

# **Suggested Guidelines for Purchasing, Bidding, and Contracting for Washington State Conservation Districts**

**Municipal Research and Services Center of Washington**



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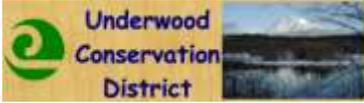
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Welcome to Whidbey Island Conservation District



Small and Large Farm Assistance

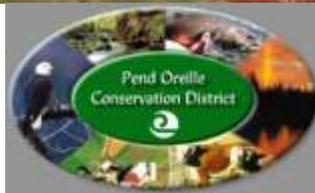


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# Purchasing, Bidding and Contracting for Washington State Conservation Districts

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### PURCHASING, BIDDING, AND CONTRACT MANAGEMENT SOURCEBOOK (online only)

This online compendium contains sample and model documents for a wide variety of purchasing, bidding, and public works contracting scenarios.

# Purchasing, Bidding and Contracting for Washington State Conservation Districts

## Introduction

Conservation districts are formed under the aegis of Chapter 89.08 RCW, which establishes a framework for how districts are formed and their general powers. This *Guidelines* document is based almost entirely on policy guidance developed by Washington State Conservation Commission staff in 2003, updated for current Washington State purchasing and public works contracting statutes. Conservation districts will also want to adopt and utilize MRSC's 2009 [Small Public Works Roster Manual for Local Governments: Second Edition](#).

## Acknowledgments

John Carpita, MRSC Public Works Consultant, is the principal editor of these *Suggested Guidelines*.

## Disclaimers

These *Suggested Guidelines* are permissive and discretionary and are applicable to all conservation districts. Where the *Suggested Guidelines* recommend particular practices using such terms as "should" or "may" the recommendation is permissive and not mandatory. In addition, districts must also consider their own Board of Supervisors' resolutions, policies, and procedures to determine what requirements are truly mandatory for a given contracting scenario. Case law, new regulations, or audit findings for one type of municipal corporation will not necessarily apply to all municipal corporations since enabling statutes may differ.

## What's in These Suggested Guidelines?

These guidelines explain general practices and procedures your conservation district is required to use when acquiring goods and/or services to accomplish grant projects using Conservation Commission funding. It also includes an explanation of public works and prevailing wage statutes and how they apply to your district.

## Why It's important to Follow These Suggested Guidelines

These policies are intended to insure that quality projects, goods and services are acquired at the least cost. Other goals are to reduce, if not eliminate, the impact of favoritism in purchasing and prevent fraud. Competitive bidding, which requires open advertisements to all qualified bidders and public opening of bids, has been determined by the legislature to be the best way to accomplish these goals. Unfortunately, following competitive bid laws is often counterproductive for small projects, can be confusing, and is sometimes expensive. Recognizing this problem, the state legislature has, over the years, established and modified dollar amounts (commonly referred to as bid limits) below which competitive bids are not required, and has provided exemptions and alternatives to the competitive bidding process.

## What's required when purchasing or bidding?

In most cases, your district and its employees will accomplish all activities for which grant funds are awarded. In the event your district decides to acquire goods and/or services, or assign work or services to accomplish grant contract work, you must first obtain approval from the Commission. This applies to all district subcontracts, Interagency Agreements, and procurement procedures entered into under a Commission grant contract. However, approval by the Commission is considered automatic if the intent to subcontract or enter into an Interagency Agreement is clearly included in the final grant contract's Scope of Work.

When acquiring goods and/or services related to the grant contract, districts will:

