LOCAL GOVERNMENT SUCCESS

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About MRSC

Municipal Research and Services Center (MRSC) is a nonprofit organization dedicated to proactively supporting the success of local governments through one-on-one consultation, research tools, online and in-person training, and timely, unbiased information on issues impacting all aspects of local governments.

For more than 80 years, local governments in Washington State have turned to MRSC for assistance. Our trusted staff attorneys, policy consultants, and finance experts have decades of experience and provide personalized guidance through Ask MRSC and our extensive online resources. Every year we help thousands of staff and elected officials research policies, comply with state and federal laws, and improve day-to-day operations through best practices.

Municipal Research News is published quarterly to inform, engage, and educate readers about ongoing and emerging issues. In print and online at the MRSC Insight blog, we cover such major topics as the Growth Management Act, the legalization of recreational marijuana, and the ever-evolving complexities of the Public Records Act, to name a few. When the legal landscape changes, we are here to clarify the issues and help local government leaders make the right decisions for their communities.

The 2022 Washington Legislative Session included a budget proviso (SB 5693) that will fund a new effort between MRSC and the Washington Procurement Technical Assistance Center (PTAC), a state-based agency that educates and advises businesses on government contracting. This new partnership will expand resources related to public work contracting with a focus on reducing disparities and increasing the share of women and minority-owned businesses that successfully compete for and earn local government public works contracts.

HOW WILL THIS HELP CONTRACTORS?

From 2013-2019, only 4% of local government public works contracts were awarded to women or minority owned prime contractors, representing 2% of the total contract dollar amounts awarded. This new partnership will bring technical assistance, training, networking events, and new online contracting tools to help women and minority-owned businesses find and properly bid on local government contracting opportunities, as well as build successful small businesses.

HOW WILL THIS HELP LOCAL GOVERNMENTS?

Legislators in this session also passed a $17 billion transportation package that provides funding for new ferries, roadway maintenance, and public transportation improvements. In addition to the training and technical assistance efforts, MRSC and PTAC are coordinating a plan to schedule regional outreach events around the state, both to help local governments make the best use of these new funding resources and to connect them with women- and minority-owned contractors for future project opportunities.

The timeframe for program deliverables will be July 1, 2022–June 30, 2023. MRSC looks forward to making a positive contribution to increasing the opportunities for women and minority-owned businesses in public works contracting.

MRSC and PTAC Announce Exciting New Partnership

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With support from PTAC, we will also expand training services to deliver:

- An updated Small Works Roster Guide that covers Washington laws related to the use of a small public works roster for awarding public works contracts;
- The development of new webpages for alternative public works contracting by addressing topics like job-order contracting, design build, and general contractor/construction management;
- An expansion of public works samples and templates in our Sample Documentation Library;
- The development of a new Local Government Public Works Contracting Toolkit.

MRSC’s Plans for Programming

With its expertise in providing services to local governments, MRSC is the lead agency for planning program deliverables, including focused training and technical assistance.

Training content will be developed and presented to customers by MRSC staff and contracted, state-based subject matter experts on public works contracting principles and best practices, utilization of supplemental bidding criteria, and utilization of alternative public works contracting (i.e., job-order contracting, design build, and general contractor/construction management).

Your ideas and comments are appreciated. If you have news you would like to share or if you would like to write a short feature article, please contact the editor, Leah LaCivita, at llacivita@mrsc.org
DONATIONS AND LOCAL GOVERNMENTS: The Basics of Giving and Receiving

RECEIVING DONATIONS

Local governments in Washington State are allowed to receive donations. RCW 35.21.100 states:

“Every city and town by ordinance may accept any money or property donated, devised, or bequeathed to it and carry out the terms of the donation, devise, or bequest, if within the powers granted by law. If no terms or conditions are attached to the donation, devise, or bequest, the city or town may expend or use it for any municipal purpose.”

While there is not a similar statutory provision for counties, counties nonetheless have inherent authority to accept donations. In general, special purpose districts may also accept gifts — see, for example, RCW 70.44.060(1) which authorizes public hospital districts to accept donations. However, the manner in which special purpose districts can receive these donations may differ — for example, the board of commissioners for a port must approve donations of real and personal property, per RCW 53.08.110.

Receiving gifts also raises a host of issues, most commonly policies and procedures, how to report gifts, and how to manage gifts with requirements. Let’s look at each.

Reporting Requirements

One common question is whether or not donations to a local government are tax deductible. The IRS Code at 26 U.S.C. §170(c)(1) states that a donation is tax deductible when it is:

- A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

Note that the donation is to be for “public purposes,” so it should not be intended to benefit a particular individual or group.

