

PROCUREMENT OF PUBLIC WORKS AND MATERIALS

PURPOSE

Public Hospital District No. 1 of Mason County (the District) qualifies as a “Municipality” under RCW 39.04.010. This policy is intended to ensure the District complies with the requirements related to the procurement of public works and materials for municipalities in Chapter 39.04 RCW *Public Works* and Chapter 70.44 RCW *Public Hospital Districts*.

POLICY

The District will establish and maintain procedures and practices to ensure compliance with law including Chapter 39.04 RCW *Public Works* and Chapter 70.44 RCW *Public Hospital Districts*. These procedures and practices will include contemporaneous documentation of decisions made and actions taken to establish the need for public works to be done and materials to be purchased, the procurement and competitive processes selected and applied, the receipt of public works and materials, and the closure of public works projects.

For purposes of this policy, Public Works is defined as all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the District, or which is by law a lien or charge on any property therein.

For purposes of this policy, Materials are defined as tangible articles incorporated in a public work and which form a part of a public work, and articles consumed in the production of a public work. Materials exclude supplies which are articles consumed in the normal course of business operations and for the provision of services to patients.

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Whenever the District determines that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made and filed in the office of the Superintendent (CEO). Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit allowed for the completion of the work, and the estimated dates of commencement and completion. The plans, specifications, and estimates of cost shall be approved by the Board of Hospital Commissioners before further action is taken.

The work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed with the original plans and specifications.

In the event that the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent (10%) of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed with the original estimate. Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work.

All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection. Certified copies of any estimate, account or record shall be furnished by the District to any person on demand and the payment of the legal fees for making and certifying the same.

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Contracts for Public Work and Materials

All materials purchased and work ordered, the estimated cost of which is in excess of \$75,000, shall be by contract. Before awarding any such contract, the District shall publish a notice at least 13 days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection and the District may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders.

The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the District on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security.

At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications. If, in the opinion of the District, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case, all bid proposal security shall be returned to the bidders.

If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than 25 percent of contract price in any case, between the bidder and commission, in accordance with the bid.

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If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within 10 days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

Alternatives

As an alternative to the requirements of this section, the District may let contracts using:

- a. the Design-Build or General Contractor/Construction Manager contract award procedures under Chapter 39.10 RCW *Alternative Public Works Contracting Procedures*
- b. the small works roster process under RCW 39.04.151 through 39.04.154
- c. the process provided in RCW 39.04.190 for purchases with an estimated cost of up to \$15,000
- d. the process provided in RCW 39.30.045 *Purchase at Auctions* for materials
- e. agreements for joint or cooperative action under Chapter 39.34 RCW *Interlocal Cooperation Act*.

Exemptions

Competitive bidding requirements may be waived by the District for public works and materials in the event of an emergency pursuant to RCW 39.04.280.

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.

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If an emergency exists, the CEO may declare an emergency exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the District to address the emergency. 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 CEO and duly entered of record no later than two weeks following the award of the contract. Immediately after the award of any such contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a contract is let under emergency procedures

- a. preference should be given to contractors identified through small works rosters if any are qualified and can mobilize quickly
- b. the contractors must be Responsible Contractors as defined in RCW 39.04.350
- c. the contractors must provide certificates of insurance, naming the District as an additional insured
- d. the contract must conform to the requirements for
 - 1) prevailing wages in RCW 39.12.020
 - 2) performance bonds in RCW 39.08.010
 - 3) retainage and retainage bonds in RCW 60.28.011.

Compliance

The District will utilize the services of independent professional facility planners, architects, engineers, and construction managers to assist in identifying the need for public works and materials.

The District will utilize the services of independent professional construction managers to conduct competitive bid processes and ensure projects are closed and retainages are released in conformity with applicable legal and contractual requirements.

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The District will utilize the services of general counsel, specialized counsel, and independent professional construction managers to ensure contracts conform with applicable law and recommended practices through the review and approval of contract templates and contracts to include

- a. a requirement for the contractor to make, execute, and deliver a performance bond or to retain ten percent (10%) of the contract amount pursuant to RCW 39.08.010
- b. a requirement for the contractor to pay not less than prevailing wage pursuant to RCW 39.12.020
- c. a requirement for the District to retain five percent (5%) of money earned by the contractor pursuant to RCW 60.28.011
- d. a requirement to condition the release of retainage on the release of liens by the state Department of Revenue, Employment Security Division, and the Department of Labor and Industries.