045**

### **Purchase at auctions.**

Any municipality, as defined in RCW [39.04.010](#), may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price.

[1993 c 198 § 4; 1991 c 363 § 112.]

### **NOTES:**

**Purpose -- Captions not law -- 1991 c 363:** See notes following RCW [2.32.180](#).

## **Bid Law Exemptions & Emergency Contracting**

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February 2012



## **Uniform Exemptions**

- RCW 39.04.280 provides uniform exemptions to municipal competitive bidding requirements when awarding contracts for equipment, supplies and material purchases and for public works projects.
- Since 1998, exemptions have been uniform.
- Statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements.
- This RCW supplements and does not limit other powers of any municipality that provide exemptions from competitive bidding requirements.



## **Uniform Exemptions**

Competitive bidding procedures may be waived by resolution of the governing body of the municipality for:

- Purchases that are clearly and legitimately limited to a single (sole) source of supply
- Purchases involving special facilities or market conditions
- Purchases in the event of emergency
- Purchases of insurance or bonds
- Public works contracts in the event of an emergency



## **Uniform Exemptions**

Competitive bidding procedures may be waived under the preceding circumstances by adopting either:

a resolution at the time of contracting; or  
by written policies beforehand.

A resolution at the time of contracting must state the factual basis for the exception.



## Uniform Exemptions

If written policies are used to waive competitive bidding requirements, the contract and a factual basis for the exception must be recorded and open to public inspection immediately after a contract is awarded under those policies.



## Possible Sole Source Purchase Rationales

Licenses, copyrighted, or patented product or service that no other vendor provides.

- Why is it mandatory to use this licensed or patented product
- Were efforts made to find other vendors

Existing City equipment, inventory, custom-built information system, custom-built data inventory system, or similar product or programs.


Compatibility with existing goods, equipment or services and there are no reasonable alternatives or substitutes.



## Sole Source Examples

- Installation of water system security equipment.
- Proprietary, customized software.
- Maintenance/repair of radio equipment and repeater site.
- Official newspaper where there is only one that meets statutory requirements.
- Water meters if only one dealer.
- Stun guns (tasers) where certification is needed on a given brand.





### Sole Source Justification Form

Date\*:

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**Department:**

**Department Contact:**  **Phone/Ext:**

**Recommended Vendor:**


**Address:**  **Phone:**

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**1. Describe the item requested and it's function:**

**2. Check the reasons for the sole source request:**

- Sole Source: No other items are known to exist which perform the same function
- Special Design: Item is of specific design to fit in with an existing installation
- Consultant: Providing professional or technical expertise of a unique nature or location availability
- Proprietary: Item is held under exclusive title, trademark or copyright
- Warranty Service: The vendor is the sole provider of factory authorized warranty service
- Established Standard: The vendor is the sole provider of goods and services for which the City has established a standard
- Used Item: The vendor/distributor is a holder of a used item that would represent good value and is advantageous to the City (attach information on market price, availability, etc.)



3. Is this product available from other sources?  Yes  No

4. What necessary features does the vendor provide which are not available from other vendors?

5. Can your requirements be modified so that competitive products or services may be used?  
 Yes  No

If yes, please explain modifications and potential costs:

6. How does the recommended vendor's prices or fees compare to the general market?

7. What steps were taken to verify that these features were not available elsewhere?

Other brands/manufacturers were examined. Provide a list of phone numbers and names and explain why these did not meet the requirements:


Other vendors were contacted but did not meet the requirements. Provide a list of companies and phone numbers and why they did not meet the requirements:

Other, please explain:

My department's recommendation for sole source is based upon an objective review of the good/service being required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favor, or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known vendors to exist.

Requestor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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## Auctions

RCW 39.30.045:

Any municipality:

May purchase any supplies, equipment, or materials at auctions by:

- Any federal, state, or local government
- Any private party

without public bidding if the items can be obtained at a competitive price

Preapproval of an upper bidding limit by the Manager/Council/Commission is advisable



Sam pulled out another file and said; "Oh, I see that your parks maintenance supervisor bought a mower at auction. I bet there's a finding lurking in this file."



Then, he smiled. "Aha, great documentation on the need for the mower and comparative prices. I see you even have a memo from the Mayor authorizing Joe to bid on the mower and a not to exceed limit for his bidding. No finding here."



## **Special Facilities or Market Conditions Rationales/Samples**

Really, really, really good deal that is only available for a very short time.

Very good price on an exceptional piece of used equipment.



## Emergencies

An emergency is defined, uniformly for all classes and types of municipalities, as unforeseen circumstances beyond the control of the municipality that either:

- present a real, immediate threat to the proper performance of essential functions or
- will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken



## Emergency Contracts

When an emergency happens, the designated emergency response person:

- may declare an emergency situation exists
- waive competitive bidding requirements
- award all necessary contracts on behalf of the municipality to address the emergency situation

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



## Caselaw & AGOs

Nothing significant since law was adopted

Reasons?

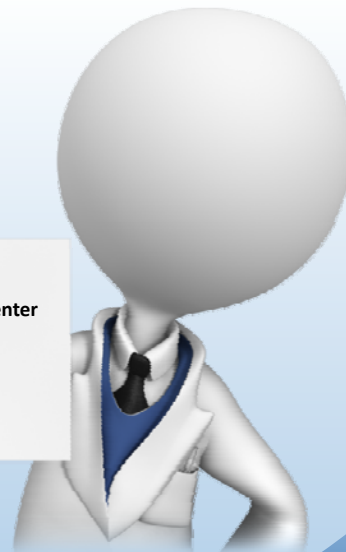
Who objects to not being given an opportunity they did not know about?

Who has the time to contest possibly losing out on a contract?



**Questions?**  
**More Information?**

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<b>#1 - Purchasing</b>
Yacolt
The Town purchased equipment and materials from the Public Works Director's personal business for \$13,980. The purchase exceeded the formal bid threshold established in state law. We found no independent appraisal of the equipment's value was performed. The transaction was at the Public Works Director's direction and included an excavator, water tank, generator, socket set, leather gloves, a shop broom, refrigerator, microwave and writing pads.

<b>#2- Purchasing</b>
Woodway
State law requires a Town to formally bid purchases of supplies and equipment costing more than \$7,500. This process includes making specifications available to interested parties through a notice in the newspaper 13 days prior to the date bids will be opened publicly and at a fixed time and place. The Town can fulfill bidding requirements by procuring goods through a purchasing cooperative if it is a member. We reviewed three purchases during the audit period and noted the Town did not comply with bid laws:
The Town did not solicit competitive bids when it purchased playground equipment for \$52,330 and related supplies for \$21,348.
The Town purchased a tractor for \$28,032 using the state Department of General Administration's contract; however, the Town was not a member of the purchasing cooperative.

<b>#3 - Public Works Contracting</b>
Whatcom County Fire Protection District No. 18
In 2007, a District employee began re-grading the shorefront on District property without obtaining Board approval or the proper permits. The cost of this project was \$7,270 and exceeded the \$2,500 threshold for competitive bid requirements. In addition, the employee hired two uninsured helpers for the project. The project caused land to slide into the lake and resulted in fines from Whatcom County and the state Department of Ecology totaling \$13,900. The District declared an emergency and paid a construction company \$25,442 to repair the damage. However, the District did not pass a resolution to waive bidding requirements as required by state bid laws. In total, the District spent \$32,712 on the project.
In 2008, the District spent more than \$4,912 to replace a roof on one of its stations. Rather than obtaining bids for the project, a District employee performed the work on his own. The project exceeded the \$2,500 threshold for obtaining bids for public works projects.

<b>#4 - Public Works Contracting</b>
Whatcom County Fire Protection District No. 8
The District used \$50,448 from a federal Homeland Security grant that it received to purchase and install new exhaust equipment on District vehicles. The District did not place this public works project up for bid and did not demonstrate the purchase was sole source.
The District did not seek bids for concrete used in a public works project at its fire station. The District also used volunteer labor on the project. Total cost of this project was \$4,368. By using volunteers, the District did not comply with prevailing wage laws.
The District believed the equipment purchase was a sole source purchase and was not required to be bid, but was unaware it needed supporting documentation to show the justification for the sole source. Further, the

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District was unaware it could not purchase materials for a public works project directly from a vendor without bidding and could not use volunteer labor on a public works project.

**#5 - Public Works Contracting**

**Wahkiakum County Port District No. 2**

Public works projects estimated to cost over \$200,000 are required by state law to follow a formal bidding process with the contract being awarded to the lowest responsible bidder. Contrary to RCW 53.08.120, "Contracts for labor and material," and RCW 39.04.155, "Small Works Roster Contract Procedures," the Port improperly split the park expansion into three separate projects and did not follow the required competitive bid process. Further review of the Port's activities identified the following additional issues:

- The engineer's estimate for the restroom facility exceeded \$200,000. Under RCW 53.08.120, competitive bidding was required for this portion of the project alone. However, Port records contain no documentation of bid procedures performed, no bids and no contract for the work to be performed. The Port paid a contractor \$224,415 to construct the restroom.
- Five commercially fabricated yurt kits were purchased from a vendor at a cost of \$38,133. The Port lacks evidence that competing products or suppliers were considered and the Port did not claim a sole-source exemption under RCW 39.04.280.
- The port could not produce the following additional records for the project, which are required by state law:
  1. Evidence of bid solicitation procedures, bids received or contracts awarded for the other, non-restroom parts of the project (RCW 53.08.120 and RCW 39.04.155).
  2. Evidence of bonding and insurance coverage for contractors performing work on the project (RCW 39.08.010).
  3. Evidence of compliance with state prevailing wage laws including "Intent to Pay Prevailing Wage" and "Affidavit of Prevailing Wages Paid" forms, certified by the state Department of Labor and Industries (RCW 39.08.020, RCW 39.08.040 and RCW 43.09.200).

**#6 - Purchasing**

**Black Lake Fire Department**

The District awarded a contract to a vendor without using the competitive bid process. The District stated the vendor was a sole source, but did not adopt a resolution officially declaring sole source. The total paid to this vendor was \$115,377.

**#7 - Purchasing**

**South Pend Oreille Fire and Rescue**

During the audit, we selected five purchases subject to competitive bidding. The District did not comply with competitive purchase requirements for three of those.

The District could not demonstrate it had properly advertised bids for a new fire engine costing \$272,763 or a fiberglass tank costing \$17,845.

The District did not advertise for bids, declare a sole source, or declare special market conditions when it purchased the brush rig for \$36,000.

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<b>#8 - Public Works Contracting</b>
Skagit County Fire Protection District No. 3
State law requires the District to competitively procure contracts for public works projects greater than \$2,500, prior to July 25, 2009, or \$20,000 after July 25, 2009. State law (RCW 39.04.280) allows the District to waive competitive bidding requirements on public works only in the event of an emergency. On June 11, 2009, the District waived competitive bidding on a \$146,055 construction project by declaring the contract "sole source". State law does not provide for a sole source exception for public works unless the entity declares an emergency. The District did not do so and should have competitively procured the contract.

<b>#9 - Purchasing</b>
Pend Oreille County
We identified the following instances in which the County did not comply with bid law: <ul style="list-style-type: none"> <li>· Three purchases of equipment and supplies totaling \$307,865 were not properly advertised and competitively bid.</li> <li>· Two computer software and hardware purchases totaling \$17,165 were not competitively negotiated as required.</li> <li>· A computer software upgrade that cost \$29,572 was purchased from a sole source of supply. The County did not follow requirements for using the sole source exemption.</li> <li>· Computer software that cost \$6,725 was not competitively negotiated.</li> </ul>

<b>#10 - Purchasing</b>
Douglas/Okanogan County Fire District No. 15
The District purchased equipment during the audit period totaling \$521,570. We reviewed these purchases and determined the District was not able to provide evidence it met competitive bid law requirements: The District entered into inter-local agreements with two other fire protection districts to piggyback on their bids. Using the piggyback process, which allows the District to use the bid results from the other districts, the District purchased two fire engines totaling approximately \$394,000. When piggybacking on other bids, the District should have ensured the other districts followed competitive bid laws. Our review of these purchases found the District did not take steps to determine if the other districts followed applicable bid laws.  The District purchased general fire equipment totaling approximately \$127,570. The amount of each purchase allowed the District to use a purchase contract or a vendor list process, which allows an entity to call for quotes from at least three vendors on a predetermined list without having to go through a formal competitive bid process. We reviewed these purchases for compliance with requirements for using the vendor list process. The District was not able to provide evidence that it obtained quotes from three vendors on the approved list of vendors as per state law.

<b>#11 - Public Works Contracting</b>
Northshore Utility District
In July 2007, the District awarded a \$1,384,360 contract for the extension of sewer and water lines in five specific neighborhoods within the District. The Board of Commissioners approved nine change orders totaling \$332,135, including one that reduced the contract by \$53,163. Our audit found four of the change orders were for work not within the original scope of the project: <ul style="list-style-type: none"> <li>· Three of the change orders, totaling \$270,703, were to repair damaged pipes. The District indicated the repairs were an emergency, which would be appropriate for this situation. However, these pipes were in locations</li> </ul>

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outside the neighborhoods included in the project and should have been separately contracted.

- One of the change orders totaled \$84,550 for water and sewer extensions on a separate District project. The developer on that project hired a contractor who did not finish the work. As a result, the District consulted its small works roster to select a new contractor and determined the contractor for the sewer and water project was the lowest quote. The District should have bid this work separately.

**#12 - Public Works Contracting and Purchasing**

City of Long Beach

State law (RCW 35.23.352) requires second class cities to competitively bid public works projects of more than \$40,000 and purchases of equipment of more than \$7,500. State law (RCW 39.04.280) allows an exemption to competitive bidding if purchases are limited to a single source of supply. An entity must approve the exemption by resolution or through written policies, and record the factual basis for using the exemption.

We examined six public works projects and purchases totaling \$302,636 and found the City did not comply with state bid laws for three, totaling \$232,781. Specifically, the City:

- Did not competitively bid or use its small works roster to obtain three quotes for the beach pavilion update project totaling \$41,935.
- Obtained three quotes to purchase a forklift for \$17,027.
- Used the sole source exemption to purchase equipment totaling \$17,500. It did not have a written policy or pass a resolution reciting the factual basis for using the exemption.

**#13 - Public Works Contracting**

I-COM

The Center is required to competitively bid all public works projects over \$200,000. The Center failed to competitively bid a \$305,571 radio tower construction project and to ensure prevailing wages were paid. Due to significant structural damage to the existing tower, the tower did not provide adequate emergency radio communication needs. In addition, an osprey nest atop the tower had to be moved to the new tower in a timely manner and under stringent guidelines imposed by the state Department of Fish and Wildlife. The Center did not declare an emergency to exempt itself from competitive bidding requirements.

**#14 - Public Works Contracting and Purchasing**

Hutchinson Irrigation District No. 16

During our review of compliance with state bid law, we judgmentally selected one engineering service, one public works project, and two purchases of supplies, materials and equipment and found:

- In 2007 the District paid a vendor \$33,452 to replace a broken pump. The District does not have a small works roster for public works projects. Therefore, the District was required to formally advertise for sealed bids and select the lowest, responsible bidder. It did not.
- The District purchased a backhoe for \$82,482 in 2008 based on quotes from three vendors. We also reviewed payments totaling \$10,784 in 2008 and \$14,043 in 2009 to a vendor for water meters and other plumbing parts. Based on the cost of these purchases, and the lack of a resolution allowing alternative purchasing methods, the District was required to formally advertise for sealed bids and select the lowest, responsible bidder. It did not.