Additionally, the IRS requires certain documentation of the donation, as explained in IRS Publication 771. If a donor wishes to claim a tax deduction for a donation to a local government that exceeds $250, the donor must obtain a written acknowledgment that contains the following:

1. the name of the individual or organizational donor,
2. the amount of cash contribution,
3. a description (but not the value) of non-cash contribution,
4. a statement that no goods or services were provided by the donor in return for the contribution, if that was the case, and
5. a description and good faith estimate of the value of goods or services, if any, that a donor provided in return for the donation.

It is not necessary to include either a Social Security number or organizational tax identification number on the written acknowledgement.

Policies and Procedures

A best practice is for local governments to have policies and procedures for donating. The implications of accepting or giving donations. The implications of accepting or giving a donation should be considered. Proper procedures for donations should be followed in order to avoid a gift of public funds problem.

CONCLUSION

Local governments should have policies and procedures in place for receiving and giving donations. The implications of accepting or giving a donation should be considered. Proper procedures for donations should be followed in order to avoid a gift of public funds issue.

Eric Lowell, Finance Consultant, has been in local government finance for over 13 years, working in city government and a special purpose district. Eric writes about local government finance. e-lowell@mrsc.org
**What must a city do to hold a fund raiser?**
The mayor would like to hold a special event with all funds for said event going into a specific fund.

Per RCW 35.21.100; RCW 35A.11.040, any class of city has the express authority to accept donations which, in our opinion, implies the authority to solicit donations or engage in fundraising.

Some cities have chosen to partner with an existing 501(c) (3) to perform fundraising, while others have created a 501(c) (3) organization for fundraising purposes. 501(c)(3) status is important as it allows donors who contribute to your fundraiser get a tax deduction on the donation. Normally, a 501(c)(3) organization should register with the Washington Secretary of State's office as a charity; however, if the organization raises less than $50,000 in a year, registration is not required.

Any local government that engages in fundraising should be sure to check with both federal and state regulations to determine what and how any contributions should be recorded/reported.

**Our county is developing a frisbee golf course and would like to get sponsors for some items. Is this allowable?**

Counties’ authorities are set forth under Title 36, but there is no general provision regarding accepting gifts for counties in this title. Nevertheless, it has been MRSC’s position that a county has inherent authority to accept gifts, whether conditional or otherwise. Counties do have express statutory authority in specific situations. RCW 36.33.030 authorizes county commissioners to accept gifts for the cumulative reserve fund; RCW 36.75.040(3) authorizes them to accept gifts or donations of land for road purposes; RCW 36.37.020 for fairs; RCW 36.58.010 for disposing of solid waste or recyclables; RCW 36.70A.160 for open space, and RCW 36.34.340 for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes. RCW 36.70.300 allows a county planning agency to accept gifts, and RCW 36.75.160 allows a county to accept gifts of bridges and trestles. Additionally, various special districts and municipal corporations that a county may establish have general statutory authority to accept gifts or donations. See, e.g., RCW 36.73.110 (transportation benefit district); RCW 36.60.010 (county rail district); RCW 36.62.010(4) (hospital); RCW 36.83.080 (service district); RCW 36.102.050(5) (public stadium authority); RCW 36.69.160 (park and recreation district); RCW 36.68.400 (park and recreation service area); RCW 36.120.110(1) (regional transportation investment district).

There are several examples of gift and donation policies on our Parks and Recreation Finance page. We also recommend working with your prosecuting attorney’s office in developing a policy for any sponsorship/advertising opportunity.

**Our public hospital district has a foundation for fundraising. The foundation has proposed providing room naming in return for donations. Is this allowable?**

Washington local governments may accept donations and agree to acknowledge the donor by naming a facility after them. However, having a policy in place at the outset is important. This policy should define the sponsorship process that would be used and ensures that the agency is consistent in handling such requests in the future.

**My city is in the process of redoing landscaping. We have a number of large trees and plants that need to be removed. Can we give away the plants and trees (intact or for lumber)?**

MRSC has received inquiries about the proper process for disposing of trees on city property. MRSC recommends declaring the downed trees to be surplus before the wood is removed. In the course of declaring the materials surplus, the city could determine that the value of the property is exceeded by the costs to remove the property. In that case, there could be a donation arrangement where the recipients — such as local nonprofit — would undertake the expense of removing/moving the plants. This could avoid a potential prohibition of gifts of public funds issue under the state constitution, Article 8, Section 7.

