

**Best Practices for  
Small On-Call (Work Order) Public Works Contracts  
Municipal Research and Services Center**

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**Introduction**

On- Call (Work Order) contracts (OC/WO Contracts) are bid and awarded without a specific public works project or scope of work in mind, but rather are categorized around general types of anticipated work or trades. When a specific scope of work is identified, individual work orders are authorized based on either a not-to-exceed time and materials basis or on a negotiated lump sum amount, using unit prices bid by the contractor and the contractor proceeds to complete the work. Most typically, OC/WO Contracts are used for repair, renovation, and maintenance, of public facilities, all of which are included in the definition of “public work” in RCW 39.04.010(4), and as further defined by the courts and the Washington Administrative Code (WAC).

Recently, the State Auditor’s Office (SAO) noted, in a presentation at a recent Washington State Association of Municipal Attorneys (WSAMA) conference:

On Call Contracts

Over the past year or so, our Office has met with the Department of Labor and Industries and Municipal Research Services Center on the topic of On-Call contracts. Much time, research and discussion have gone into these meetings. Most On-Call contracts are not being done under the authority of job order contracting. Therefore, we have concluded:

On-Call contracts are not specifically authorized in state law. These contracts can result in noncompliance with the public works contracting and prevailing wage statutes. Since the On-Call contracts are not authorized by state law, we recommend local governments establish policies, procedures and internal controls to ensure their contracting processes are in compliance with public works contracting statutes (RCW Chapter 39.04, 39.06, 39.08 and 60. 28) as well as prevailing wage statutes (RCW Chapter 39.12).

One reason that on-call contracts are of dubious legality, in addition to being are not specifically authorized in state law, is that RCW 39.04.010 (2) defines a "contract" as “... a contract in writing for the execution of public work *for a fixed or determinable amount* duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW [39.04.155](#).” By their very nature, on-call contracts often do not meet this definition, as they are rarely for a fixed or determinable amount.

**Projects Costing Less Than an Agency’s Bid Limits (Small Projects)**

RCW 35.23.352(1), which applies to all code cities, second class cities and towns, contains this language:

Any second-class city or any town may construct any public works, as defined in RCW [39.04.010](#), by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of sixty-five thousand dollars if more than one craft or trade is involved with the public works, or forty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract.

Contracts for projects costing less than the limits in RCW 35.23.352 and so do not have to be bid, then, are not considered “contracts” per RCW 39.04.010, and so the requirement that they be for a fixed or determinable amount no longer applies.

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Similarly, RCW 57.08.010, for water and sewer districts states: “1) All work ordered, the estimated cost of which is in excess of twenty thousand dollars, shall be let by contract and competitive bidding. ....”

RCW 52.114.110(2), which applies to fire districts exempts (from competitive bidding): “ Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of twenty thousand dollars, which includes the costs of labor, material, and equipment;

For counties, RCW 36.32.250 states that: “In the letting of any contract for public works involving less than forty thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority.”

For at least these three agency types, MRSC believes that on-call contracts are permissible for projects less than the bid limits stated in the above statutes. Other agencies will need to check their enabling statutes to see if similar language exists. Because federal requirements are often more stringent than statutory requirement, MRSC cannot recommend use of OC/WO contracts for projects with federal money.

**Definitions**

*“Typical” Public Works Contracts*

Every public works contract is different, of course, but the typical contract envisioned in the public works contracting statutes (Chapters 39.04, 39.12, 39.06, 39.08, and 60.28 RCW, among others) has a fixed scope, estimated quantities that lead to a readily determinable project cost, and a specified time frame for completion.

*On-Call (Work Order) Public Works Contracts*

On Call (Work Order) Contracts (OC/WO Contracts) are bid and awarded without a specific public works project or scope of work in mind, but rather are categorized around general types of anticipated work or trades. When a specific scope of work is identified, individual work orders are authorized based on either a not to exceed time and materials basis or on a negotiated lump sum amount, using the unit prices bid by the contractor and the contractor proceeds to complete the work. Most typically, OC/WO Contracts are used for repair, renovation, and maintenance, of public facilities, all of which are included in the definition of public works in RCW 39.04.010, and as further defined by the courts and Washington Administrative Code. These contracts are typically on an annual basis, with optional renewals,(up to the maximum contract amount) although many agencies have multi-year contracts.

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**Recommendations for Small On-Call (Work Order) Repair and Maintenance Contracts**

<b>Table A - Recommendations for Small On-Call (Work Order) Public Works Contracts</b>		
<b>Statutes</b>	<b>Recommended Practice(s)</b>	<b>Comments</b>
<p><i>Contract definition in <a href="#">RCW 39.04.010</a>:</i> "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in <a href="#">RCW 39.04.155</a>.</p> <p><a href="#">RCW 39.04.010</a> and <a href="#">RCW 39.04.350</a> require award of a contract to the lowest responsible bidder.</p> <p>[Although individual agency requirements may differ, public works contracts less than an agency's bid limits do not meet the definition of a contract under RCW 39.04.010(2).]</p>	<ul style="list-style-type: none"> <li>• OC/WO contracts are to be limited to a total dollar amount over the life of the contract to an amount less than an agency's bid limits.</li> <li>• Requests for bids under an OC/WC contract should incorporate unit price and lump sum price bid items as much as is practical.</li> <li>• Award of an OC/WO contract should be to a responsible contractor with the lowest total price based on the sum of the unit price and lump sum bid item extensions.</li> <li>• During a contract, there will be occasions when the original unit/lump sum bid items will not cover work to be accomplished. In such situations, new line items may be added by change orders or the work may be accomplished under a time and materials work order as long as the total contract amount will not be exceeded.</li> </ul>	
<p><i>Plans and specifications in <a href="#">RCW 39.04.020</a></i> “(The agency) shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made ...”</p>	<ul style="list-style-type: none"> <li>• When possible, the agency should reference building/facility plans on file, utility system plans, pavement management plans, etc. that will enable the contractor to locate work requested in a work order request.</li> <li>• As most OC/WO work requests are for repair /maintenance of existing infrastructure, reference to standard drawings, details and standard specifications should accompany work order requests.</li> <li>• The agency must provide sketches, plans and drawings for work not already shown on one of the above.</li> </ul>	<ul style="list-style-type: none"> <li>• As an example, electrical and plumbing repair and maintenance projects governed by codes, standard plans and details would not require new plans and specifications, but otherwise new plans and specifications and a new competitive contract would be needed.</li> <li>• Bidding and contract documents in use by agencies must be tailored to on-call contracting. The normal boilerplate often doesn't work.</li> </ul>
<p><a href="#">Chapter 39.12 RCW</a> requires payment of prevailing wages for</p>	<ul style="list-style-type: none"> <li>• Statement of Intent to Pay</li> </ul>	<p>Contract extension language should be included in all</p>