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<b>#15 - Public Works Contracting and Purchasing</b>
Eatonville
<p>We examined Town expenditures of \$337,646 from January 2004 through December 2005 to ensure compliance with Town policies and state bid law. We also included several expenditures for the period January 2006 through June 2007. We noted the following:</p> <ul style="list-style-type: none"> <li>· The Town did not solicit bids for construction of a \$36,999 sewer treatment plant.</li> <li>· The Town did not solicit bids for a purchase of \$46,626 in playground equipment. State bid law requires purchases of materials and supplies over \$15,000 be awarded by a formal sealed bid process. The Town exempted the purchase from the bid process because it considered it part of the public works project.</li> <li>· The Town did not solicit bids for the \$55,776 Pennsylvania Avenue South water main project. The project included a water line extension and electrical work for new homes. The Council approved the project as an emergency repair; however, it does not meet the requirements of an emergency repair and should have been competitively bid.</li> </ul>

<b>#16 - Purchasing</b>
Clallam County Fire Protection District No. 2
<p>Clallam County Fire Protection District No. 2 spends approximately \$1.1 million annually. During the audit period, the District did not follow state bid law when it purchased items totaling \$498,089. In June 2006 the District signed an inter-local agreement with Skagit County Fire Protection District No. 3 to piggyback on its competitive bid to purchase two fire trucks. The inter-local agreement stated the District needed to have its own contract with the vendor and it did not. Further, when a local government piggybacks on another entity's bid, it is required to demonstrate compliance for purchases made through that entity's bid. The District did not review the Skagit Fire District's bid documentation to ensure it complied with state bid law. In January 2007 the District purchased 40 pagers for \$15,661 without a formal bid. In May 2007 the District informally solicited quotes from three suppliers to purchase a self-contained fire-fighting unit for a pick-up truck for \$12,597 without a formal bid.</p>

<b>#17 - Purchasing</b>
Central Skagit Medic One
<p>During 2010, the Authority purchased two ambulances for a total of \$339,859 and spent \$55,470 and \$100,350 on fuel and medical supplies, respectively. We reviewed the Authority's compliance with procurement requirements for these purchases and noted:</p> <p>State law requires the Authority to use a competitive process when purchasing supplies, materials and equipment in excess of \$5,000. The Authority did not solicit quotes or bids for its purchases of fuel or general medical supplies.</p> <p>The Authority does not have policies and procedures for procurement.</p> <p>The Authority purchased the two ambulances using another entity's contract. State law allows governments to make purchases from contracts awarded by other jurisdictions or cooperatives by entering into an interlocal agreement. When piggybacking on another entity's contract with a vendor, it is the responsibility of the participating government to ensure the following requirements are met:</p> <ul style="list-style-type: none"> <li>o The award falls within the piggybacking entity's own bid thresholds.</li> <li>o The lead government advertised for bids in accordance with its own statutory requirements.</li> <li>o The lead government posted the bid notice on a website established for posting public notice for bids.</li> <li>o The lead government's request for bids notified vendors the contract could be used by more than one government entity.</li> </ul> <p>The Authority could not demonstrate it met all of the requirements.</p>

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<b>#18 - Purchasing</b>
City of Arlington
<p>The Fire Department delayed replacing an ambulance purchased in 1994. It broke down and could not be repaired. The Department contacted three ambulance vendors for quotes instead of publishing a competitive bid advertisement. The Department received one quote for an ambulance available in 30 days, so it proposed that the Council approve the purchase immediately.</p> <p>The City purchased the ambulance for \$128,142 without soliciting competitive bids or adopting a resolution reciting the reason for an exemption to bid law.</p>

<b>#19 - Public Works Contracting</b>
City of Anacortes
<p>In January 2006, the City's Planning Commission reviewed a project for a two-phase, 47-lot residential subdivision. The Planning Commission recommended approval of the project subject to 30 conditions, one of which being a cost sharing arrangement between the applicant and the City for 17th Street improvements. The work that the applicant performed for the City was a street improvement project that should have been put out to bid. The City engineers estimated the 17th Street improvements would cost approximately \$420,000. The developer offered a project cost of \$378,000, with no charge for engineering or mobilization costs, and provided the contract amount would not exceed \$378,000.</p> <p>The City claimed the developer was a sole-source vendor due to cost savings for the City and the least disruption to neighbors. However, only purchases are subject to this bid exemption, not public works.</p>

# Sample Emergency Purchasing & Contracting Municipal Code Sections

## **Auburn Municipal Code**

2.75.110 Emergency purchases of supplies.

Upon the proclamation of a civil emergency by the mayor, and during the existence thereof, emergency purchases of supplies, materials and equipment are authorized to be made in accordance with the following procedure:

A. Emergency purchasing forms shall be provided by the finance department for use for all emergency purchases or contracting for supplies, materials or labor during the existence of such emergency, which forms shall provide for the filling in of appropriate prescribed information which shall include date and time of purchase, name and address of supplier, quantity, unit, description, unit price, and total price of item, name and appropriate identification number from the identification card of the person making the purchase, date required and date delivered, description of use of item, including disaster work order number, description of disaster work and location of use, and name and appropriate identification number from the identification card of the person receiving the item.

B. An identification card shall be used in all cases to verify that the purchaser is authorized by the city to make emergency purchases.

C. A log of all purchases made during any emergency shall be maintained by each department.

D. The heads of departments using emergency purchase forms shall account for all costs incurred in making such purchases.

E. Upon termination of the emergency, the heads of departments shall review all emergency purchase orders issued by their respective departments, and shall verify and authenticate such orders, and submit a summary thereof through the purchasing agent to the city council for authorization of payment. (Ord. 3957 § 2(11), 1984.)

3.10.050 Emergency purchases – Authorization.

The mayor is hereby authorized to make emergency purchases or enter into emergency contracts, such emergencies being:

A. In case of any breakage or loss of equipment or in other circumstances in which any necessary service is or is about to be interrupted;

B. In cases where the city will suffer loss by following the normal purchases and contract procedures;

C. In situations where public health or safety may be jeopardized;

D. In other cases as allowed by state law. (Ord. 5525 § 1, 2001.)

## **Cowlitz County Code**

2.32.030 Purchases by department heads authorized – Emergency purchases.

The County Purchasing Agent may, and where legally required to do so, shall authorize, in writing, any department head to purchase or contract for certain specified classes of supplies, materials, equipment, or contractual services, independently of the County Purchasing Agent's office, but such purchases or contracts shall be made in conformity with the applicable provisions of state law and regulations prepared by the County Purchasing Agent. The County Purchasing Agent may also rescind such authorization to purchase independently by written notice to the department head concerned unless otherwise prohibited by law.

Emergency purchases may be made by department heads. Emergency purchases shall be construed to mean only an item or service which is an immediate and pressing necessity and which is urgently needed, the lack of which will endanger life, cause added expense and great inconvenience, and which must be secured without delay. Emergency purchases made under this authority shall be requisitioned through the Purchasing Agent within 60 hours. Requisitions for all such emergency purchases shall be stamped or otherwise identified as emergencies. [Res. dated 12-29-61, 33 J 550.]

## **Fircrest Municipal Code**

3.12.070 Exemptions to competitive bidding requirements.

(a) Purchases which by their nature are not adapted to competitive bidding, such as purchases of repairs and purchases of items which may, as a practical matter, only be purchased from a single source, and purchases for repairs or additions to equipment owned by the city which may be more efficiently added to by a certain person or firm, shall not be subject to the competitive bidding requirements of this policy.

(b) RCW 39.30.045, Permits to Purchase, Auction, Closeout, Bankruptcy Sales. If an authorized purchasing coordinator determines that supplies, material, or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or

## Sample Emergency Purchasing & Contracting Municipal Code Sections

other similar sale, and makes a finding that a purchase at any such auction or sale will be made at a cost below market cost, the city manager may authorize said purchases.

(c) Exchanges. The city may by agreement exchange supplies, materials or equipment with other public agencies.

(d) Interlocal Agreements in Letting of Contracts for Commodities or Services. The city manager may enter into joint purchase agreements with any and all other public agencies within the state for the purchase of any commodity or service as permitted by state law, where it is determined by the manager to be in the best interest of the city.

(e) Emergency Purchases. In the event that an emergency should arise after office hours, which emergency requires immediate action on the part of the city department involved for the protection of the best interests of the city, or should such a situation arise on a Saturday, Sunday or holiday and where it is not possible or convenient to reach the city manager, any necessary purchase shall be made by the city department for which the purchase is necessary. The purchase shall be reported to the city manager at the first of the next business day. Publication notices may be waived for emergency purchases as provided by law. However, authorized employees must demonstrate a reasonable effort to contact two or more vendors for price quotations.

(f) Petty Cash.

(1) The treasurer may maintain a petty cash fund of up to \$575.00 to help eliminate the issuance of purchase orders and claims vouchers for small items needed immediately from vendors not having open purchase orders. No petty cash purchase shall exceed \$25.00, except in emergencies. All requests for petty cash funds or reimbursement of petty expenditures shall be reconciled by a receipt or paid invoice along with a completed petty cash form.

(2) Reimbursements and reconciliations of petty cash funds shall be made within 30 days of the transaction. No personal checks shall be cashed out of the petty cash fund.

(g) Real Property. Acquisition of real property is exempt from the competitive bidding requirements of this policy. Upon approval of the city council, the city manager may proceed to acquire real property through negotiation. Such negotiations shall be based upon an independent fee appraisal of the property. The city shall not pay more than fair market value for any real property without prior council approval. If the property is acquired in part or in whole with federal funds, such acquisition shall additionally comply with the Uniform Real Property Acquisition and Relocation Assistance Act of 1970, as amended.

(h) Purchases Between \$7,500 and \$15,000. Any purchase of supplies, material, or equipment except for public work or improvement, where the cost thereof exceeds \$7,500 shall be made upon call for bids.

Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

For advertisement and formal sealed bidding to be dispensed with as to purchases between \$7,500 and \$15,000, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190. (Ord. 1127 § 1, 1996).

### **Port Townsend Municipal Code**

3.46.090 Exemptions to competitive bidding requirements.

A. Sole Source Purchases and Special Market Conditions. Purchases which by their nature are not adapted to competitive bidding, such as purchases of repairs and purchases of items which may, as a practical matter, only be purchased from a single source, shall not be subject to the competitive bidding requirements of this chapter. Purchases for materials, supplies, equipment or repairs which are made under special market conditions, e.g., where the item is offered to the city at a highly favorable price and will be sold before the city has the time to comply with formal bidding requirements, or where the city must act quickly or through a specific channel to take advantage of special circumstances to achieve a lower cost, shall not be subject to the competitive bidding requirements of this chapter. Where the city makes sole source purchases or special market condition purchases without formal bidding compliance, the city council shall pass a resolution, or the city manager shall prepare a statement in cases within the manager's authority, reciting the situation and setting forth the reasons for invoking this section.

B. Auctions, Closeout and Bankruptcy Sales. If an authorized purchasing coordinator determines that supplies, material, or equipment can be purchased by any public auction, closeout sale, bankruptcy sale or other similar sale, and makes a finding that a purchase at any such auction or sale will be made at a cost below the market cost, the city manager may authorize said purchases.

C. Exchanges. The city may by agreement exchange supplies, materials or equipment with other public agencies.

## Sample Emergency Purchasing & Contracting Municipal Code Sections

D. Interlocal Agreements in Letting of Contracts for Commodities or Services. In accordance with RCW 35.77.020, 36.75.200, 39.34.080, and 47.24.050, the city manager may enter into joint purchase agreements with any and all other public agencies within the state for the purchase of any commodity or service as permitted by state law, where it is determined by the manager to be in the best interest of the city, without individual approval of the city council, and so long as the contract is consistent with the approved annual budget. Prior to commencing a bid process for significant purchases, the city manager shall make reasonable efforts to find opportunities for joint purchases with other public agencies in accordance with this section.

E. Emergency Purchases. Under emergency conditions as provided herein, the public bidding requirements are suspended. Publication notices may be waived for emergency purchases and other contracts as provided by law. However, where the conditions allow sufficient time, authorized employees shall demonstrate a reasonable effort to contact two or more vendors for price quotations, and/or to follow bidding procedures to the best extent possible under the circumstances.

1. Emergencies Occurring After Regular Business Hours. In the event that an emergency should arise after office hours, which emergency requires immediate action on the part of the city department involved for the protection of the best interests of the city, or should such a situation arise on a Saturday, Sunday or holiday and where it is not possible or convenient to reach the city manager, any necessary purchase shall be made by the city department for which the purchase is necessary. The purchase shall be reported to the city manager at the first of the next business day.

2. Other Emergencies. In the event of a natural disaster or man-made disaster or emergency, and where it is necessary to the health, safety or welfare of the community that immediate action and execution of a public work be undertaken, public bidding requirements shall be suspended during the pendency of the emergency condition.

3. City Council Action. Where public works projects are undertaken in emergency conditions, and without public bidding compliance, the city manager shall report the condition to the city council as soon as practicable. As soon as practicable, the city council shall pass a resolution declaring the emergency, reciting the facts constituting the emergency, and waiving the public bidding requirements.

F. Petty Cash.

1. Petty cash purchase shall not exceed \$100.00 per project, except in emergencies. All requests for petty cash funds or reimbursement of petty expenditures shall be reconciled by a receipt or paid invoice along with a completed petty cash form.

2. Reimbursements and reconciliations of petty cash funds shall be made within 30 days of the transaction. No personal checks shall be cashed out of the petty cash fund.

3. Purchasing Cards. Purchasing cards may be used for purchases; provided, however purchasing cards shall not be used until the city manager adopts policies and procedures governing their use, in accordance with Washington law.

G. Real Property. Acquisition of real property is exempt from the competitive bidding requirements of this policy. Upon approval of the city council, the city manager may proceed to acquire real property through negotiation. The city council shall authorize all real property purchases. Negotiations to purchase real property shall be based upon an independent appraisal of the property. The city shall not pay more than fair market value for any real property without prior council approval. All property acquisition negotiations shall be conducted in accordance with the city's property acquisition policies and procedures and shall comply with Chapter 8.26 RCW (the State Uniform Relocation and Real Property Acquisition Act, as amended). (Ord. 2715 § 2, 2000).

### **Mount Vernon Municipal Code**

2.40.100 Authority of mayor to enter into contracts and incur obligations.

A. Upon the proclamation by the mayor of an emergency or disaster and during the existence of such emergency or disaster, the mayor, in carrying out the provisions of Chapter 38.52 RCW, shall have the power by order to enter into contracts and incur obligations necessary to combat such emergency or disaster, protect the health and safety of persons and property, and provide emergency assistance to the victims of such emergency or disaster. Such powers shall be exercised in light of the exigencies of the situation without regard to time-consuming procedures and formalities prescribed by ordinance or statute (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds; provided, the mayor shall, wherever practicable, advise and consult with the city council with respect to disaster

## Sample Emergency Purchasing & Contracting Municipal Code Sections

response activities, and any such order shall at the earliest practicable time be presented to the city council for review and appropriate legislation including:

1. Findings by resolution with respect to actions taken;
  2. Authorization of payment for services, supplies, equipment loans and commandeered property used during disaster response activities;
  3. Approval of gifts, grants, or loans accepted or made by the mayor during the emergency;
  4. A finding of the existence of such emergency, and a direction to the city finance director, upon making such finding and ratification of any public works contract, that a description and estimate of the work be made and published, all as required pursuant to RCW 39.04.020.
- B. The city finance director shall be authorized to draw and to pay the necessary warrants for expenditures made pursuant to order and authorized by the city council.
- C. Notwithstanding the foregoing, and insofar as may be practical or possible, the proper city officers shall attempt to secure from contractors appropriate forms as may be required pursuant to Chapters 39.12 and 50.24 RCW, and such forms as may be necessary to signify that all appropriate sales and use taxes have been paid to the State Department of Revenue.
- D. Upon the proclamation of a disaster or emergency, and during the existence thereof, the proper officers of the city, and as authorized by the mayor, may make available services, equipment, supplies, materials, or funds through grants, loans, or gifts to those who are in need of assistance for the sole purpose of protecting life and property. (Ord. 3051 § 2, 2001).

### 2.40.110 Emergency purchases of supplies.

Upon the proclamation of a disaster or emergency by the mayor, and during the existence thereof, emergency purchases of supplies, materials and equipment are authorized to be made in accordance with the following procedures:

- A. Standardized emergency purchasing forms shall be provided by the finance director for use for all emergency purchases or contracting for supplies, materials, or labor during the existence of such emergency, which forms shall provide for the filling in of appropriate information prescribed by the finance director including date and time of purchase; name and address of supplier; quantity, unit, description, unit price and total price of item; date required and date delivered; description of use of item, including description of job and location of job; and name and identification number of city employee receiving purchased items.
- B. A log of all purchases made during any emergency shall be maintained by each department and by the finance director.
- C. The heads of departments using emergency purchase forms shall account for all costs incurred in making such purchases.
- D. Upon termination of the emergency, the heads of departments shall review all emergency purchase orders issued by their respective departments, and shall verify and authenticate such orders, and submit a summary thereof through the finance director to the city council for authorization of payment. (Ord. 3051 § 2, 2001).