If the trees do have value, then the city should follow its process for disposal of surplus property and contract for their removal with someone willing to pay fair market value for the items.
Here is how OFM described the income tax issue:

When state and local governments hire workers who live out of state, make sure to research whether that state is required to withhold the other state’s income tax, they are legally obligated to withhold the other state’s income tax from an employee’s paycheck? Washington State Office of Financial Management (OFM) prepared to avoid any future compliance issues. The Washington state agencies should proactively withhold payroll taxes. The Washington Department of Revenue also touches on this issue in an online FAQ as follows:

Question: What about employers located outside of Oregon? Are they required to withhold (income tax) for Oregon residents working out of state?

Answer: It isn’t required but we do ask employers to register and withhold taxes as a convenience to the employee.

Note, however, that income tax is only one of the payroll taxes to consider. There could be other taxes unique to that state that must be assessed against the out-of-state employee or even the Washington local government employer. For example, according to OFM’s Out-of-State Remote Work Guidance and Resources, Oregon has a statewide transit tax imposed at a rate of 0.2% on wages of all residents, even if that individual performs their work out of state.

As a comparison, Washington has a few payroll taxes unique to our state — such as premiums for paid family and medical leave as well as premiums for long term care. So, those taxes must be collected from Washington residents even if they work remotely for an Oregon company. Therefore, when hiring an individual who lives out of state, make sure to research whether that state may have state-specific payroll taxes. If so, your local government should collect those taxes.

**SIGNING BONUSES**

Signing bonuses, where an individual is paid a bonus upon their initial hire (and/or at a certain period after the hire), are also an acceptable method for attracting new employees. As a general matter these types of bonuses don’t implicate the gift of public funds prohibition contained in Article 8, Section 7 of the Washington State Constitution because the employer is receiving something in return: a new employee. However, the local government should adopt a policy authorizing signing bonuses and other hiring incentives.

Spokane County’s Sign-on Bonus Policy uses the bonus as a recruiting tool to attract highly competent candidates into positions that are difficult to fill. The policy provides 50% of the bonus with the new employee’s first paycheck and the remaining 50% upon their first year of service: executive and department heads can allocate up to $10,000 in annual positions $7,000, and sheriff’s office and detention services employees $7,500. In another example, Everett’s Lateral Police Officer Hiring Incentive Program provides a $25,000 monetary incentive for in-state lateral hires who successfully complete their fourth anniversary as an Everett Police Officer.

**ADDITIONAL RECRUITMENT TOOLS AND HIRING INCENTIVES**

There are other recruitment tools besides signing bonuses available to Washington local governments described on MRSC’s Hiring Procedures webpage, which states:

Recruitment may encourage applications from more qualified and experienced candidates who might not otherwise be aware of the position. The cost of recruitment is specifically recognized as an expense that may be paid through an emergency expenditure (for cities, see RCW 35.33.081, 35.34.140, 35A.33.080, and 35A.34.140). Recruitment may be handled in-house or through a job placement, “headhunter” firm. State law allows the direct pay of lodging and transportation costs of candidates who are sought to be interviewed.

In addition to candidate lodging and transportation costs, other incentives could include front-loaded vacation and/or sick leave, payment of moving expenses, a paid visit to the municipality to search for housing or for other matters, and interim housing expenses. Redmond Municipal Personnel Manual, Section 3.50 includes all of these in its hiring toolkit for non-union supervisors and managers. Another recruitment tool is payment of a referral bonus, which is a bonus paid to an existing local government employee for referring the new hire. Like the other incentives, the local government agency should adopt a policy detailing the specific criteria for what triggers payment of a referral bonus, the amount of the bonus, at what point in time the bonus will be paid, and other similar considerations.

In searching for Washington referral bonus examples, we found several in the law enforcement context, such as King County’s referral program for corrections officer and juvenile detention officers and Kitsap County’s collective bargaining agreement authorizing a referral bonus for lateral hire candidates for deputy sheriff and corrections officer. However, referral bonuses can be used outside of the law enforcement context. Maple Valley’s Resolution No. R-20-1431 authorizes a referral bonus for recruitment of the vacant city engineer position.

A local government’s policy on referral bonuses should also identify the public purpose for providing the bonus in order to satisfy any gift of public funds concerns. As well, the agency will want to review whether this type of referral bonus is in sync with its equity policies and any diversification goals.