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<b>Table A - Recommendations for Small On-Call (Work Order) Public Works Contracts</b>		
<b>Statutes</b>	<b>Recommended Practice(s)</b>	<b>Comments</b>
OC/OC contracts.	<p>Prevailing Wages and an Affidavit of Wages Paid are required for each separate work (task) order under the contract</p> <ul style="list-style-type: none"> <li>• At the end of the contract: Agency files Notice of completion to DOR, ESD, and Industrial Insurance (if contract amount of all work orders is over \$35K) and then releases the retainage</li> </ul>	<p>contracts, but no OC/WO contract should exceed the agency's bid limits over the total life of the contract.</p> <p>Multi-year contracts and contract extensions should be limited to a maximum of 3 years.</p>
Bid guaranties	<p>Requirements for bid guaranties vary by agency type, so each agency must check its enabling statutes. Generally, they are not required for projects less than the bid limits.</p>	
Bonds ( <a href="#">Chapter 39.08 RCW</a> )	<p>Performance and payment bonds are required for OC/WO contracts over \$35,000.</p>	
Retainage ( <a href="#">Chapter 60.28 RCW</a> )	<p>5% retainage will be withheld from each work order until the end of a contract year and released in accordance with Chapter 60.28 RCW.</p> <p>RCW 39.08.010 allows an agency, at the contractor's option to waive P/P Bonds and hold 50% Retainage until 30 days after completion for projects less than \$35,000.</p>	
Contract less than \$35K	<p>If the maximum stated contract amount for all anticipated work orders is less than \$35K then an agency has the ability to request informal bids for the OC/WO contract from contractors on its small public works roster using the limited public works process under <a href="#">RCW 39.04.155(3)</a> and to waive performance/payment bonds and retainage for these contracts</p>	

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**Note the following bond and prevailing wage matrix:**

<b>Table B: Bond And Prevailing Wage Matrix</b>				
Estimated Contract Cost	Bid Bond Required?	P/P Bond Required?	Prevailing Wages	Notice of Completion
Over \$300K	Yes	Yes	Separate Paid I & A required	Required
Under \$300K and more than \$35K and using small works roster	Optional*	Yes	Separate Paid I & A required	Required
Less than \$35K at contractor's option (RCW 39.08.010)	No	No	Use Combined (Paid) Form But note restrictions at <a href="#">Alternate Processes</a>	Not Required
Less than \$35K and not using limited public works (LPW) process	No	Yes	Use Combined (Paid) Form But note restrictions at <a href="#">Alternate Processes</a> (Option 2)	Not Required
Less than \$35K and using LPW process	No	No	Use Combined (Paid) Form But note restrictions at <a href="#">Alternate Processes</a> (Option 2)	Not Required
Less than \$5,000 (say)	No	Risk is Low. Require proof of payment for supplies and equipment rental.	Use Combined (Paid) Form But note restrictions at <a href="#">Alternate Processes</a> (Option 2)	Not Required
Less than \$2,500	No	Risk is Low. Require proof of payment for supplies and equipment rental.	Use Combined (Free) Form But note restrictions at <a href="#">Alternate Processes</a> (Option 1)	Not Required
*May wish to require bid bonds for all projects over, say, \$100K				

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<b>Table C - Bid Limit Matrix</b>		
Agency	RCW Cite	Contracting Bid Limits
First Class Cities	<a href="#">RCW 35.22.620</a>	None <a href="#">See City Bidding Book, Page 7</a>
Code Cities, 2 <sup>nd</sup> Class Cities and Towns	<a href="#">RCW 35.23.352</a>	\$40K single craft \$65K multiple crafts
Counties Over 400K	<a href="#">RCW 36.32.235 &amp; 250</a>	\$40,000
Counties Under 400K	<a href="#">RCW 36.32.240 &amp; 250</a>	\$40,000
Water & Sewer Districts (Title 57 RCW)	<a href="#">RCW 57.08.050</a>	\$50,000
Fire Districts (Title 52 RCW)	<a href="#">RCW 52.14.110</a>	\$20,000
Port Districts (Title 53 RCW)	<a href="#">RCW 53.08.120</a>	\$0
Public Utility Districts (Title 54 RCW)	<a href="#">RCW 54.04.070</a>	\$25,000
Public Hospital Districts (Ch. 70.44 RCW)	<a href="#">RCW 70.44.140</a>	\$75,000
Housing Authorities (Ch. 35.82 RCW)	<a href="#">RCW 35.82.070</a>	???
School Districts (RCW 28A.335.190)	<a href="#">RCW 28A.335.190</a>	\$40,000
Metropolitan Park Districts [Ch. 35.61 RCW]	<a href="#">RCW 35.61.135</a>	\$20,000