## **Puyallup Municipal Code**

### Chapter 2.31: EMERGENCY MANAGEMENT

Sections:

- 2.31.010 Purpose.
- 2.31.020 Preparation for emergencies.
- 2.31.030 Emergency management defined.
- 2.31.040 Emergency or disaster defined.
- 2.31.050 Director defined.
- 2.31.060 Deputy director defined.
- 2.31.070 Comprehensive emergency management plan.
- 2.31.080 Emergency management program.
- 2.31.085 Unavailability of mayor or city manager.
- 2.31.087 Disaster and emergency powers of the mayor.
- 2.31.090 Disaster and emergency powers of the city manager.
- 2.31.100 Disaster and emergency powers of the director.

## Sample Emergency Purchasing & Contracting Municipal Code Sections

2.31.110 Functions and duties of departments and employees.

2.31.115 **Emergency contracts.**

2.31.120 Private liability.

2.31.130 Penalty.

2.31.140 Severability.

2.31.010 Purpose.

The declared purposes of this chapter are to provide for the preparation and carrying out of plans for mitigation, preparedness, response and recovery for persons and property within the city of Puyallup in the event of an emergency or disaster, and to provide for the coordination of emergency functions and services of the city of Puyallup with the county and other affected public agencies and private persons, corporations and organizations. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.020 Preparation for emergencies.

It is the policy of the city of Puyallup to make effective preparation and use of manpower, resources, and facilities for dealing with any emergency or disaster that may occur. Disasters and emergencies, by their very nature, may disrupt or destroy existing systems and the capability of the city of Puyallup to respond to protect life, public health and public property. Therefore, citizens are advised to be prepared to be on their own for up to 72 hours should an emergency or disaster occur. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.030 Emergency management defined.

“Emergency management” shall mean the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to and recover from emergencies and disasters, and to aid victims suffering from injury or damage resulting from disasters caused by all hazards, whether natural or manmade, and to provide support for search and rescue operations for persons and property in distress. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.040 Emergency or disaster defined.

“Emergency” or “disaster” as used in this chapter shall mean an event or set of circumstances which:

(1) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken neighborhood overtaken by such occurrences; or

(2) Reaches such a dimension or degree of destructiveness as to warrant the mayor, county executive, or Governor to proclaim the existence of a disaster or state of emergency in accordance with appropriate local and state policy, ordinance, or statute. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.050 Director defined.

“Director” means the emergency management director as set forth in the comprehensive emergency management plan of the city of Puyallup. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.060 Deputy director defined.

“Deputy director(s)” means the person or persons who shall assume the position of director in the event that the director is unavailable, as set forth in the comprehensive emergency management plan of the city of Puyallup. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.070 Comprehensive emergency management plan.

The comprehensive emergency management plan, prepared by the director and promulgated by the city council, is the official emergency management plan of the city of Puyallup. The director shall file a copy of said plan in the office of the city clerk, and distribute copies of said plan to appropriate city departments. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

2.31.080 Emergency management program.

(1) The emergency management program of the city of Puyallup is hereby created and shall consist of:

(a) The city manager, who shall be the administrative head and have direct responsibility for the organization, administration and operation of the emergency management program for the city of Puyallup and direct responsibility for

## Sample Emergency Purchasing & Contracting Municipal Code Sections

the emergency operations of departments of the city of Puyallup; provided, however, the city manager may delegate such functions in accordance with the comprehensive emergency management plan of the city of Puyallup;

(b) The director, who shall be appointed by the city manager, and who shall develop and maintain the emergency management plan and program of the city of Puyallup, and shall have such other duties as may be assigned to him by the city manager;

(c) A deputy director(s), who may be appointed by the director, subject to the approval of the city manager, and who shall perform such functions as outlined in the comprehensive emergency management plan and shall act for and exercise the powers and perform the duties of the director during his/her unavailability;

(d) Compensated members of the emergency management organization;

(e) Volunteer members of the emergency management organization; and

(f) Such advisory committees or other persons, groups, corporations, agencies, or entities as may be appointed by the director.

(2) The city of Puyallup may form its own department of emergency management, or it may contract pursuant to Chapter 39.34 RCW for emergency management services with another political subdivision which does have an approved emergency management program in accordance with Chapter 38.52 RCW. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.085 Unavailability of mayor or city manager.

(1) In the event that the mayor is unavailable to proclaim a disaster or state of emergency or carry out the functions required by this chapter, the deputy mayor shall act in his or her place, and, in the event that the deputy mayor is not available, then the next available councilmember with the longest period of consecutive service shall perform the functions required by this chapter.

(2) In the event that the city manager is unavailable to perform the functions of this chapter, the person designated by city policy to act as city manager in the absence of the city manager shall perform the functions required of this chapter. (Ord. 2706 1, 2001).

### 2.31.087 Disaster and emergency powers of the mayor.

In the event of a disaster or emergency, and after consulting with the director, the mayor is authorized to proclaim a disaster or state of emergency, request that the county executive or Governor proclaim a state of emergency when in the opinion of the mayor the resources of the area or region are inadequate to cope with the disaster, and call and conduct any emergency meetings of the city council as deemed appropriate. (Ord. 2706 1, 2001).

### 2.31.090 Disaster and emergency powers of the city manager.

In the event of a proclamation of a disaster or state of emergency by the mayor, county executive, or Governor, the city manager is hereby empowered:

(1) To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster; provided, however, such rules and regulations set forth by ordinance or resolution must be passed by the city council;

(2) To request the county executive or Governor to proclaim a state of emergency when, in the opinion of the city manager, the resources of the area or region are inadequate to cope with the disaster;

(3) To obtain vital supplies, equipment and such other properties found lacking and needed for the protection of the life and property of the people and to bind the city of Puyallup for the fair value thereof, and, if required immediately, to commandeer the same for public use;

(4) To control and direct the efforts of the emergency management organization of the city of Puyallup for the accomplishment of the purposes of this chapter;

(5) To require emergency services of any city of Puyallup officer or employee and to command the aid of as many citizens of the city of Puyallup as may be deemed necessary in the execution of the purposes of this chapter; and such persons to be entitled to all privileges, benefits and immunities as are provided by state law for registered emergency workers;

(6) To requisition necessary personnel or material of any city of Puyallup department or agency;

(7) To execute all of the special powers conferred upon the mayor by this chapter, by any other statute, agreement or lawful authority, as necessary;

## Sample Emergency Purchasing & Contracting Municipal Code Sections

(8) To take any action necessary to accomplish the purpose or policy of this chapter, the provisions of the comprehensive emergency management plan, or the provisions of Chapter 38.52 RCW. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.100 Disaster and emergency powers of the director.

The director is hereby empowered:

- (1) To request the mayor to proclaim a disaster or state of emergency and the termination thereof;
- (2) To direct coordination and cooperation between divisions, services and staff of the departments and services of the city of Puyallup in carrying out the provisions of the comprehensive emergency management plan, and to resolve questions of authority and responsibility that may arise between them;
- (3) To recommend for adoption by the city council emergency management plans and mutual aid agreements;
- (4) To represent the emergency management organization of the city of Puyallup in dealing with issues pertaining to emergency management;
- (5) To prepare and maintain the comprehensive emergency management plan of the city of Puyallup and manage the day-to-day responsibilities of the emergency management program activities of the city of Puyallup;
- (6) To take any action necessary to accomplish the purpose or policy of this chapter, the provisions of the comprehensive emergency management plan, or the provisions of Chapter 38.52 RCW. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.110 Functions and duties of departments and employees.

The city council hereby assigns to the various departments and to the officers and employees thereof the functions, duties and powers set forth in the emergency management plan referenced in PMC [2.31.070](#). (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.115 **Emergency contracts.**

The city council, city manager, or director is authorized to enter into contracts and incur obligations necessary to carry out the purposes or policies of this chapter or the provisions of the comprehensive emergency management plan in light of the exigencies of the emergency without regard to time-consuming procedures and formalities proscribed by law (excepting mandatory constitutional requirements), including but not limited to budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditure of public funds. (Ord. 2706 1, 2001).

### 2.31.120 Private liability.

No individual, firm, association, corporation or other party owning, maintaining or controlling any building or premises, who voluntarily and without compensation grants to the city of Puyallup a license or privilege or otherwise permits said city of Puyallup to inspect, designate and use the whole or any part or parts of such building or premises for the purpose of sheltering persons during an actual, impending, mock or practice emergency or disaster, or their successors in interest, or the agents or employees of any of them, shall be subject to liability for injuries sustained by any person while in or upon said building or premises as a result of any act or omission in connection with the upkeep or maintenance thereof, except a willful act of misconduct, when such a person has entered or gone into or upon said building or premises for the purpose of seeking refuge therein during an emergency or disaster or an attack by enemies of the United States or during a disaster drill, exercise or test ordered by a lawful authority. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.130 Penalty.

It shall be a violation of this chapter for any person to:

- (1) Willfully obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter or in the performance of any duty imposed upon such member by virtue of this chapter or the comprehensive emergency management plan of the city of Puyallup; or
- (2) Do any act forbidden by any lawful rules or regulations issued pursuant to this chapter or the comprehensive emergency management plan of the city of Puyallup if such act is of such a nature as to give or be likely to give assistance to the enemy, or to imperil the lives or property of any person, or to prevent, hinder or delay the defense or protection thereof;

## Sample Emergency Purchasing & Contracting Municipal Code Sections

(3) Wear, carry or display, without authority, any means of identification specified by the emergency management agency of the state;

(4) A violation of this chapter shall constitute a misdemeanor, and any person committing such violation shall be punished by a term of 90 days in jail or a \$1,000 fine, or both such jail and fine; provided, that any person who commits a second violation shall be guilty of a gross misdemeanor punishable by one year in jail or a \$5,000 fine or both such jail and fine. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

### 2.31.140 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (Ord. 2706 1, 2001; Ord. 2444 2, 1995).

## **Everett Purchasing Policy Excerpt (April 2012)**

### **SECTION 9.0 . UNIFORM EXCEPTIONS**

Occasions may arise when competition among potential vendors is not possible for a particular procurement. These situations may occur: (a) in the event of emergencies and (b) where a sole source of procurement is available. In these situations, purchases may be made directly from a vendor with limited competition or without soliciting other bids or quotes, as the situation requires.

#### **9.1 – Emergencies**

Competitive bidding is not required when an emergency exists; however, in making emergency purchases, an effort will be made to include the level of competition that is practical under the circumstances.

An emergency means unforeseen circumstances beyond the control of the municipality that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

#### **9.1.1 – Declaration of Emergency**

If an emergency exists, and time permits, the Mayor/designee or department director will seek a resolution from Council that will: (a) declare an emergency situation exists; (b) waive competitive requirements; and (c) authorize the award, on behalf of the City, of all contracts necessary to address the emergency situation, including, but not limited to, architectural and engineering services.

If an emergency exists and time does not permit seeking the City Council's approval, the Mayor or his/her designee may declare an emergency situation to exist, waive competitive requirements, and award contracts on behalf of the City.

If an emergency exists and both the Mayor/designee and the City Council are not available to declare an emergency a department director may declare an emergency situation to exist, waive competitive requirements, and award contracts on behalf of the City.

#### **9.1.2 – Ratification of All Emergency Procurements**

The department director will submit a memo to Administration, reciting the facts that constituted the emergency, enumerating the purchases and their costs, and requesting that the waiver of competitive bid requirements be ratified. Acceptance of the ratification is subject to the approval of the Mayor/designee and the City Attorney.

#### **9.1.3 – Ratification of Emergency Procurements of \$100,000 or More**

Within fourteen (14) days of the award of an emergency procurement contract over \$100,000, which has been approved by the Mayor/designee and the City Attorney, the department director will seek further City Council ratification. The department director will present City Council with a resolution reciting the facts constituting the emergency, enumerating the purchases and their costs, and ratifying the waiver of competitive requirements.

## **9.2 – SOLE SOURCE OR PROPRIETARY PROCUREMENTS**

Sole source procurements may be made directly from a sole source vendor without soliciting other bids or quotes where (a) there is clearly and legitimately only one source capable of supplying the subject matter in a timely fashion or (b) there are special facilities or market conditions that result in only one source.

In the event the equipment, materials, supplies, or services are available from only one supplier, a complete Request for Sole Source Form should be submitted to Purchasing, providing written documentation demonstrating the appropriateness of sole source procurement.

For proposed purchases up to five thousand dollars (\$5,000), the Mayor/designee or department director may make the determination that there is only one source available. Every justification for sole source procurement over five thousand dollars (\$5,000), must be approved by the Purchasing Manager. When a proposed sole source purchase exceeds one hundred thousand dollars (\$100,000), the Purchasing Manager must seek the City Council's approval, by resolution, that there is only one source and authorizing the Purchasing Manager to conduct negotiations as appropriate as to price, delivery, and terms. The resolution will recite the factual basis for the exception from competitive procurement.

To the extent possible, the contract and the basis for the exception from competitive procurement should be recorded and open to public inspection immediately after its award.



# REQUEST FOR SOLE SOURCE

To: Purchasing Office

From: \_\_\_\_\_ / \_\_\_\_\_  
Name of Department Head Dept./Division

Subject: Sole Source Request for the Purchase Of: \_\_\_\_\_  
\_\_\_\_\_

REQUESTED SUPPLIER: \_\_\_\_\_

REQUISITION NUMBER: \_\_\_\_\_ COST ESTIMATE: \_\_\_\_\_

Sole source purchases are defined as clearly and legitimately limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological grounds such as operational compatibility with existing equipment and related parts or upon a clearly unique and cost effective feature requirement. The use of sole source purchases shall be limited only to those specific instances which are totally justified to satisfy compatibility or technical performance needs.

### STATEMENT OF NEED:

My department's recommendation for sole source is based upon an objective review of the product/service required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

Refer to the attached sole source justification as prepared by our department, to the attached review of available products/services and to my completed Purchase Requisition.

Requestor	Department Head
  	<input type="checkbox"/> Approved <input type="checkbox"/> Rejected
_____ Signature of Requestor      Date	_____ Signature of Dept. Head      Date

**If Purchase is \$10,000 or more:**

**If Purchase is \$50,000 or more:**

Purchasing Manager	City Attorney
<input type="checkbox"/> Approved <input type="checkbox"/> Rejected	<input type="checkbox"/> Approved <input type="checkbox"/> Rejected
_____ Signature of Purchasing Manager      Date	_____ Signature of City Attorney      Date

## SOLE SOURCE JUSTIFICATION

**Requisition Item:** \_\_\_\_\_

**Requisition Number:** \_\_\_\_\_

**Prior Purchase Order Number (if item had been approved previously):** \_\_\_\_\_

**1. Please describe the item and its function:**

**2. This is a sole source\* because:**

- sole provider of a licensed or patented good or service
- sole provider of items that are compatible with existing equipment, inventory, systems, programs or services
- sole provider of goods and services for which the City has established a standard\*\*
- sole provider of factory-authorized warranty service
- sole provider of goods or services that will meet the specialized needs of the City or perform the intended function (please detail below or in an attachment)
- the vendor/distributor is a holder of a used item that would represent good value and is advantageous to the City (please attach information on market price survey, availability, etc.)

**3. What necessary features does this vendor provide which are not available from other vendors? Please be specific.**

**4. What steps were taken to verify that these features are not available elsewhere?**

- Other brands/manufacturers were examined (please list phone numbers and names, and explain why these were not suitable)
  
- Other vendors were contacted (please list phone numbers and names, and explain why these were not suitable).

\*Sole Source: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.

\*\*Procurements of items for which the City has established a standard by designating a brand or manufacturer or by pre-approving via a testing shall be competitively bid if there is more than one vendor of the item.



# City of Seattle

## SOLE SOURCE JUSTIFICATION

### PURCHASING SERVICES

Attach to your Requisition or Vendor Contract Request and send to: SMT-41-12

Call 206-684-0444 for assistance

Your Name	Your Department
Your Phone	Your Mail Stop
Request number	Cost Estimate
Vendor's Address	Vendor or E Mail
Vendor or Contact Name	Vendor or Phone

1. Describe the product, service or system. Attach all information

2. There are eligible reasons for sole source. Check all boxes below that apply to your sole source situation and attach any useful documents to justify the sole source.