1. **Use sound business judgment** The district will use sound business judgment and fair administrative procedures in acquiring goods and services. This applies to invitations to bid, requests for proposals, solicitation of subcontractors or vendors, and awards of subcontracts or purchase contracts.
2. **Select responsible subcontractors** The district will award subcontracts only to responsible subcontractors with the ability to perform successfully under the terms of the grant contract. The district should consider such matters as subcontractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
3. **Competitive procurement** The district will award subcontracts through a competitive process, if required by State law and/or this Grants Administrative Policy.
4. **Ensure subcontractor compliance** The district will ensure that subcontractors adhere to the same terms and conditions as the district. The district will ensure that all subcontractors comply with all applicable federal, state and local laws and regulations related to discrimination, labor and job safety, and environmental protection; and that subcontractors perform in accordance with the terms and conditions of their contracts. Where deviation from those terms is permitted by the district, the responsibility for any extra costs may not be allowed by the Commission.
5. **Provide a written contract document** Subcontracts must be written, enforceable and legally sound, and must include appropriate general conditions (i.e. verbal contracts are not permitted). When subcontracting, the district is responsible for:
  - i. Including specified provisions of the grant contract in any subcontract or Interagency Agreement it enters into;
  - ii. Ensuring that the subcontractor follows applicable Commission reporting formats and procedures;
  - iii. Ensuring that the State of Washington is named as an express third-party beneficiary of such subcontracts, with full rights as such;
  - iv. Ensuring that no right or claim arising from the grant contract is assigned either in whole or in part, except to the Commission as provided for in suspension or termination procedures; and
  - v. Seeking administrative, contractual, or legal remedies in instances where subcontractors violate or breach grant contract terms.
6. **Maintain complete subcontracting records:**
  - i. Your district is required to submit to the Commission, on request, all signed subcontracts or Interagency Agreements it awards;
  - ii. Your district is required to keep a complete written record of the procedures leading up to the award of any subcontract or Interagency Agreement
  - iii. Your district may be required to forward to the Commission copies of financial and activity reports, and records pertaining to any and all subcontracts and Interagency Agreements.
7. **Maintain standards of ethical conduct** Districts will maintain a code of conduct governing the performance of their representatives including employees engaged in the award and administration of subcontracts. No employee, officer, or agent of the district will participate in the award or administration of a subcontract under the grant contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - a. the employee, officer or agent,
  - b. any member of his or her immediate family,
  - c. her or his partner, or
  - d. an organization that employs, or is about to employ, any of the above has a financial or other interest in the firm selected.

The district's officers, employees, or agents must not solicit or accept gratuities, favors, or anything of monetary value from subcontractors, potential subcontractors, or other parties to subcontracts. Districts

may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, the district's code of conduct will provide for penalties, sanctions, or other disciplinary actions for violations by its employees or agents, or by its subcontractor's employees or agents.

8. **Analyze purchases for cost-effectiveness** Districts will avoid purchase of unnecessary or duplicate items, and consolidate or break out purchases as appropriate to obtain a more economical price. Where applicable, the district will analyze lease versus purchase alternatives in determining the most economical approach.
9. **Consider cooperating with other local governmental units** To foster greater economy and efficiency, districts are encouraged to consider entering into agreements with other public agencies for joint or cooperative action, pursuant to [Chapter 39.34 RCW](#), the Interlocal Cooperation Act.
10. **Use state or federal surplus property when possible** Districts are encouraged to use federal or state excess and/or surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces projects costs.
11. **Resolve disputes promptly and fairly** Districts are responsible for the fair and just settlement of all contractual and administrative issues related to subcontracts for goods and services. Such issues include, but are not limited to, source evaluation, protests, disputes, and claims. This does not imply that the district is to be relieved of any contractual responsibilities under subcontracts.
12. **Protest procedure required** The district will have a protest procedure for handling disputes relating to subcontracts and interagency agreements and will disclose all information regarding protests to the Commission at the request of the Project Officer. A protester must exhaust all administrative remedies with the district before pursuing a protest with the Commission. The Commission will limit its review of protests to violations of state law, regulations, or the standards of the grant contract, and violations of the district's protest procedures in its failure to review a complaint. The Commission will refer all other protests to the district and will not substitute its judgment for that of the district unless the matter is primarily a Commission concern.

### **What Kind Of Purchase Is It?**

Conservation district purchases are generally categorized as:

- Personal Services (consultants)
- Professional Services (Consultants) Related to a Public Works Project
- Purchased Services and/or Goods
- Public Works Contracts

Note the graphic entitled *Purchasing and Contracting Limits for Conservation Districts* on the next page.

### **Definitions**

#### Personal Services

Professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, which may not reasonably be required in connection with a public works project meeting the definition in [RCW 39.04.010\(4\)](#). "Personal service" does not include purchased services or professional services procured using the competitive selection requirements in [Chapter 39.80 RCW](#) (A&E).

#### Professional Services Reasonably Required in Connection with a Public Works Project

Professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters [18.08](#) (Architects), [18.43](#) (Engineers and Land Surveyors), or [18.96](#) (Landscape Architects) [RCW. RCW 39.80.020\(5\)](#). Services are procured using the qualifications based selection requirements in Chapter 39.80 RCW.

Public Work (RCW 39.04.010)

Public work means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.