**REMOTE WORK ARRANGEMENTS**

Since the onset of the COVID-19 pandemic, remote work or telecommuting has been the norm and it continues to be the expectation for many employees today — especially those with “desk” jobs. Offering new employees a telecommute opportunity can make the difference between a unsuccessful and successful hire, and local governments should examine which of their positions could accommodate a fully or partially remote worker.

Remote work arrangements are also an exceptional tool to recruit applicants who cannot work in traditional office settings or in the traditional office environment, such as those with disabilities or limited childcare support. The agency should also adopt a clear internal remote work policy in order to articulate it to applicants.

**PRACTICAL TIPS**

Other approaches Washington local governments are taking to fill vacant positions include:

1. Shortening the time between posting the job and the initial review. While it is used to be common to wait several weeks until a first review, a better approach in a tight job market is to have an initial review much sooner. This makes it less likely that a good candidate will take a different job in the meantime.

2. Linking to the agency’s values statement in the job description. Other helpful measures are to include a message about your agency’s culture, and describe your diversity, equity, and inclusion plan. Also, be clear about the benefits your agency offers, as these may be more generous than those offered by other employers.

3. Posting job openings on a variety of job sites. If you post on LinkedIn, consider that your post may gain better visibility if your agency uses LinkedIn for more than just job announcements. Some cities have shared with MRSC that they have seen a pretty dramatic increase in response to LinkedIn job posts once the city started posting other content regularly to the site.

**FINAL THOUGHTS**

While it’s a tough recruiting world out there, these hiring incentives and practical tips can help your local government find success in filling positions.
As has been the case for several years, the Washington State Legislature continues to expand employer obligations by calling for more generous employee benefits and protections. This article covers new legislation related to mandatory disclosure of salary and benefits in job postings and an expansion of the Paid Family and Medical Leave Act.

SALARY AND BENEFITS DISCLOSURE

The legislature previously updated the Equal Pay and Opportunities Act (EPOA) in 2019 by requiring transparency on pay ranges for particular positions after an employer has extended a job offer and prohibiting employers from asking for an applicant’s wage history prior to extending an offer with proposed pay. Note that the EPOA only applies to employers with 15 or more employees (See Chapter 49.58 RCW).

With ESSB 5761, the legislature has amended RCW 49.58.110 to require wage transparency upfront. Employers with 15 or more employees will be required to:

- disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, “posting” means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants.

This requirement to include wage information in the job posting will go into effect January 1, 2023. While the new requirement is not yet in effect and smaller employers are not required to comply, MRSC encourages all employers to consider going abroad and voluntarily disclose this information in their job postings.

PAID FAMILY AND MEDICAL LEAVE EXPANSION

Washington implemented the Paid Family and Medical Leave Act (PFML) in 2020 (adopted in 2017), replacing the former Washington Family Leave Act. As with any major new program, it is necessary to fill in some gaps and prepare for the long-term health of the program.

The legislature made several changes and additions to the PFML in SSB 5649. The first, and likely most significant for employees, is that the bill expands the definition of “family leave” to include the first six weeks after the birth of a child rather than family leave during the first six weeks after the birth of a child. An employee is also not required to obtain certification for a serious health condition (i.e., a doctor’s note after three days of absence) to be eligible for leave benefits during the first six weeks after the birth of a child.

Currently, the PFML does not apply to collective bargaining agreements that were in existence on October 19, 2017 (see RCW 50A.05.090), but this exemption will expire on December 31, 2023. The bill also requires the Employment Security Department (ESD) to publish a list of employers with approved voluntary plans that have opted out of participating in the PFML. This list is available on Paidleave.wa.gov.

SSB 5649 creates the Office of Actuarial Services within ESD. This office is required to annually report on the financial health of the program and the lowest future premium rates to ensure solvency. ESD is required to report quarterly on premium collections, benefit payments, the insurance account balance, and other program expenditures. The Office of the State Actuary is required to assist ESD.

The bill also creates a legislative committee to oversee the health of the program and charges the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit. Finally, the bill creates a temporary obligation for ESD to ask employees if they are taking PFML for reasons related to the COVID-19 pandemic, with the obligation expiring July 1, 2023. The information is to be used solely for the administration of the program, including monitoring the potential impacts on the financial health of the program.

Disclosure of this information is controlled by chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.090.
MRSC TRAINING

Learning For Local Government Professionals and Elected Officials

MRSC offers convenient, online and in-person training across a variety of broad topics including finance and budgeting, government performance, management, public works and contracting, public records act compliance, and land use case law.

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Thursday, August 25, 11 AM–12 PM

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