- Compatibility to existing City standard or to existing equipment, inventory, systems, data, programs or service.** Describe. List efforts to find other sources.
- License or patented product with only one dealer.** Describe. Attach documentation if available, to confirm your source is the only dealer or supplier for this region.
- Authorized Service Provider, Repair and/or Warranty Services.** Describe.
- Unique design:** Requires unique features that are essential, aesthetic requirements, or not practical to match to existing design or equipment. Describe.
- Use item:** Surplus item bought through an auction, used or at a bargain price. Describe.
- Delivery Date:** Only one supplier can meet required delivery date: Describe and list efforts to find other suppliers to meet the delivery date.
- Project or Research Continuity:** Product, systems, services or data must comply with an ongoing project, research, data, testing or analysis. Results would be interrupted or compromised without continuity. Describe
- Requirement by Funding Source:** Lender, grantor (such as Federal government) or other provider of funds requires the specific product, service or system.
- Legal Monopoly:** Only one supplier, such as electricity, water, or sewage.
- Other:** Please describe:

Signature of Requestor

Date

## **Poulsbo, Washington Resolution No. 94-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DECLARING THAT THE PURCHASE OF SELF CONTAINED BREATHING APPARATUS IN ACCORDANCE WITH THE STANDARDS ADOPTED BY THE KITSAP COUNTY FIRE CHIEF'S ASSOCIATION CREATES A SITUATION IN WHICH THE PURCHASE OF SUCH EQUIPMENT IS CLEARLY AND LEGITIMATELY LIMITED TO A SOLE SOURCE SUPPLIER WITHIN THE NEAR VICINITY, THAT THE EQUIPMENT IS SUBJECT TO SPECIAL MARKET CONDITIONS AND AUTHORIZING A SOLE SOURCE BID OR DIRECT NEGOTIATION WITH THE SUPPLIER OF THE STANDARDIZED EQUIPMENT.**

WHEREAS, the Kitsap County Fire Chief's Association adopted Policy No. 94-1 regarding self contained breathing apparatus standardization establishing by its Appendix B and C a Countywide standard for the equipment described in the agreement as a mask mounted regulator (MMR) manufactured by a company described therein as MSA, and

WHEREAS, the City Council finds that there are only two manufactures of self contained breathing apparatuses (SCBA) supplying the Kitsap County market of fire departments, and WHEREAS, in the past the City has utilized a CCBA product manufactured by Survivair, and WHEREAS, standardization of breathing equipment is in the public interest by simplifying the training of firefighters, allowing the Kitsap County fire agencies to function more efficiently during mutual aid conditions, permitting the ordering of breathing apparatus and replacement parts in larger volume through an interlocal agreement or similar joint purchasing agreement and in the event of a future merger of the Poulsbo Fire Department with another fire agency, providing for a more cost effective method of utilization of existing equipment as well as its repair, and

WHEREAS, the City Council further finds that the MSA - MMR breathing apparatus has been the subject of "extensive study of all breathing apparatus including usability, cost, maintenance, and operations" by the Kitsap County Operations Chief, now, therefore,  
THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Pursuant to the authorization provided by RCW 35.23.352(9) and based upon the preceding findings of fact indicating that the purchase of the MSA - MMR self contained breathing apparatus is clearly and legitimately limited to a sole source supply and that the purchase of the equipment is subject to special market conditions, the City Council of the City of Poulsbo hereby authorizes a sole source bid or direct negotiation in order to purchase MSA - MMR self contained breathing apparatus in order to replace existing apparatus of the department at such times and on such basis as the department deems appropriate until such time as the existing situation limiting purchasers to a sole source expires.

Section 2. The City's Fire Chief and Purchasing Agent are encouraged to work with the other fire agencies of Kitsap County in order to establish an interlocal agreement for the purchase of such equipment in quantity in conjunction with the other agencies. This authorization and direction shall extend to service contracts and/or repair parts as appropriate.

RESOLVED this 14th day of December 1994

APPROVED: MAYOR, RICHARD MITCHUSSON

ATTEST/AUTHENTICATED: CITY CLERK, KAROL JONES

**RESOLUTION NO. 02-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT TOWNSEND,  
WASHINGTON DECLARING HUGHES SUPPLY, INC. AS THE SOLE SUPPLIER OF  
HYDRANTS, METERS AND REPLACEMENT PARTS FOR THE CITY WATER  
SYSTEM**

**WHEREAS**, State law and the City's own purchasing ordinance requires purchases of materials and supplies over \$15,000 a year to be competitively bid; and

**WHEREAS**, the City must purchase hydrants and meters for its water system at a cost over the \$15,000 limit: and

**WHEREAS**, the City has found using one manufacturer for its hydrants and water meters has been more reliable and efficient; and

**WHEREAS**, there is only one distributor for these fire hydrants and water meters; and

**WHEREAS**, a competitive bidding process would likely only produce one bid; and

**WHEREAS**, RCW 35.23.352(9) authorizes sole source purchasing without calling for bids; and

**WHEREAS**, The statute requires a resolution by Council declaring an exemption from bidding under the sole source provision,

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Port Townsend as follows: to declare Hughes Supply, Inc. the sole source for water meters fire hydrants and replacement parts for the city's public works department.

**ADOPTED** by the City Council of the City of Port Townsend at a regular meeting thereof, held this 4th day of February, 2002.

\_\_\_\_\_  
Kees Kolff, Mayor

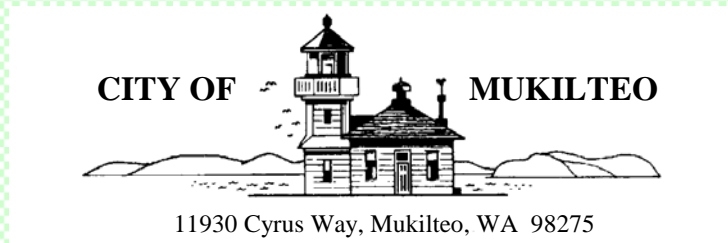
*Attest:*

*Approved as to form:*

\_\_\_\_\_  
Pamela Kolacy, CMC  
City Clerk

\_\_\_\_\_  
John Watts  
City Attorney

# City of Mukilteo



## Procurement Policies & Procedures

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**Amended June 21, 2010**

**City of Mukilteo**  
**Procurement Policies & Procedures**  
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## Policy

All employees must follow established policies and procedures for procurement of equipment, materials, and services. Adherence to policies and procedures will ensure that public purchases and contracts are open, fair, and at the best value to the public.

Procedures are divided into four major areas: 1) Procurement of Goods and Services, 2) Bidding Requirements, 3) Reimbursement of Expenses, and 4) Other Issues.

### Procurement of Goods and Services

City purchases are subject to authorization & quote/bid requirements as follows:

#### **General Purchases**

- < \$5,000 No Competitive Bids Required, Department Selection
- \$5,000 - \$15,000 3 Verbal Quotes, Department Selection
- \$15,001 - \$20,000 3 Written Quotes, City Administrator or Mayor Approves
- > \$20,001 - \$40,000 Competitive Bid Required, City Administrator or Mayor Approves
- > \$40,000 Competitive Bid Required, City Administrator or Mayor Approves / Council Awards

#### **Public Works Projects: (when Small Works Roster is not used) (RCW 35.22.620)**

- < \$5,000 No Competitive Bids Required, Department Selection
- \$5,000 - \$15,000 3 Verbal Quotes, Department Selection
- \$15,001 - \$30,000 3 Written Quotes, City Administrator or Mayor Approves

#### **One Craft or Trade, or street signaling or street lighting**

- >\$30,000 Competitive sealed bid; City Administrator or Mayor Approves / Council Awards

#### **Two or more Crafts or Trades**

- \$30,001 - \$50,000 3 Written Quotes, City Administrator or Mayor Approves
- >\$50,000 Competitive Sealed Bid, City Administrator or Mayor Approves / Council Awards

#### **Professional and Personal Services Contracts: (Ongoing contracts must be approved by Council bi-annually)**

- < \$5,000 No Competitive Bid Required, Department Selection
- \$5,000 - \$30,000 No Competitive Bid Required, City Administrator or Mayor Approves
- >\$30,000 No Competitive Bid Required, City Administrator or Mayor Approves / Council Awards

#### **Architectural & Engineering Services: (RCW 39.80) (Contract cannot exceed 3 years without new RFQ)**

- < \$5,000 Advertise, Request For Qualifications Required, Department Selection
- \$5,000 - \$30,000 Advertise, Request For Qualifications Required, City Administrator or Mayor Approves
- >\$30,000 Advertise, Request For Qualifications Required, City Administrator or Mayor Approves / Council Awards

NOTE: Purchases may not be broken into multiple projects or purchases to avoid compliance with state statutes and City policies.

**Public Works Projects and Prevailing Wage Laws**

Public works projects (“...all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency...”) including maintenance when performed by contract, are governed by chapter 39.12 RCW Prevailing Wages on Public Works requirements, *regardless of contract amount*. It is the *responsibility of the contracting employee to notify the vendor of prevailing wage requirements and obtain compliance documentation prior to awarding any public works contract*. Public works contracts will only be awarded to contractors who document compliance with the Washington State Prevailing Wage Law. The department head or designee managing the project is responsible for collecting compliance documents. *Failure to follow prevailing wage laws will result in delayed or denied payment to the vendor. The City CANNOT pay for public works projects that are in violation of prevailing wage laws.* (See Exhibit 7.)

**Professional and Personal Services**

Professional or personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, bond brokerage, insurance brokerage, legal, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing. Procurement of professional and personal services will be in accordance with RCW 39.80 and RCW 39.29.

A competitive process is not required for professional or personal services, other than professional engineering or architectural services for the design of City improvements.

**Non-Architectural and Engineering Services**

Professional and technical services include disciplines such as attorneys, computer programmers, financial analysts, bond counsels, artists, planners, and real estate appraisers.

Purchase of professional services requires completion of a City professional services contract that describes services to be performed and negotiated price.

Prior experience with the City, time-frame for completing projects, and the value of a negotiated agreement will be considered when choosing a consultant/firm to perform professional services, as defined in this section.

**Architectural, Engineering and Design Services**

State statutes require advance notice of the requirement for architectural, engineering and design services, evaluation of firms’ qualifications and performance, and negotiation with firms in accordance with adjudged qualifications. Architectural, engineering and design services contracts will be reviewed by the City Attorney to ensure RCW compliance.

**Verbal Quotes**

Purchases requiring verbal quotes must be documented by a properly completed verbal quote log. Verbal quote logs are included on the back of the City of Mukilteo Order Form, which may be obtained from Finance. (Exhibit 1).

**Sole Source Purchases**

A “sole source” is characterized as meeting one or more of the following standards: (a) the City department has conducted a screening process whereby it can justify purchase of a specific product; (b) the City requires legitimate specifications to which only one vendor can successfully respond; or (c) the product is available only through one manufacturer (or distributor) and the manufacturer so certifies. In any such case where the purchase exceeds \$5,000, the vendor shall certify that the City is getting the lowest price it offers anyone. Purchases in

excess of \$5,000 from a sole source vendor require prior approval of the Finance Department Director or designee and must be signed by requesting Department Director or Designee (Exhibit 2).

### **Conflicts of Interest**

The City will not accept donations of materials or services in return for a commitment to continue or initiate a purchasing agreement. No employee will participate in procurement when they are aware of a conflict of interest, or accept gifts or gratuities from existing or potential vendors in return for a commitment to continue or initiate a purchasing relationship.

## **Bid Procedures**

### 1. Authorization Request

Request from City Administrator authorization to call for bids. In special circumstances, the City Administrator may waive portions of the bid procedures. The “special circumstances” are limited to items where publication of bids may impinge on the safety of staff or City assets (Drug Task Force vehicles for example).

### 2. Publication of Notice

After City Administrator authorization, the requesting department director (or designee) will publish the Call for Bids in the official newspaper or a newspaper of general circulation most likely to bring responsive bids and ensure notice is posted on the City web page, at least 13 days prior to bid submittal deadline.

### 3. Notice Contents

Notice (or advertisement) for bids should contain definite specifications and procedures for bidders to use to estimate their bids. At a minimum, a bid notice for public works must include:

- Project title;
- Nature and scope of work;
- Where contract documents (plans and specifications) can be reviewed or obtained;
- Cost to obtain a set of contract documents;
- Place, date, and time that bids are due;
- Statement that a bid bond must accompany the bid,;
- Statement that the City retains the right to reject any and all bids and to waive minor irregularities in the bidding process;
- Statement that the contract involves “public work,” and that workers shall receive the prevailing rate of wage pursuant to the Prevailing Wages on Public Works Act (Chapter 39.12 RCW);
- List of the applicable prevailing wage rates; and
- Statement that the City is an equal opportunity employer and invites responsive bids from all qualified responsible bidders.

In addition, provide evaluation criteria; minimum qualifications; date, time, and location of pre-bid conference (if applicable); name, address, and telephone number of the project contact; and number of required copies will help bidders prepare responsive submittals.

### 4. Bid Opening

Bids are submitted to the City Clerk, where they are time and date stamped and processed. Bid opening will be announced to Mayor, City Administrator and department heads by department head or designee responsible for the project.

### 5. Report on Bids

The responsible department head or designee will prepare a report and recommendation on all bids received.

6. Bid Award

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered.

7. Rejection of Bids

The City reserves the right to reject any bid not in substantial compliance with the bid documents, or all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the City that it is in the public interest to do so.

The following shall apply to bid solicitations:

- Selection of a winning offer is based primarily on lowest responsive bid. Quality and expertise, however, must also be a consideration.
- To ensure consistency and fair process, the City will use standard forms, documents, contracts, and terms and conditions, when practical. The Finance Department will maintain templates for bid-related documents for use by departments. The City will use an evaluation selection committee to promote an open, proper selection. The requesting department director will appoint committee members to act in an advisory capacity.
- Minimum qualifications are stated to ensure respondents are reasonably qualified. Minimum qualifications cannot be used to eliminate qualified vendors. Minimum qualifications should be tested against the marketplace to ensure they aren't overly restrictive.
- When practical, the City will conduct a pre-bid conference to allow a thorough discussion of the City's intent, scope, specifications, and terms. Interested companies should be encouraged to attend.

**Exemptions to competitive bidding requirements**

Section 39.04.280 RCW provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases.

Competitive bidding requirements may be waived for:

1. Purchases that are clearly and legitimately limited to a single source of supply (Sole Source Vendor):

If, after conducting a good faith review of available resources, the requesting department director determines that there is only one source of the required materials, supplies, or equipment, a purchase contract may be awarded without complying with established bid requirements. The requesting department director will submit a written request for sole source procurement to the Finance Director for approval, and conduct price, terms, and delivery negotiations, as appropriate. The vendor must certify in writing that the City is getting the lowest offered price.

2. Purchases involving special facilities or market conditions:

The City Administrator may waive established bidding requirements if an opportunity arises to purchase favorably-priced equipment at an auction, or supplies or used goods that will be sold before the City can conduct the bid process.

3. Surplus Property:

The City may acquire surplus property from another government without the use of bids (RCW 39.33.010).

#### 4. Purchases in the event of an emergency:

"Emergency" is defined as "...unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken." If an emergency situation has been declared, the City Administrator may waive competitive bidding requirements and the City may award all necessary contracts to purchase goods, materials, or services to address the emergency situation. Purchase order(s) must be properly documented as pertaining to an emergency as soon as possible following the event. If a contract is awarded without competitive bidding due to a declared emergency, the City Council must adopt a resolution certifying the emergency situation existed no later than two weeks following the award of the contract.

#### 5. Interlocal Agreements

##### Interlocal Cooperative Purchasing Agreements

Pursuant to RCW 39.34, bidding is not required when purchases of materials, supplies, or equipment are made under State standard contracts or similar contracts executed by and through other local governments which have complied with state bidding requirements. The other government's bid process must have been conducted within the previous 12 month period to be valid for use by the City of Mukilteo. In addition, the City of Mukilteo must conduct a screening process whereby it can justify the purchase through an Interlocal Agreement. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

Approval and authority for entering into an Interlocal Cooperative Purchasing Agreement will be determined by the anticipated cost of the procurement. Blanket Interlocal Cooperative Purchasing Agreements where the costs of the potential purchases are not known will be treated as purchases over \$15,000.