Purchased Services

Services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased services" includes, but is not limited to: services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

**Distinguishing between Personal Services and Purchased Services and/or Goods**

Procurement procedures are quite different for personal services, professional services and purchased services. It is important that your district clearly distinguish among the three.

Personal services differ significantly from purchased services in the degree of independence in performance of the services. Personal services are performed independently from the day-to-day control of the district. Purchased services may be more directed by the district. Another difference is in the level of professional or technical skill or competency. Personal services require more professional or technical expertise, whereas purchased services do not. Purchased services are more general, routine, or repetitive in nature.

The following chart will assist in determining the distinctions between personal and purchased services.

<b>Personal Service Characteristics</b>	<b>Purchased Service Characteristics</b>
<ul style="list-style-type: none"><li>◆ Services are professional or technical in nature and meet more specialized district needs. Work is predominantly intellectual and varied.</li><li>◆ Work is independent from the day-to-day control of the district; consultant maintains control of work methods.</li><li>◆ Work requires regular exercise of judgment, discretion, and decision-making; involves providing advice, opinions or recommendations; may have policy-implications for district; often addresses management-level issues.</li><li>◆ May require advanced or specialized knowledge, or expertise gained over an extensive period of time in a specialized field of experience.</li><li>◆ Work may be original and creative in character in a recognized field of endeavor, the result of which may depend primarily on the individual's invention, imagination or talent.</li><li>◆ Personal service provider generally assumes risk of loss if the agreed to requirements are not satisfied.</li></ul>	<ul style="list-style-type: none"><li>◆ Services are more repetitive, routine or mechanical in nature, following established or standardized procedures generally involving completion of an assigned task, rather than an entire project.</li><li>◆ Services contribute to the day-to-day business operations of the district, rather than the management or policy side of the district, and may meet more general needs of the district.</li><li>◆ Services generally follow established procedures, as contrasted with customary and regular exercise of discretion or independent judgment.</li><li>◆ Decision-making and analysis, if required, is more routine or perfunctory in nature</li><li>◆ Services performed are generally based upon district direction</li></ul>

In addition, the following chart describes what factors a district may consider when acquiring services of various types:

<b>Purchased Services</b>	<b>Personal Services</b>	<b>Professional Services Under Chapter 39.80 RCW</b>
Cost or Price	Fees or costs	Qualifications first, then price - after selection
Quality of previous performance	Quality of previous performance	Quality of previous performance
Ability to meet deadlines for contract performance	Ability to meet deadlines for contract performance	Ability to meet deadlines for contract performance
Responsiveness to solicitation requirements	Responsiveness to solicitation requirements	Responsiveness to solicitation requirements
Demonstrated compliance with employment security and sales tax requirements (all as applicable)	Compliance with statutes and rules relating to contracts or services	Compliance with statutes and rules relating to contracts or services
Ability, experience, and reputation	Ability, experience, and reputation	Ability, experience, and reputation
References	References	References
Staff readily available for the project	Staff readily available for the project	Staff readily available for the project
Financial capacity	Financial capacity	Financial capacity
Meets applicable licensing requirements	Meets applicable licensing requirements	Meets applicable licensing requirements
Safety record	Safety record	Safety record
Ability to meet necessary response times for unscheduled work and emergencies	Ability to meet necessary response times for unscheduled work and emergencies	Ability to meet necessary response times for unscheduled work and emergencies
N/A	History of Errors and Omissions	History of Errors and Omissions
N/A	N/A	Construction Change Order History

## Soliciting for Personal Services

The chart below outlines the procedures for personal services procurement.