In addition, the City may make a bid call with another government entity as a joint purchase complying with the bid requirements of the participating jurisdictions. Purchases made pursuant to any such agreement shall be separately invoiced to the respective purchasers in accordance with the purchases made by each; and each such purchaser shall be responsible for payment for its own purchases only. Purchases made for the City under a purchasing contract executed by a state, or agency or subdivision thereof, or by another governmental unit or public benefit nonprofit corporation shall be exempt from competitive bidding and related requirements.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from the City of Mukilteo's bids or quotations, provided that the other agencies allow similar rights and reciprocal privileges to the City of Mukilteo.

##### Purchasing Cooperatives That Meet Washington State Revised Code of Washington and City Bidding Requirements

Pursuant to chapter 39.34 RCW, bidding is not required when purchases of materials, supplies, or equipment are made under State standard contracts or similar contracts executed by and through purchasing cooperatives which have complied with state bidding requirements. The purchasing cooperative's bid process must have been conducted within the previous 12 month period to be valid for use by the City of Mukilteo. In addition, the City of Mukilteo must conduct a screening process whereby it can justify the purchase through a purchasing cooperative. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

## 6. Competitive Negotiations Telecommunication Systems/Services

Competitive negotiation can be used as an alternative to the competitive bidding procedures for the acquisition of electronic data processing and telecommunications systems; energy saving or energy related equipment or services; or when it is determined in writing that the use of competitive bidding is neither practical nor advantageous to the City.

“Electronic data processing” includes, but is not limited to, systems that comprise a combination of equipment or units to provide input of source data, and storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame (RCW 36.92.020). In other words, hardware, software, firmware, “smart cards” or any combination thereof.

Eligible purchases (RCW 39.35A.030) are those for “equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance.” (RCW 39.35A.020(1)) The procurement may be structured on a performance basis, rather than a design specification, so that the City may specify a result, rather than the type or model of equipment. (RCW 39.35A.020(3))

The approval requirements found in Authorization & Quote/bid requirements as listed on page1 also apply to procurement by competitive negotiation. The approving officer shall determine in writing that competitive bidding is either not practical or not advantageous to the City.

Requisitions for electronic data processing systems shall be routed through and approved by the Finance Director or designee for compatibility certification prior to purchase. This will allow for the appraisal of the present supply of devices, and the possible elimination of an unnecessary expenditure of City funds.

A request for proposals should be prepared and submitted to enough qualified sources, to permit reasonable competition consistent with the requirements of the purchase. The request for proposal should identify significant evaluation factors, including price, and their relative importance. The City reserves the right to determine the number of sources considered to be adequate.

The City will provide procedures for technical evaluation of the proposals received, identification of qualified sources, and selection criteria for awarding the contract.

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered. If the City is unable to negotiate a contract successfully, the City may terminate negotiations and proceed to negotiate with the second most advantageous proposer, and so on.

### **Small Works Roster**

RCW 39.04 provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property. The Small Works Roster may be used for public works projects valued below \$200,000.

The Small Works Roster maintained by the Municipal Research and Services Center ([www.mrscrosters.org](http://www.mrscrosters.org)) allows the City to evaluate the professional qualifications on file when a proposed project is scheduled. Use of the Small Works Roster allows the City to preclude the advertisement requirements of the formal competitive process. *All other bidding requirements are the same.*

- For each project, the City will secure telephone or written quotations from (whenever possible) at least three appropriate contractors on the Roster. Whenever possible, at least one of the contractors invited to submit a proposal will be a minority- or woman-owned firm. The City may invite proposals from more than three or all appropriate contractors on the Roster.
- The contract must be awarded to the contractor submitting the lowest responsible quote.
- Once a contractor has been invited to submit a proposal, that contractor will not be offered another opportunity until all other appropriate contractors on the Roster have been given the opportunity to submit a proposal on a project.

Vendors/contractors selected from the Small Works Roster are not relieved from observing applicable legal requirements such as Performance Bond, Prevailing Wage, Labor and Material Bonding, etc.

## **Change Orders**

City of Mukilteo Resolution No. 2005-18 establishes the Change Order Authorization Policy as follows”

### For Change Orders Within City Council Authorized Budget Appropriations

Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary and reasonable, the City Administrator is authorized to approve any and all Change Orders that do not exceed the legally authorized budget limit established by the City Council for the applicable project or contract.

### For Change Orders in Excess of City Council Authorized Budget Appropriations

Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary the City Administrator shall submit to the City Council, a Change Order Request to include the amount of requested funds and a written justification describing why the additional funds are necessary and the benefits to be derived.

If the City Council approves the Change Order Request, the City Administrator shall take the necessary actions to enact the Change Order and complete the work in an expeditious manner in accordance with the City Council’s direction.

If the City Council denies the Change Order Request, the City Administrator shall report back to the Mayor and City Council with options as to how to accomplish the project/contract within the funds allocated.

In the event of an emergency or the need to take immediate or expeditious action necessary to protect or maintain the public health, safety, or welfare; or to prevent damage to public or private property, and with approval of the Mayor, the City Administrator is authorized to enact Change Orders in excess of the legally authorized expenditure level. The City Administrator shall timely report such actions to the City Council.

## **Travel Expenses**

All expense payments or reimbursements for travel and/or subsistence expenses must meet the requirements set forth in the City of Mukilteo Travel Policy, which establishes policy and procedure related to obtaining travel authorization, advance travel funds, and expenditure or reimbursement for travel and subsistence expenses incurred in conduct of business of the City. Refer to the City of Mukilteo Travel Policy and Procedures for details.

## Payment Processing

### Approvals

Vendor invoices shall be signed for approval by the department head or designee. Reimbursements payable to City employees shall be signed for approval as follows:

- Council – approved by the Mayor, City Administrator, or designee.
- Mayor – approved by the City Administrator or designee.
- City Administrator – approved by the Mayor or designee.
- Department Director – approved by the City Administrator or designee.
- Other employees – approved by the direct supervisor or Department Director or designee.

Employees may not approve their own reimbursement.

### Accounts Payable

Invoices that are received by accounts payable via the US Postal Service will be date-stamped and routed to department heads the day that they are received. Other invoices may be received directly by the department head or other staff, such as when items are picked up at will-call or services are performed on-site. For all invoices, department heads or designees will verify that the invoiced items have been received and that the invoiced amount is correct. The accounts payable coding stamp will be stamped on the invoice in a conspicuous place, the account coding and approval signature entered, and the approved invoice will be routed to accounts payable for payment. There are two accounts payable check cycles scheduled each month, generally on the 10<sup>th</sup> and 25<sup>th</sup> of each month, unless the date falls on a weekend or holiday.

### Hand-Issued Checks

Departments should avoid requests for hand-issued checks by submitting approved invoices to Accounts Payable as soon as invoices are received. If extenuating circumstances exist, a check may be hand-issued to avoid incurring penalties, interest, or late charges. Submit requests for hand-issued checks to Finance. Manual checks must be pre-approved by the Finance Director or the Accounting Services Manager.

### Store-Issued Charge Cards

It is sometimes necessary to use store-issued charge cards. The Finance Director or Accounting Services Manager will establish the authorized account in such cases.

### Bank Credit Cards

Bank credit cards may be issued with the approval of the City Administrator. They are to be used solely for City-authorized business purposes. Please see Credit Card Policy for additional details.

### Petty Cash

Petty cash funds cover minor disbursements. Employees may be reimbursed from petty cash funds for authorized purchases that do not exceed the established petty-cash limit. Refer to Petty Cash Policy for additional details.

### Budget Adjustments

Each department's authorizing staff must ensure that purchases are initiated only when departmental appropriations are sufficient to cover the anticipated cost. Expenditures that exceed departmental appropriations require the City Administrator's approval via the Budget Adjustment Request Form (Exhibit 5).



**Exhibit 2**

**Sole Source Vendor Statement**



**Sole Source Vendor Statement**

**Date:**

**To: Finance Director & Accounts Payable**

**From: Fill – in Dept name and name of person signing this form**

To Whom It May Concern:

This form justifies the proposed sole source purchase described below. In accordance with State of Washington regulations, City of Mukilteo must procure material, equipment, supplies and services by competitive means when the purchase is in excess of \$5,000. However, in unusual circumstances the competitive process may be waived and sole source purchasing approved, provided the requesting party can adequately justify its use. In any such case where the purchase exceeds \$5,000, the vendor shall certify in writing that the City is getting the lowest price it offers. Purchases in excess of \$5,000 from a sole source vendor require prior approval of the Finance Director or designee.

“Sole source” means the product is unique and can be purchased from only one vendor.

If one of the reasons 1 through 4 below applies to this purchase, you need only to check the applicable reason and describe item being purchased below. If reasons 5 or 6 apply, please provide the item description and explanation below.

- 1.  Proprietary. The item is under patent, copyright, or proprietary design.
- 2.  Replacement parts. The purchase is for replacement parts or components.
- 3.  Technical service. The purchase is for technical service in connection with the assembly installation or servicing of equipment of a technical or specialized nature.
- 4.  Continuation of work. We now require additional work, additional item or additional service, but we did not know it would be needed when the original order was placed.
- 5.  Urgent requirement. Need must be met immediately. Please explain below the nature of the urgency, including an explanation of why the purchase is critical and why only the suggested vendor can meet it.
- 6.  Exclusive capability. Only one supplier qualified. No other suppliers known. Please explain below.

**Item Description:**

**If explanations 5 or 6 were used, please provide an explanation below. Explain why the identified vendor is recommended:**

\_\_\_\_\_  
Signed Department Director or Designee

\_\_\_\_\_  
Finance Director or Accounting Services Manager

**Exhibit 3**

**Bid Recap Worksheet**




Purchases which require written competitive bids are summarized here and included as part of the purchase request.

Description of item placed on competitive bid:

Company Name & Location	Quantity Units Required	Unit Quote	Total Quote

Finance Director Signature

Requesting Dept Director or Designee Receiving Quote

 <p><b>CITY OF MUKILTEO</b> 4480 Chennault Beach Road, Mukilteo, WA 98275</p>	<p><b>CITY OF MUKILTEO</b></p> <p><b>REQUEST FOR REIMBURSEMENT OF MISCELLANEOUS EXPENSES</b></p>
--	--

<p><b>VENDOR OR CLAIMANT (check is to be payable to)</b></p>	<p>I hereby certify under penalty of perjury that the items and totals listed herein are proper charges for materials, merchandise or services furnished to the City of Mukilteo, that this is a true and correct claim for necessary expense incurred by me and that no payment has been received by me on account thereof.</p>
	SIGNATURE
	TITLE
	DATE

DESCRIPTION	ACCOUNT CODE	AMOUNT
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
DEPARTMENT APPROVAL SIGNATURE	APPROVAL DATE	TOTAL
		\$

**Budget Adjustment Request**



4480 Chennault Beach Road, Mukilteo, WA 98275

**Current Year  
Budget Adjustment Request**

<b>1. To Finance Director</b>	<b>Date</b> _____
-------------------------------	-------------------

Please transfer the following revenues and/or appropriations:

<i>Decrease (from)</i>			<i>Increase (to)</i>		
category	acct. number	amount	category	acct. number	amount
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$

**Reason:**

Requested By: \_\_\_\_\_  
(Department Director)

FINANCE DIRECTOR:

Comments: \_\_\_\_\_

\_\_\_\_\_ Approved      \_\_\_\_\_ Not Approved      Signature \_\_\_\_\_

<b>2. To CITY ADMINISTRATOR</b>	<b>Date</b> _____
---------------------------------	-------------------

Comments: \_\_\_\_\_

\_\_\_\_\_ Approved      \_\_\_\_\_ Not Approved      Signature \_\_\_\_\_

<b>3. To Financial Services Division</b>	<b>Date</b> _____
--	-------------------

Adjustment Recorded: AJ# \_\_\_\_\_ Date: \_\_\_\_\_

Prepared By: \_\_\_\_\_ Approved By: \_\_\_\_\_

**Exhibit 6**

**Employee Purchasing and Accounts Payable Agreement**



City of Mukilteo  
**EMPLOYEE PURCHASING AND  
 ACCOUNTS PAYABLE AGREEMENT**

As an employee, I understand that the City of Mukilteo has authorized my use of the Purchasing and Accounts Payable system for purchasing approved business related expenses. In accepting this privilege, I agree to the following terms and conditions:

- The Purchasing and Accounts Payable system may be used only for payment of authorized expenses on behalf of the City of Mukilteo.
- The Purchasing and Accounts Payable system may not be used to obtain pay advances or other expenses that are not allowed as established by the City of Mukilteo’s Purchasing Policy.
- The Purchasing and Accounts Payable system may not be used for personal purchases of any type. I understand if I use the Purchasing and Accounts Payable system for personal purchases, such use will result in disciplinary action up to and including termination of my employment with the City of Mukilteo and I will be held personally and financially responsible for unauthorized purchases.
- I understand if I violate the terms and conditions of the Purchasing and Accounts Payable system, such use or violation will result in disciplinary action up to and including termination of my employment with the City of Mukilteo and I will be held personally and financially responsible for unauthorized purchases.
- The Purchasing and Accounts Payable system may not be utilized as a substitute for professional service agreements, public works contracts, and/or personal services contracts.
- I understand that when using the Purchasing and Accounts Payable system for travel and meal expenses that I am governed by the City of Mukilteo’s travel policies.
- Whenever a purchase is made, I will retain all receipts, packing slips and shipping documents for submission with payment requests.
- I understand that I will forfeit my Purchasing and Accounts Payable system purchasing privileges if, (1) I use the Purchasing and Accounts Payable system in a manner which is inconsistent with any City or Department policies and procedures and/or the requirements of this Agreement, (2) I transfer to another department, resign, or otherwise terminate City employment, (3) if I do not timely process payments, and (4) if finance charges are incurred as a result of my negligence.

**I have read and understand the above conditions as well as the reference policies and procedures and certify that I will be in compliance with reference policies and procedures.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signed: \_\_\_\_\_

Employee Signature

\_\_\_\_\_  
Employee Name Printed

\_\_\_\_\_  
Department Director Approval

**Exhibit 7****Washington State Prevailing Wage Law**

The Prevailing Wages on Public Works Act (Chapter 39.12 RCW) requires that employees of government contractors be paid prevailing wages for all public work. Agencies awarding public works contracts include state agencies, counties, municipalities and all political subdivisions of the state.

All public agencies, contractors performing public work, and construction workers on public works construction should be aware of their rights and legal responsibilities. Failing to comply with the provisions of Chapter 39.12 RCW may subject contractors and/or public agencies to liability for all unpaid prevailing wages and penalties.

The Department of Labor and Industries (L&I) administers the prevailing wage law. The Office of the Attorney General provides legal counsel to L&I and prosecutes violators. The State Auditor's Office ascertains if a public agency's policies, procedures and practices meet the requirements of the law.

Do not rely on this plain language description without reading the laws and regulations. The informal discussions below are meant to be helpful when read in conjunction with the laws and WAC rules. They are not meant to be a substitute for reading and understanding the laws. After reading the laws and regulations, please do not hesitate to contact the Prevailing Wage Office with any questions you may have.

**The Prevailing Wages on Public Works Act**

Enacted in 1945, the Washington State Public Works Act, also known as the "prevailing wage law", is a worker protection act. It requires that workers be paid prevailing wages when employed on public works projects, and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010, and RCW 39.12.020)

The Public Works Act is modeled after the federal Davis-Bacon Act, which was enacted to protect the employees of contractors performing public works construction from substandard earnings, and to preserve local wage standards.

The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive, administrative or professional in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing Wage application depends on the work that is performed, regardless of the worker's job title. Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Office. (RCW 39.12.020 and WAC 296-128-510 through 530)

**What Is Public Work?**

Public work is all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency. This includes, but is not limited to, demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction. (RCW 39.04.010)

**What Is Prevailing Wage?**

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

**Awarding Agencies' Responsibilities**

A. Contracts for Public Work: Employers are not responsible for making the legal determination of whether a contract does or does not meet the definition of a "public works" contract. Public agencies, in awarding a contract,

must make the determination of whether that contract involves “public work” and communicate it to the employers in the bid specifications and contracts. The law does not allow public agencies to place this burden upon the employer. For example, it is insufficient to state, “Contractors shall comply with the prevailing wage law, if applicable”. Agencies should seek the advice of legal counsel regarding when a contract is for public work. Before acting on advice that a contract is not for public work, agencies should contact the Prevailing Wage Office for a determination of the applicability of the statute. (RCW 39.04.010, RCW 39.12.030, RCW 39.12.040, and RCW 39.12.042)

B. Prevailing Wage Provisions: Awarding agencies must stipulate in bid specifications and contracts for public work that workers shall receive the prevailing rate of wage. Those documents must also contain a list of the applicable prevailing wage rates. Compliance with the law is not met by referring contractors to the department or other sources to obtain wage rate information.

RCW 39.12.030

C. Public Building Service Maintenance Contracts: Public building service maintenance (janitorial) contracts of more than one year duration must include wage language recognizing the potential for future variance in applicable prevailing wages each year after the first year of the contract.

RCW 39.12.020 and WAC 296-127-023

D. Disbursal of Public Funds: Agencies may not make any payments where employers have not submitted an Intent form that has been approved by the Industrial Statistician. Agencies may not release retainage until all employers have submitted an Affidavit form that has been certified by the Industrial Statistician. The requirement to submit these forms should also be stated in the contract.

RCW 39.12.030, RCW 39.12.040 and RCW 39.12.042

E. Turnkey Projects (lessee/lessor relationships between public and private parties): Prevailing wages must be paid for any work, construction, alteration, repair or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities. RCW 39.04.260. It is the responsibility of the awarding agency to make an accurate determination as to whether the entire project falls within RCW 39.04.260 prior to entering into a lease relationship for space in a privately owned building. The determination is based on whether the awarding agency is causing the work to be performed and when at least fifty percent of the leased space is going to be occupied by one or more public agencies. If RCW 39.04.260 applies, all work performed in conjunction with the project is covered, not just the tenant improvements, and the project is subject to all provisions of RCW 39.12. Should the awarding agency fail to comply with all the provisions of RCW 39.04.260 and RCW 39.12.040, the awarding agency can be held responsible for any unpaid prevailing wages.

F. Contract Administration: Though not legally required, the following activities are recommended to ensure compliance with the Public Works Act.

I. Job site inspections should be performed on a routine or periodic basis to verify compliance. These inspections should include checking to see that a copy of the Intent is posted at the job site. Workers should be randomly interviewed to verify that prevailing wages are received. Apprentice workers should be asked to show their registration cards.

II. References should be checked when the agency is empowered to select the lowest responsible bidder. The department can advise an agency regarding an employer’s history of wage claims. Check the Contractor Debarment List to find out if a contractor is debarred from bidding on public works projects.

III. Verify Contractor Registration Status and Verify Workers’ Compensation Premium Status. Find out whether a contractor or other employer has an industrial insurance (workers’ compensation) account with L&I and that their premiums are up to date.

# PROCEDURES FOR COMPETITION WAIVERS

CPO-6 Effective January 10, 2010

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## **CPO-6 PROCEDURES FOR COMPETITION WAIVERS**

CPO-6 is effective January 10, 2010.

### **STATEMENT OF THE PROCEDURE**

The Port of Seattle (POS) promotes a competitive procurement environment with full and open competition. In certain circumstances, state law provides exemptions from competition, and the POS may waive the requirements for competitive procurements. See RCW 39.04.280; RCW 53.19.020. Those exemptions should be used judiciously and only when the circumstances meet the requirements of the law. To qualify for an exemption from competition, specific requirements must be met and documented prior to initiating procurement and/or executing a contract.

### **1. PURPOSE**

- 1.1. The purpose of this procedure is to:
  - 1.1.1. Identify the process for obtaining a competition waiver; and,
  - 1.1.2. To ensure that competition waivers are evaluated, adequately documented, and comply with the requirements of the law.

### **2. ABBREVIATIONS**

CEO – Chief Executive Officer  
CPO – Central Procurement Office  
POS – Port of Seattle  
RCW – Revised Code of Washington  
RD – Requesting Department  
RDR – Requesting Department Representative

### **3. OVERVIEW**

- 3.1. RCW 39.04.280 provides for five exemptions to competitive procurement requirements:
  - 3.1.1. Purchases that are clearly and legitimately limited to single source of supply;
  - 3.1.2. Purchases involving special facilities or market conditions;
  - 3.1.3. Purchases in the event of an emergency;
  - 3.1.4. Purchases of insurance or bonds; and
  - 3.1.5. Public works in the event of an emergency

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**PROCEDURES FOR COMPETITION WAIVERS**

- 3.2. RCW 53.19.020 authorizes five exemptions to competitive solicitations for personal services:
  - 3.2.1. Emergency contracts;
  - 3.2.2. Sole source contracts;
  - 3.2.3. Contract amendments;
  - 3.2.4. Contracts of less than \$50,000; and
  - 3.2.5. Other specific contracts or classes or groups of contracts exempted from competitive solicitation process by the commission when it has determined that a competitive process is not appropriate or cost-effective.
- 3.3. A waiver is not necessary for (a) purchases of insurance and bonds, (b) in-scope amendments, and (c) personal service contracts with a value less than \$50,000 because those services are exempt from competition.
- 3.4. CPO-6 establishes the requirements for the following competition waivers:
  - 3.4.1. Single source of supply; sole source (RCW 39.04.280; RCW 53.19.020)
  - 3.4.2. Special facilities or market condition (RCW 39.04.280)
  - 3.4.3. Emergency (RCW 39.04.280; RCW 53.19.020)
  - 3.4.4. Other classes authorized by the commission (RCW 53.19.020 (5)).
- 3.5. Commission delegated to the CEO the authority to approve competition waivers. The CEO has delegated authority to approve competition waivers to the Managing Director of the Capital Development Division, with the concurrence of the General Counsel. See EX-2 A.
- 3.6. The only competition waiver available with respect to the procurement of public works is an emergency as defined in RCW 39.04.280 (3).
  - 3.6.1. Sole source, single source of supply, special facilities or market condition waivers are not applicable for selecting a general contractor on public works procurement.
  - 3.6.2. Public work procurement may have sole source products identified in the specification if a sole source competition waiver has been executed.
- 3.7. When a procurement involves federal or state funds, the POS must also comply with the requirements of the funding source which may limit or alter the applicability of competition exemptions.

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**PROCEDURES FOR COMPETITION WAIVERS**

**4. SINGLE SOURCE OF SUPPLY – SOLE SOURCE**

4.1. Single source of supply or sole source occurs when:

- 4.1.1. There is only one company capable of providing the service or product; or,
- 4.1.2. There is only one manufacturer of a product and no other product will meet the essential needs of the POS.

4.2. Appropriateness of a waiver is based on the particular circumstances of the situation. RD should consult with CPO to evaluate the facts to determine whether the circumstances justify a competition waiver. If it is possible and reasonable to procure the service or product competitively, a competition waiver will not be granted.

4.2.1. Some examples of appropriate single source of supply or sole source may include:

- 4.2.1.1. Item is legitimately and actually available from only a single source manufacturer, supplier, or vendor.
- 4.2.1.2. There is only one source for the service.
- 4.2.1.3. The product is proprietary in nature. No other firm has the capability or authority to distribute, sell, or modify the product.
- 4.2.1.4. There is only one product that is compatible with existing POS infrastructure and/or required for interoperability and changing POS infrastructure would be at significant cost.
- 4.2.1.5. Only one utility supplier or patented product can adequately meet the essential needs of the POS.
- 4.2.1.6. Consultant has exclusive knowledge that was provided during an earlier phase of the contract or project and is responsible for the design. Another consultant cannot reasonably take over the work; assume responsibility for the work provided by another consultant.
- 4.2.1.7. Standardization or interchangeability of parts – another manufacturer's parts will not perform with the existing equipment or will void the manufacturer's warranty (provided there is sufficient time remaining on the warranty).
- 4.2.1.8. Standardization of equipment – equipment must be able to communicate with and control other equipment.

4.2.2. Examples of inappropriate reasons to request single source of supply or sole source waiver:

- 4.2.2.1. RD prefers to do work with a particular firm, the firm has POS experience, no learning curve and the RD

**CPO-6  
PROCEDURES FOR COMPETITION WAIVERS**

- knows and trusts the firm's personnel and believes they do good work.
  - 4.2.2.2. RD prefers products manufactured by a particular company.
  - 4.2.2.3. The firm did the work last time or at another port.
  - 4.2.2.4. Firm has already performed the work and therefore they are the only ones capable of performing the work.
  - 4.2.2.5. Lack of advance planning results in an urgent situation.
  - 4.2.2.6. Loss of funding if we take the time to competitively procure the item or service.
- 4.3. CPO recommends a competitive process for standardization of products. If the POS selected the product through this competitive process, a competition waiver would be unnecessary because the product was selected through a competitive process.
- 4.4. Issuing a competition waiver to standardize around existing products or systems in order to minimize the need of stocking spare parts and/or train staff on numerous systems is a legitimate basis for competition waiver depending on the circumstances. CPO will evaluate the circumstances to determine if there is sufficient justification to standardize around already existing systems and products.
- 4.5. State law has identified special requirements for Personal Services Sole Source Contracts over \$50,000:
  - 4.5.1. Documented justification shall include evidence that the POS tried to identify other potential consultants. See 53.19.040 (1)
  - 4.5.2. The waiver shall indicate costs, fees or rates are reasonable. See 53.19.040 (2)
  - 4.5.3. Procurement file shall include justification that the costs, fees or rates negotiated are reasonable.
- 4.6. If waiver is granted for sole manufacturer's product and that product is available for purchase from more than one source, the POS will issue a competitive procurement for the particular manufacturer's product. The POS must be certain to notify offerors and bidders in the solicitation that substitutions are prohibited. The ITB or RFP should state "Brand Name, No Equal" or similar language. Failure to include the language may result in a change order/claim if the contractor insists on the right to provide a substantially similar product.

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PROCEDURES FOR COMPETITION WAIVERS**

**5. SPECIAL FACILITIES OR MARKET CONDITION**

5.1. Special Facilities or Market Condition waiver are rare and may be granted when unusual conditions make a waiver of normal competitive procurement procedures for the procurement of services or products advantageous to the POS.

5.1.1. Examples of appropriate special facilities or market conditions:

5.1.1.1. Contractor or Vendor is temporarily in a position to give the POS a price significantly below market price due to fact that manufacturer has item in supply and must liquidate asset.

5.1.1.2. Product normally has a long manufacturing lead time, Vendor motivated to sell and can deliver the item in a significantly shortened time period and the POS will benefit from expedited delivery or has an immediate need for the item.

5.1.2. Examples of inappropriate special market conditions:

5.1.2.1. RD prefers to do work with a particular firm, the firm has POS experience, no learning curve and the RD knows and trusts the firm's personnel and believes they do good work.

5.1.2.2. RD prefers products manufactured by a particular company.

5.1.2.3. The firm did the work last time or at another port.

5.1.2.4. Firm has already performed the work and therefore they are the only ones capable of performing the work.

5.1.2.5. Lack of advance planning results in an urgent situation.

5.1.2.6. Funding will expire if we take the time to competitively procure the product or service.

**6. EMERGENCY**

6.1. An emergency is defined as an unforeseen circumstance beyond the control of the POS that either (a) presents 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. See RCW 39.04.280(3).

6.2. The CEO is authorized to make a determination (declaration) of an emergency.

6.2.1. The Managing Director of Capital Development and/or Chief Engineer will consult with the CEO and General Counsel and make recommendations to the CEO with respect to an emergency declaration.

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**PROCEDURES FOR COMPETITION WAIVERS**

6.2.2. The Capital Development Division is responsible for documentation of the declaration, compliance with legal requirements related to public notice, and compliance with Port resolutions.

6.2.2.1. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of the emergency and notification published in a newspaper is required no later than two weeks following contract execution. See RCW 39.04.280(2) (b).

6.2.2.2. In accordance with Resolution 3605, Commission shall be notified of the emergency.

6.2.3. A copy of the emergency declaration and Commission notification should be maintained in the procurement file.

6.3. Special Requirements for Personal Services Emergency Contracts. See RCW 53.19.030

6.3.1. Emergency contract shall be filed with Commission and available for public inspection within seven (7) working days following commencement of the work or execution of the contract, whichever occurs first.

6.3.1.1. Filing with the commission shall be met by providing notice to commission of the emergency and identifying how to obtain a copy of the contract.

6.3.1.2. To make the contract available for public inspection, the contract will be posted on the Port's internet database.

6.3.2. Documented justification of the emergency shall be filed with commission when the contract is filed.

6.3.3. A copy of the emergency declaration and Commission notification should be maintained in the procurement file.

**7. COMMISSION ACTION FOR PERSONAL SERVICE COMPETITION WAIVERS**

7.1. Only the Commission can authorize a competition waiver for personal services based on RCW 53.19.020 (5). Specifically the Commission must find that a competitive process is not appropriate or cost effective.

7.2. RD should consult with CPO about this waiver and, following concurrence of CPO, draft a commission authorization memo seeking commission approval of this type of waiver.

7.3. Following approval of the waiver by Commission, CPO should include this waiver in the competition waiver log. A copy of the Commission memo and Commission meeting minutes should be maintained in the procurement file.

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PROCEDURES FOR COMPETITION WAIVERS**

8. PROCESS REQUIREMENTS FOR SINGLE SOURCE OF SUPPLY, SOLE SOURCE, & SPECIAL FACILITIES OR MARKET CONDITION WAIVERS
- 8.1. RD prepares a written justification explaining basis for waiver. The justification memorandum must:
- 8.1.1. Identify the particular service or products the RD is seeking to purchase;
  - 8.1.2. Identify the type of waiver sought;
  - 8.1.3. Demonstrate that the procurement qualifies for that type of waiver;
  - 8.1.4. Provide rationale justifying and supporting the basis for the waiver; and
  - 8.1.5. Request approval of the waiver.
- 8.2. CPO will review justification and consult with RD. CPO will route the waiver for concurrence and approval process. A competition waiver is granted when:
- 8.2.1. The CPO Director and General Counsel concur in writing with the rationale and basis for the waiver; and
  - 8.2.2. The Managing Director of Capital Development approves the waiver in writing.
- 8.3. RD shall also prepare a transmittal memo for Commission. Transmittal memorandum shall be from the RD and the Managing Director of Capital Development.
- 8.4. CPO is responsible for tracking all waivers in the waiver log and providing Commission with notification of the waiver. Such notification shall include a copy of the waiver.
- 8.5. A copy of the waiver will be maintained in the procurement and/or contract administration file.

9. REFERENCE MATERIALS

- 9.1. Port Commission Resolution 3605
- 9.2. See CPO Internet for Waiver and Transmittal Memo Forms & Examples

  
\_\_\_\_\_  
Tay Yeshitani, Chief Executive Officer

  
\_\_\_\_\_  
Date

**RESOLUTION NO. 07-006**

A RESOLUTION of the City Council of the City of SeaTac, Washington authorizing the purchase of sports field lighting from Musco Lighting for the Valley Ridge Sports Park Project, and waiving the competitive bidding requirement due to a sole source purchase and special market conditions.

**WHEREAS**, the City Council finds that based upon extensive research by the Parks and Recreation Department, the purchase of Musco Lighting is appropriate due to the substantial energy savings (approximately \$242,940 over 30 years compared to the next best lighting manufacturer), a 25 year warranty, and a central control system; and

**WHEREAS**, RCW 39.04.280 provides that a local agency, by Resolution, may waive the competitive bidding requirement when the purchase is clearly and legitimately limited to a single source of supply, or when the purchase involves special facilities or market conditions; and

**WHEREAS**, the City Council finds that there is one sports field lighting system that will meet the City's needs, and thus the manufacturer is the sole source of supply, and that there is a special market condition because the City will receive the lowest price that is offered by the manufacturer; and

**WHEREAS**, the City Council is it appropriate to waive the competitive bidding requirements for the above reasons; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON HEREBY RESOLVES as follows:**

1. The City's purchase of a sports field lighting system manufactured by Musco Lighting is authorized in the amount of \$274,863.60 (including tax), and
2. The competitive bidding requirement for the Sports Field Lighting System for the Valley Ridge Sports Park Project is waived as this is a sole source purchase and involves special market conditions.