Dollar Threshold	Competitive Process	Major Activities
\$1—\$4,999	Minimal Competition  OR  Select From Roster	<ul style="list-style-type: none"> <li>◆ Seeking competition is always recommended, though not required for this dollar range.</li> <li>◆ Telephone calls can be made to firms or individuals describing the services desired and requesting price, schedule and qualifications to perform.</li> <li>◆ Subcontract is entered into upon selection of subcontractor, regardless of dollar amount.</li> </ul>
\$5,000—\$19,999	Informal Competition -- also called "evidence of competition"	<ul style="list-style-type: none"> <li>◆ Prepare written solicitation document/letter including at a minimum: description of services required, project schedule, request for consultant's qualifications, request for costs or fees, and due date for responses.</li> <li>◆ Send to a minimum of three firms/individuals. May be faxed to them and responses may be faxed to the district to expedite processing. List of firms can be developed from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc.</li> <li>◆ Evaluate responses and make award decision.</li> <li>◆ Negotiate subcontract with successful contractor.</li> <li>◆ Document for file: names of firms solicited; information of firm's responses, basis for award decision, and copy of subcontract.</li> </ul>
\$20,000— or more	Formal Competition	<ul style="list-style-type: none"> <li>◆ Prepare formal solicitation document, e.g., Request for Proposals (RFP) or Request for Qualifications/Quotations (RFQQ). Include all requirements in order for proposers to understand what the district needs and how the district will evaluate responses.</li> <li>◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop mailing list from firms responding to notice.</li> <li>◆ Post solicitation document on district website (optional).</li> <li>◆ Develop score sheets for use by evaluators.</li> <li>◆ Issue RFP or RFQQ to a minimum of 6 firms/businesses. District may also just send a notification to 6 or more businesses that the solicitation document is posted on their web site and can be accessed there. Document for the file if fewer than 6 firms are contacted &amp; state the reason why.</li> <li>◆ Conduct pre-proposal conference, if required in RFP or RFQQ, and issue addendum.</li> <li>◆ Provide answers to bidders' questions via addenda to all who receive the RFP or RFQQ. Or advise those who download the RFP or RFQQ from the web site to check back for any addenda that may be posted.</li> </ul>

Dollar Threshold	Competitive Process	Major Activities
		<ul style="list-style-type: none"> <li>◆ Date and time stamp proposals received by the due date. Electronic proposals will have the date and time automatically noted.</li> <li>◆ Evaluate proposals strictly against criteria set forth in the RFP or RFQQ and score. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine ranking of proposers.</li> <li>◆ Schedule and conduct oral interviews of top finalists, if desired.</li> <li>◆ Determine final scoring and select apparent successful contractor.</li> <li>◆ Notify successful and unsuccessful firms.</li> <li>◆ Negotiate contract with apparent successful contractor.</li> <li>◆ Conduct debriefing conferences with unsuccessful proposers, if requested.</li> </ul>

**Soliciting for Professional Services**

The chart below outlines the procedures for procurement of professional services reasonably required in connection with a public works project. These services must be obtained using the quality based selection (QBS) procedures of Chapter 39.80 RCW. Chapter 39.80 RCW requires selection of professional architecture, engineering, surveying and landscape architecture services on the basis of qualifications of the firm or individual. AGO 1988 No. 4 notes:

- A public agency may not, in procuring architectural or engineering services, consider proposed price or cost in determining which firm is most highly qualified to provide services.
- When a public agency selects a firm to perform architectural or engineering services, price and cost may be considered only after the most qualified firm has been selected, at which time the law provides for negotiation of a "fair and reasonable" price.

RCW 39.80.030 requires advance publication of an agency's requirement for professional services. Two methods of compliance are noted:

- an announcement for each project (project based selection)
- or a general announcement of projected requirements for any category or type of professional services. [Typically referred to as a Consultant Roster.]

Dollar Threshold	Competitive Process	Major Activities
\$1—\$4,999	Select From Roster	<ul style="list-style-type: none"> <li>◆ Develop a list of firms from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc.</li> <li>◆ Select the most qualified firm from those who have qualifications on file with the district.</li> <li>◆ OR Advertise for statements of qualifications and proposals from interested firms</li> <li>◆ Negotiate a contract with the firm deemed most highly qualified from either method.</li> </ul>

Dollar Threshold	Competitive Process	Major Activities
\$5,000— \$19,999	Informal Competition -- also called "evidence of competition"	<ul style="list-style-type: none"> <li>◆ Develop a list of firms from telephone listings, professional societies and periodicals, internet listings, a published legal notice requesting information on available services, etc.</li> <li>◆ Prepare written solicitation document/letter including at a minimum: description of services required, project schedule, request for consultant's qualifications and/or non-price proposal and due date for the responses.</li> <li>◆ Send to a minimum of three firms/individuals. May be faxed to them and responses may be faxed to the district to expedite processing.</li> <li>◆ Evaluate responses and select the most qualified firm.</li> <li>◆ Negotiate subcontract with most qualified firm.</li> <li>◆ Document for file: names of firms solicited; information of firm's responses, basis for award decision, and copy of subcontract.</li> </ul>
\$20,000— or more	Formal Competition	<ul style="list-style-type: none"> <li>◆ Prepare formal solicitation document, e.g., Request for Proposals (RFP) or Request for Qualifications/Proposal (RFQ/RFP). Include all requirements in order for proposers to understand what the district needs and how the district will evaluate responses.</li> <li>◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop mailing list from firms responding to notice.</li> <li>◆ Post solicitation document on district website (optional).</li> <li>◆ Develop score sheets for use by evaluators.</li> <li>◆ Issue RFP or RFQ/RFP to a minimum of 6 firms/businesses. District may also just send a notification to 6 or more businesses that the solicitation document is posted on their web site and can be accessed there. Document for the file if fewer than 6 firms are contacted &amp; state the reason why.</li> <li>◆ Conduct pre-proposal conference, if required in RFP or RFQ/RFP, and issue addendum.</li> <li>◆ Provide answers to bidders' questions via addenda to all who receive the RFP or RFQ/RFP. Or advise those who download the RFP or RFQ/RFP from the web site to check back for any addenda that may be posted.</li> <li>◆ Date and time stamp proposals received by the due date. Electronic proposals will have the date and time automatically noted.</li> <li>◆ Evaluate proposals strictly against criteria set forth in the RFP or RFQ/RFP and score. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine ranking of proposers.</li> <li>◆ Schedule and conduct oral interviews of top finalists, if desired.</li> <li>◆ Determine final scoring and select apparent successful</li> </ul>