**PASSED** this 27<sup>th</sup> day of March, 2007 and signed in authentication thereof on this 27<sup>th</sup> day of March, 2007.

**CITY OF SEATAC**

---

Gene Fisher, Mayor

ATTEST:

---

Judith L. Cary, City Clerk

Approved as to Form:

---

Mary E. Mirante Bartolo, City Attorney

[Valley Ridge Park Lighting]

# City of Sequim, Washington

## Resolution No. 2005-14

A resolution of the City of Sequim, Washington setting guidelines for the purchase of used equipment under RCW 39.04.280(1)(a)(b), Special Market Conditions, Sole Source Bidding and Ordinance 2002-006 section 8(K) of the Sequim Municipal Code.

WHEREAS, RCW 39.04.280(1)(a)(b), allows for the Special Market Conditions and Sole Source Bidding for special purchases; and

WHEREAS, the City has need to purchase a used water truck; and

WHEREAS, the City has researched the used water truck; and

WHEREAS, the used equipment has been located that fits the needs of the City at a very favorable price and may be sold before the City could complete a formal bidding process;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEQUIM that the purchase of the 1997 Ford 8000 water truck be approved according to RCW39.04.280(1)(a)(b). Special Market Conditions include:

1. The contractor is selling a used water truck.
2. The 1997 Ford 8000 water truck is offered at a very favorable price to the City of Sequim.
3. The truck is local and no out of state transportation or hauling is required.
4. The equipment may be sold before the City could complete a formal bid process.
5. No other equipment has been found that meets the needs and cost of the City.
6. This water truck the City is searching for is limited to a single source.

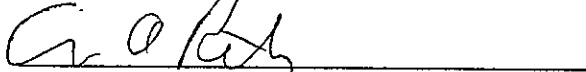
Adopted by the City Council this 7th day of September, 2005.

  
Walter E. Schubert, Mayor

ATTEST:

APPROVED AS TO FORM:

  
Karen Kuznek-Reese, CMC, City Clerk

  
Craig Richie, City Attorney

## Rock and Roll Moment

Late Friday afternoon, Paul McCartney, your Sewer Superintendent, reports a serious sewer main break on Penny Lane. It needs to be fixed immediately to protect the Yellow Submarine deli and other businesses from obvious health threats. The estimated cost, including applicable sales and use taxes, is \$34,999. (What if the estimated cost is \$205,000?) Led Zeppelin Construction (LZC) and his utility subcontractor, Gary Puckett, are working nearby on a private project and are willing and able to help.

*Even though LZC is close, you may want to see if there are contractors on your SWR who can mobilize almost as fast, as they may already have insurance certificates, etc. on file.*

What things do not need to happen before LZC begins work?

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

Do you need to get quotes or bids before they start?

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

If not, does Paul know how track and pay for force account work?

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

Should you have a contract in place beforehand?

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

Do you need a performance and payment bond?

*Theoretically, yes. Practically, no.*

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

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

How much insurance do you need?

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

Do prevailing wages apply?

*YES!*

When do you tell them that prevailing wages need to be paid and how much?

*Before they start work. Download prevailing wages for anticipated worker classifications from L&I Web site.*

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

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

Do you need to withhold retainage?

*Yes, if the project takes longer than one of your agency's normal payment cycles. If not, and you are satisfied that all material suppliers have been paid for and an approved Affidavit of Wages Paid is on file, then you can pay the full amount due.*

Do you need to notify the Department of Revenue?

*At project completion, and if the contract is over \$20,000 (\$35,000 after July 22, 2007).*

What action, and when, does your Council/Commission need to take in regard to this project?

*RCW 39.04.280(2)(b) says: "If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract."*

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

RESOLUTION NO. 7061

A RESOLUTION certifying the existence of an emergency and authorizing staff to waive the contract bidding process for construction of emergency public works to address a leaking sewer line along the shoreline of Meydenbauer Bay.

WHEREAS, a public health and safety hazard exists consisting of a leaking sewer line along the shoreline of Meydenbauer Bay; and

WHEREAS, if the sewer line is not repaired there is a likelihood that the health, safety and welfare of the public and the environment will be jeopardized;

WHEREAS, on July 28, 2004, the City Manager declared a state of emergency pursuant to BCC 4.28.140, RCW 35.22.620 and RCW 39.04.280; and


WHEREAS, said emergency requires immediate execution of certain public works in order to protect property within the City; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Pursuant to BCC 4.28.140, RCW 35.22.620 and RCW 39.04.280, the City Council hereby certifies the existence of an emergency situation arising from a leaking sewer line described in the Declaration of Emergency issued by the City Manager on July 28, 2004, which situation requires emergency public works without formal bid.

Passed by the City Council this 2nd day of August, 2004, and signed in authentication of its passage this 2nd day of August, 2004.

(SEAL)

  
\_\_\_\_\_  
Connie B. Marshall, Mayor

Attest:

  
\_\_\_\_\_  
Myrna L. Basich, City Clerk

Deputy City Clerk

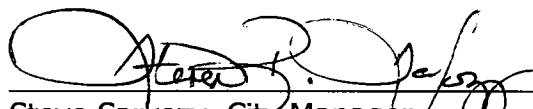
**DECLARATION OF EMERGENCY  
FOR  
WAIVER OF PUBLIC BIDDING REQUIREMENTS**

On July 9, 2004 the King County Department of Public Health closed the beach at Bellevue's Meydenbauer Bay Park due to high bacteria levels in the water. Bellevue utility maintenance crews later discovered that the bacterial levels were being contributed to by a leak in the City's sewer lake line under a rockery just north of the park. Emergency repairs are needed to address the health and environmental risks that the sewage leak poses.

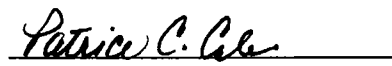
Therefore, in accordance with RCW 35.22.620(6), RCW 39.04.280(1)(e) and WAC 197-11-880, the undersigned has determined that an emergency situation exists requiring the waiver of competitive bidding requirements and the award of a contract to repair the leaking sanitary sewer pipeline to avoid the very real threat to the environment as well as to the health, welfare and safety of the public. The Utilities Department is therefore authorized to execute a contract for the repair of the leaking sanitary sewer pipeline without competitive bidding. This declaration of emergency will be presented to the City Council at the earliest possible opportunity after contract execution for confirmation of the existence of an emergency.

Executed this 28th day of July, 2004.

CITY OF BELLEVUE

  
Steve Sarkozy, City Manager

Approved as to form:

  
Patrice C. Cole,  
Assistant City Attorney

**City of Woodinville**

Proclamation of Emergency for 2006 November Rain Storm Event

And

Finding of Emergency

# **CITY OF WOODINVILLE PROCLAMATION OF EMERGENCY**

**2006 November Rain Storm Event  
(November 4<sup>th</sup> through 6<sup>th</sup>, 2006)**

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**WHEREAS**, the City Manager and Director of Public Works have reported to the Mayor of the City of Woodinville that a slope stability condition exists due to a storm line pipe collapse along the slope on the northeast corner of NE 195<sup>th</sup> Street and Wood-Snohomish Road intersection, which threatens to result in potential injury to persons or the destruction of, or damage to property if not addressed in the near term; and

**WHEREAS**, this constitutes an emergency and necessitates the utilization of emergency powers, including but not limited to the emergency contracting authority granted pursuant to RCW 39.80.060 and RCW 39.04.280; and


**WHEREAS**, technical compliance with otherwise-applicable contracting procedures would unreasonably delay the performance of services necessary to address the above-referenced emergency;

**NOW, THEREFORE**, be it resolved by the City Council of the City of Woodinville that an emergency exists in Woodinville; therefore City of Woodinville Departments are authorized to do the following:

1. Enter into contracts and incur obligations necessary to combat such emergency to the extent necessary to protect the health and safety of person and property; and
2. Provide appropriate emergency assistance; and
3. Utilize the emergency contracting authority provided by state law, including but not limited to RCW 39.80.060 and RCW 39.04.280, and waive the competitive bidding and/or selection procedures otherwise required for the City's procurement of engineering services and public work; and
4. Other actions, as appropriate and reasonably necessary to address the emergency and protect the public health, safety and welfare of the Woodinville community.

Each City of Woodinville Department is authorized to exercise the powers vested under this resolution in the light of the exigencies of the emergency situation without regard to time consuming procedures and formalities prescribed by law (except mandatory legal requirements).

**DATED THIS 15<sup>TH</sup> DAY OF NOVEMBER 2006**

  
\_\_\_\_\_  
**Cathy VonWald**  
**Mayor, City of Woodinville**

**FINDING OF EMERGENCY –  
NOVEMBER 2006 FLOODING EVENT**

Pursuant to a Proclamation of Emergency dated November 15, 2006, the City of Woodinville awarded a public works contract to Thomco Construction Ltd. on November 15, 2006 in the amount of \$34,999, using the emergency contracting procedures authorized under RCW 39.04.280. The purpose of the emergency contract was to allow for the immediate performance of public work necessary to repair a failed drainage pipe located at NE 195<sup>th</sup> Street and Woodinville-Snohomish Road in Woodinville. The drainage pipe at issue apparently failed as a result of the unanticipated heavy precipitation that occurred in November 2006. In the professional judgment of the City of Woodinville Public Works Director, delaying this corrective work by the time necessary to comply with otherwise-applicable competitive contracting procedures would have severely jeopardized the slope stability of the underlying property, and would likely have resulted in material loss or damage to property and/or bodily injury.

Based upon the unforeseen circumstances acknowledged above, the Woodinville City Council hereby finds that an emergency situation existed necessitating the use of emergency contracting procedures. The City Council further ratifies and confirms the award of a public works contract to Thomco Construction Ltd in the amount of \$34,999.

The City Clerk is directed to enter a signed copy of this Finding into the legislative record.

  
\_\_\_\_\_  
**Cathy VonWald, Mayor**



**DEPARTMENT OF PUBLIC WORKS  
POLICIES AND PROCEDURES**

<b>TITLE</b>  <b>General Procedures for Contracting for Emergency Work</b>		<b>SUBJECT:</b>  <b>Public Works Program and Project Management</b>		
		<b>INDEX NO:</b>  <b>300-07a</b>		
<b>EFFECTIVE DATE:</b> April 21, 2004	<b>SUPERSEDES:</b> 10/4/02	<b>PAGE NO:</b> 1 <b>OF:</b> 2	<b>PREPARED BY:</b> Pam Miller Admin. Services Supv.	<b>DIRECTOR'S APPROVAL:</b>

**PURPOSE: To set forth procedures for contracting for emergency public works projects.**

Reference RCW 39.04.280, which provides for the following:

- Competitive bidding requirements may be waived for public works in the event of an emergency.
- An emergency is defined as an unforeseen circumstance beyond the control of the municipality that either: (a) presents 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.
- A written finding of the existence of an emergency must be made by the City and duly entered on the record no later than two weeks following award of the contract.

Procedures

- A. When an emergency arises and City operations and maintenance staff determine that they cannot perform the required work, the staff should contact:
  - During Normal Working Hours – the Program Manager.
  - Outside of Normal Working Hours - The Construction Manager. If the Construction Manager is not available, they should go down the Construction Inspector list.
- B. If the Program Manager and/or Construction Manager determines an emergency, the Public Works Director will be notified immediately.
- C. If the Public Works Director concurs that an emergency situation exists and a contractor(s) needs to be called in, the Director will notify the Mayor, who is authorized by Auburn City Code 3.10.050 to enter into emergency contracts.
- D. Upon concurrence of the Mayor that an emergency situation exists, and upon the Mayor’s authorization, contractor(s) can be called upon to make the necessary repairs.

PUBLIC WORKS POLICIES AND PROCEDURES	TITLE: General Procedures for Contracting For Emergency Work	INDEX NO.: 300-07a	PAGE NO.: 2	OF: 2
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- E. Prior to work commencing, the contractor(s) shall review and sign an Emergency Public Work Agreement form [FC125A](#), outlining prevailing wage and bond requirements and payment schedule.
- F. The first working day following the emergency situation, the staff member directing the contractor's on-site work will notify the Administrative Services Supervisor of:
1. The need for the emergency work.
  2. The name(s) of contractor(s) called in to perform the work.
  3. The type of work being performed by the contractor(s).
  4. The estimated cost of the work.
- G. The Administrative Services Supervisor will ensure that a description and estimate of the work is published within seven (7) days of commencement of the work (RCW 39.04.020) (see [FE033](#)) and will create an agenda bill (see [ab-Emergency](#)) outlining the emergency situation and the details listed in Item F above. The agenda bill will be presented to the Public Works Committee and City Council in a manner such that the agenda bill is presented to the Council within two weeks following award of the emergency contract(s).
- H. If the amount of work being done by any single contractor is greater than \$5,000, an Emergency Public Work Contract form [fc125](#) will be entered into with the contractor. For work less than \$5,000, the Emergency Public Works Agreement form and a purchase order will be sufficient.

REF: H:\PUB\_WRKS\Policy\300-07a.doc



**Emergency Public Work Agreement**  
 Auburn Public Works Department  
 25 W Main Street  
 Auburn WA 98001  
 253.931.3010

Date: \_\_\_\_\_

<b>Contractor</b>	Name:	
	Address:	
	City:	State and Zip:
	Phone:	Fax:
	State Contractors License No.:	

<b>Project Site</b>	
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<b>Scope of Work</b>	
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<b>Time of Completion</b>	Work shall be completed within _____ working days.
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<b>Estimate Cost</b>	\$ _____
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PREVAILING WAGES. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. Intent to Pay Prevailing Wage forms are required.

RETAINAGE. Retainage is required.

- If the cost of work is \$25,000 or less, the Contractor can choose to be paid 50% of the contract amount upon completion and acceptance of the work by the City. The remaining 50% of the contract amount will be retained by the City.
- If the cost of work is greater than \$25,000, the amount of retainage is 5% of the contract price. The contractor can elect to furnish a bond in lieu of retainage, have the retainage held in an escrow account, or decline escrow and have the City retain the funds.

Regardless of the method chosen, retainage will be held for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor & Industries, and until settlement of any liens filed under Chapter 60.28. RCW, whichever is later. On the first working day following the award of the Emergency Contract, you will be contacted by City staff to discuss retainage.

If the estimated cost of work is over \$5,000, an Emergency Public Work Contract shall be executed within five (5) working days of the work commencing. A performance bond and certificates of insurance will also be required.

CONTRACTOR

CITY OF AUBURN

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**EMERGENCY PUBLIC WORK CONTRACT NO. XX-XX**  
**Project No. xxxx, Title**

THIS CONTRACT is entered into between the City of Auburn, a Washington Municipal Corporation ("City"), and \_\_\_\_\_ ("Contractor"), whose mailing address is \_\_\_\_\_.

The parties agree as follows:

- I. CONTRACTOR SERVICES.** The Contractor shall do all work and furnish all tools, materials and equipment for the construction of Project No. XXXX in accordance with this Contract form. Scope of work is as follows:

**(List here).**

**If attaching a scope of work and/or drawings, use the following language:** "The Contractor shall do all work and furnish all tools, materials and equipment for the construction of Project No. MSxxxx, in accordance with this Contract form and as shown on the attached Exhibit "?", which is by this reference incorporated herein and made a part hereof."

**Note:** In the paragraphs above, if you have referenced any documents or exhibits as "attached," they must be attached to the three Contract originals that are prepared for execution by the Contractor and City. Be sure to adjust punctuation and wording so that it makes sense.

The complete Contract includes the following parts, which are by this reference incorporated herein and made a part hereof. Any inconsistency in the parts of the Contract shall be resolved by the order in which they are listed.

- A. Emergency Public Work Contract
- B. List specific exhibits, attachments, drawings, including those attached to Small PW Contract
- C. Washington State Department of Labor & Industries Prevailing Wage Rates and Benefit Key Code effective date. ( must be the rate in effect on the date that the Emergency Public Works Agreement was executed, or the date the work commenced if an Agreement was not executed)

On the Contract plans, working drawings, and standard plans, figured dimensions shall take precedence over scaled dimensions.

In case of any ambiguity or dispute over interpreting the Contract, the City Engineer's decision will be final.

- II. CITY OF AUBURN BUSINESS LICENSE REQUIRED.** In order to do business in the City of Auburn, you are required to have a current City of Auburn business license. All subcontractors and lower tier subcontractors working on the project must also have a City of Auburn business license.

**III. TIME OF COMPLETION.** The Contractor shall complete the work within [redacted] working days from the date of work commencing.

**Add the following section if liquidated damages are deemed to be appropriate – check w/Proj. Eng.**

**IV. LIQUIDATED DAMAGES.** If said work is not completed within the time specified, the Contractor agrees to pay liquidated damages to the City as follows:

A. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for physical completion, and

B. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

C. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

Formula:  $\text{Contract Price (without tax)} \times 0.15$ , divided by the original number of working days for completion.

**If inserting the above section, remember to renumber the following sections.**

**IV. HOURS OF WORK.** Normal working hours for the Contract shall be any consecutive 8-hour period between 7:00 a.m. and 6:00 p.m., Monday through Friday. If the Contractor desires to perform work on holidays, Saturdays, Sundays, or between the hours of 6:00 p.m. and 10:00 p.m. on any day, the Contractor shall apply in writing to the Engineer for permission to work such times. Permission to work longer than an 8-hour period between 7:00 a.m. and 6:00 p.m. is not required. Such requests shall be submitted to the Engineer two (2) working days prior to the day for which the Contractor is requesting permission to work. The City reserves the right to grant or deny any such request at its sole discretion.

Permission to work between the hours of 10:00 p.m. and 7:00 a.m. during weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on weekends or holidays may also be subject to noise control requirements, as indicated in Auburn City Code Chapter 8.28.010 entitled “Noise Control.” If the Contractor desires to work during restricted times, the Contractor shall submit a written request to the Engineer fourteen (14) calendar days prior to the day for which the Contractor is requesting permission to work. The written request will include specific days and times and description of work to be performed and the reasons the work cannot be performed during the normal hours of work. The City reserves the right to grant or deny any such request at its sole discretion. If approval is granted, it may be revoked at any time the City receives complaints from the public or adjoining property owners regarding the noise from the Contractor’s operations. The Contractor shall have no claim for damages or delays should such permission be revoked for any reason.

V. **COMPENSATION.** The Contractor shall do all work and furnish all tools, materials, and equipment for the work and services contemplated in this Contract for the not-to-exceed amount of \$\_\_\_\_\_, and Washington State Sales Tax of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_ (based on time and materials in accordance with Section 1-09.6 of the current WSDOT Standard Specifications for Road, Bridge and Municipal Construction.).

**(When filling in contract after award, spell out and list amounts in numbers. If this is a Street project that is not taxable, delete “and Washington State Sales Tax of \$\_\_\_\_\_ for a total of \$\_\_\_\_\_ and add the following: This project is subject to use tax, which shall be included in the not-to-exceed amount) Our sales tax area is 1702 for King County. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every Subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.**

A. **Performance Bond.** The Contractor shall furnish the City with an executed performance bond for the full Contract amount of \$\_\_\_\_\_. **(when filling in contract after award, show total contract price, with tax – spell out and show numbers). If the contract amount is over \$25,000, delete the following sentence.** This requirement may be waived if the Contractor chooses Option 2 of Section VI.B, “Retainage,” below.

**For contracts <\$25,000, use the following:**

B. **Retainage.** The Contractor may elect to (1) furnish a performance bond in accordance with Section VI. A, in which case the City shall hold back retainage in the amount of five percent (5%) of any and all payments made to the Contractor, or (2) have the City retain, in lieu of the performance bond, fifty percent (50%) of the total Contract amount, pursuant to RCW 39.08.010. The Contractor shall execute a “Declaration of Option for Performance Bond or Additional Retainage” to indicate his/her option. In either case, the Contractor can choose to have the retainage held by the City in a non-interest bearing account, have it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of forty-five (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

**If contract amount is over \$25k, delete above Section B and use the following:**

B. **Retainage.** The City shall hold back retainage in the amount of five percent (5%) of any and all payments made to the Contractor pursuant to RCW 39.08.010. The Contractor can choose to have the retainage held by the City in a non-interest bearing account, have

it placed in an Escrow (interest bearing) Account, or submit a bond in lieu of retainage. Said retainage shall be held by the City for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and State Employment Security Department, including Affidavits of Wages paid for the Contractor and each and every subcontractor, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

- C. Defective or Unauthorized Work. The City reserves its right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and the Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any additional costs, from any and all amounts due or to become due the Contractor.
- D. Final Payment: Waiver of Claims. The making of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the Contractor as unsettled at the time request for final payment is made.

**VI. INDEPENDENT CONTRACTOR.** The parties intend that an Independent Contractor - Employer Relationship will be created by this Contract, the City being interested only in the results obtained under this Contract.

**VII. SUBCONTRACTING.** Work done by the Contractor's own organization shall account for at least 30 (thirty) percent of the awarded Contract price. Before computing this percentage however, the Contractor may subtract (from the awarded Contract price) the costs of any subcontracted work on items the Contract designates as specialty items.

The Contractor shall not subcontract work unless the City approves in writing. Each request to subcontract shall be on the form the City provides. If the City requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The Contractor shall require each subcontractor to comply with RCW 39.12 (Prevailing Wages on Public Works) and to furnish all certificates and statements required by the Contract. As stated in Section VI, "Compensation," no payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each

and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

Along with the request to sublet, the Contractor shall submit the names of any contracting firms the subcontractor proposes to use as lower tier subcontractors. Collectively, these lower tier subcontractors shall not do work that exceeds 25 percent of the total amount subcontracted to a subcontractor. When a subcontractor is responsible for construction of a specific structure or structures, the following work may be performed by lower tier subcontractors without being subject to the 25 percent limitation:

- A. Furnishing and driving of piling, or
- B. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25 percent limit, lower tier subcontractors shall meet the same requirements as subcontractors.

The City will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience and ability. Approval to subcontract shall not:

- 1. Relieve the Contractor of any responsibility to carry out the Contract.
- 2. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond.
- 3. Create any contract between the City and the subcontractor, or
- 4. Convey to the subcontractor any rights against the City.

The City will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in A and B above in accordance with WAC 296-127.

If dissatisfied with any part of the subcontracted work, the City may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the subcontractor for any further work under the Contract.

This section does not create a contractual relationship between the City and any subcontractor. Also, it is not intended to bestow upon any subcontractor, the status of a third-party beneficiary to the Contract between the City and the Contractor.

**VIII. TERMINATION.** The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly-skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.

After all the work contemplated by the Contract has been completed either by the Surety or the City, the City will calculate the total expenses and damages for the completed work. If the total expenses and damages are less than any unpaid balance due the Contractor, the excess will be paid by the City to the Contractor. If the total expenses and damages exceed the unpaid balance, the Contractor and the Surety shall be jointly and severally liable to, and shall pay the difference to, the City on demand.

**IX. PREVAILING WAGES.** Contractor shall file a "Statement of Intent to Pay Prevailing Wages" with the State of Washington Department of Labor & Industries prior to commencing the Contract work. The Contractor shall pay prevailing wages and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The prevailing wage rate revision in effect on the **date that the Emergency Public Works Agreement was fully executed" or "in effect on the date work commenced" if agreement was not executed**) is attached and by this reference incorporated herein and made a part hereof. No payment shall be issued until a Statement of Intent to Pay Prevailing Wages form, for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City. Retainage shall not be released until an Affidavit of Wages Paid form for the Contractor and each and every subcontractor, has been approved by the State Department of Labor & Industries, and is received by the City.

**X. CHANGES.** The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to an authorized agent of the City within fifteen (15) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems

appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time allowed, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below:

- A. Procedure and Protest by the Contractor. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor shall:
1. Immediately give a signed written notice of protest to the City;
  2. Supplement the written protest within fifteen (15) calendar days with a written statement that provides the following information:
    - a. The date of the Contractor's protest.
    - b. The nature and circumstances that caused the protest.
    - c. The provisions in this Contract that support the protest.
    - d. The estimated dollar cost, if any, of the protested work and how that estimate was determined.
    - e. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The City shall have access to any of the Contractor's records needed for evaluating the protest.
  3. The City will evaluate all protests, provided the procedures in this section are followed. If the City determines that a protest is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.
- B. Contractor's Duty to Complete Protested Work. In spite of any protest, the Contractor shall proceed promptly with the work as the City has ordered.
- C. Contractor's Acceptance of Changes. The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for

Contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

**XI. CLAIMS.** Changes references from X.A. to XI.A. if Liquidated Damages (Sect. V) was inserted. The Contractor waives right to a claim if they have not followed procedures outlined in Section X.A of this Contract. If resolution cannot be reached under Section X.A, then the Contractor shall give written notice to the City of all claims other than change orders within fifteen (15) calendar days of the City's notice of its final decision on the Contractor's protest. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract; or if (and only if) no such provision is applicable, unless that claim is set forth in detail in writing and received by the City within seven (7) calendar days from the date the Contractor knew, or should have known, of the facts giving rise to the claim. At a minimum, a Contractor's written claim must include the information set forth regarding protests in Section X.A.

Failure to provide a complete, written notification of claim within the time allowed shall be an absolute waiver of any claims arising in any way from the facts or events surrounding that claim or caused by that delay.

The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Contract within forty-five (45) calendar days from the date the Contract work is complete.

**XII. WARRANTY.** All defects in workmanship and materials that occur within one year from the date of the City's acceptance of the Contract work shall be corrected by the Contractor. When defects are corrected, the warranty for that portion of the work shall extend for one year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a

reasonable time, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

**XII. INDEMNIFICATION.** Contractor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of the Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that this indemnification constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties acknowledge that they have mutually negotiated this waiver.

The provisions of this section shall survive the expiration or termination of this Contract.

**XIV. INSURANCE.** The Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the Contract work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

Before beginning work on the project described in this Contract, the Contractor shall provide a Certificate of Insurance evidencing the coverages listed below. The policies of insurance for general, automobile, and pollution policies shall be specifically endorsed to name the Contracting Agency and its officers, elected officials, employees, agents and volunteers, and any other entity specifically required by the Contract Provisions, as additional insured(s).

A. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- B. Commercial General Liability insurance written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy, with respect to the work performed for the City using ISO Additional Insurance endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- C. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Per WCIA Jan/Feb 2005 newsletter, Builders Risk Coverage is provided automatically in the property insurance coverage offered by WCIA for remodeling or additions to facilities already on the City's scheduled of property values. Separate builders risk is needed for any of the following: New facilities, structures, or building; bridges; dams; piers; new wastewater treatment facilities; all projects [involving a building] over \$25 million in value. If the project requires builders risk, include the following language and re-letter the remaining paragraphs.

- D. Builders Risk insurance, if any structures are involved in the Contract. The Contractor shall provide Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work in an amount equal to the completed value of the structure with no coinsurance provisions. Builders Risk Insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the

responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

- D. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability: (if Builders Risk insurance required, delete the word “and” and use a comma between Auto Liability and Commercial GL, and then add to end of sentence, “, and Builders Risk Insurance”):
1. The Contractor’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor’s insurance and shall not contribute with it.
  2. The Contractor’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- E. Contractor’s Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor’s employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor’s agents, suppliers, or contractors as well as to any temporary structures, scaffolding, and protective fences.
- F. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to Section XV of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.
- G. Acceptability of Insurers. Insurance is to be placed with authorized insurers in Washington State with a current A.M. Best rating of not less than A-:VII.
- H. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

- I. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains and maintains at a minimum, the insurance coverages listed in this section. Upon request of the City, the Contractor shall provide evidence of such insurance.

Any payment of deductible or self insured retention shall be the sole responsibility of the Contractor.

The City reserves the right to receive a certified copy of all the required insurance policies.

**XV. MISCELLANEOUS.**

- A. Nondiscrimination. In the hiring of employees for the performance of work under this Contract, the Contractor, its subcontractors, or any person acting on behalf of Contractor shall not, by reason of race, religion, color, sex, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.
- B. Compliance with Laws. The Contractor shall comply with all federal, state and local laws, rules and regulations throughout every aspect in the performance of this Contract.
- C. Work Performed at Contractor's Risk. The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of this Contract. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- D. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.
- E. Governing Law. This Contract shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the City and the Contractor under any of the provisions of this Contract, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.
- F. Attorney's Fees. To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the parties' performance of this Contract, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 10 of this Contract.
- G. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless otherwise notified. Any

written notice shall become effective upon delivery, but in any event three (3) calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract.

- H. Assignment. Any assignment of this Contract by the Contractor without the written consent of the City shall be void.
- I. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and the Contractor.
- J. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.
- K. Entire Contract. The written provisions and terms of this Contract, together with any referenced documents and attached Exhibits, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Contract. This Contract, referenced documents, and any attached Exhibits contain the entire Contract between the parties. Should any language in any referenced documents or Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

IN WITNESS WHEREOF, the parties below have executed this Contract.

CONTRACTOR

THE CITY OF AUBURN

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

By \_\_\_\_\_  
(Print name here)

By Peter B. Lewis

Its \_\_\_\_\_  
(Authorized representative)

Its Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Contractor's State License No. \_\_\_\_\_

State Tax Registration (UBI) No. \_\_\_\_\_

Federal Tax ID # \_\_\_\_\_

Notices to be sent to:

Notices to be sent to:

CONTRACTOR

CITY OF AUBURN

Attn:  
Address  
City, State Zip  
Phone:  
Fax:  
E-mail:

Attn: **Insert Proj. Eng./Mgr. name here**  
25 West Main Street  
Auburn, WA 98001  
Phone: 253.**xxx.xxxx**  
Fax: 253.931.3053  
E-mail:

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel B. Heid, City Attorney

H:\FORMS\FC125 (Rev. 12/1/06)

**Cxxxx CAPITAL PROJECT CEC LIST**

**Emergency Public Works**

**Use this form sheet for projects that**

\* Are necessary due to an emergency that has been declared by the Mayor

<b>PROJECT SET UP (Administrative Services Supervisor)</b>		
Date	Task	Hyperlinks
	Emergency situation discovered.	
	Emergency declared by PW Director and Mayor.	
	Estimated Cost	
	Inspector fills out Emergency PW Contract (3-part NCR form FC125a.doc, that all inspectors have in their trucks), and has contractor's representative sign it prior to work commencing.	
	Date Emergency Public Works Agreement Signed.	
	1 <sup>st</sup> Working Day	
	Administrative Services Supervisor Notified (1 <sup>st</sup> working day after work commenced) and given copy of Emergency PW Contract.	

**Perform verifications listed on Contractor verification form sheet.**

Working with the inspector or engineer assigned to the project, draft the following documents:		
	Using the sample ad at H:\Forms\FC033.doc or one of the samples at H:\AdminServices\EmergencySamples, create a draft advertisement containing a description and estimate of the work. This ad must be published in the City's newspaper of record within 7 days.	<a href="#">FE033</a>  <a href="#">SampleAds</a>
	Have the ad reviewed and approved by the Assistant City Engineer prior to finalizing and sending it to the paper.	
	Date advertised in City's newspaper of record.	
	Date Affidavit of Publication received	
	Using one of the samples at H:\AdminServices\CA-Construction\EmergencySamples, draft a resolution. Call the City Clerks office to get a resolution number.	
	E-mail the draft resolution to the City Attorney for his comments/edits. Upon receipt of the resolution, make sure he has signed it. If not, give him a call and set up a time when you can go down to his office and get it signed.	
	Using the format at H:\AgendaBills\FormsAndSamples\ab-Emergency or one of the samples at H:\AdminServices\CA-Construction\EmergencySamples, draft an agenda bill outlining the emergency situation, contractor performing the work, type of work performed, and estimated costs. The agenda bill must go to the Public Works Committee and Council (Per RCW 39.04.280, the agenda bill must go to Council within 2 weeks following award of the emergency work, which is the date Emergency Public Works Agreement form was signed.)	<a href="#">ab-Emer</a>  <a href="#">Samples</a>
	Upon finalization, give the agenda bill and resolution to the Department Secretary for inclusion in the Public Works Committee agenda packet.	

**SET UP PRECON (Contracts Administration Specialist)**

Date	Task	Hyperlinks
	Check with the PM/PE - Is a preconstruction meeting necessary? If yes, continue with the remainder of the procedures listed in this section.	
	Check with PM - who should attend pre-con (consultant, staff ,etc.)? Any special conditions for award letter?	