Dollar Threshold	Competitive Process	Major Activities
		<p>contractor.</p> <ul style="list-style-type: none"> <li>◆ Notify successful and unsuccessful firms.</li> <li>◆ Negotiate contract with most qualified firm.</li> <li>◆ Conduct debriefing conferences with unsuccessful proposers, if requested.</li> </ul>

**Soliciting for Purchased Goods and/or Services**

The chart below outlines the procedures for purchased services as well as goods procurement.

Dollar Threshold	Competitive Process	Major Activities
\$1—\$5,000	Minimal Competition or Direct Buy	<ul style="list-style-type: none"> <li>◆ Seeking competition is always recommended, though not required for this dollar range.</li> <li>◆ Telephone calls can be made to vendors describing the services desired and requesting price, schedule and qualifications to perform. Purchases should be made based on the District's inquiries and experience and knowledge of the market to obtain the best quality product at the best price.</li> </ul>
\$5,000—\$50,000	Informal Competition -- also called "evidence of competition"	<ul style="list-style-type: none"> <li>◆ Either written solicitation or documented telephone solicitation may be used. The solicitation should include at a minimum: a description of goods or services required, project schedule, request for qualifications, request for bid, and due date for responses. If solicitation is done by phone, it must be thoroughly documented.</li> <li>◆ Seek bids from a minimum of three vendors. If written, the solicitation may be faxed to them and responses may be faxed to the District to expedite processing. A list of vendors can be developed from telephone listings, internet listings, a published legal notice requesting information on available services, etc.</li> <li>◆ Evaluate responses and make award decision.</li> <li>◆ Negotiate subcontract with successful bidder.</li> <li>◆ Document for file: names of vendors solicited; information on vendor's responses, basis for award decision, and copy of subcontract.</li> </ul>
\$50,000— or more	Formal Competition	<ul style="list-style-type: none"> <li>◆ Prepare formal solicitation document. The Invitation for Bid (IFB) is the solicitation document most frequently used by Districts to subcontract for purchased services or goods. The IFB identifies the functional performance threshold at which the District needs would be met, serves as the basis for the applicants to respond, and also provides the foundation for the eventual subcontract.</li> <li>◆ Publish legal notice in major daily newspapers to notify firms of upcoming solicitation. Develop bidder's list from firms responding to notice.</li> </ul>

Dollar Threshold	Competitive Process	Major Activities
		<ul style="list-style-type: none"> <li>◆ Issue IFB to responding bidders.</li> <li>◆ Conduct a preproposal conference to clarify the extent of the work and permit prospective bidders to ask questions.</li> <li>◆ Date and time stamp proposals received by due date.</li> <li>◆ Evaluate proposals strictly against the criteria that are set forth in the IFB and score the proposals. Must use a minimum of 3 evaluators for scoring and score proposals using score sheets. Determine apparent successful bidder.</li> <li>◆ Notify successful and unsuccessful firms.</li> <li>◆ Negotiate subcontract with successful contractor.</li> <li>◆ Conduct debriefing conferences, if requested.</li> <li>◆ Begin subcontract work.</li> </ul>

### **Soliciting for Public Works**

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, under RCW 39.04.010. This statute requires competitive bids for public works projects (except for emergencies under RCW 39.04.280):

- ❖ Competitively Bid Public Works Projects
  - ◆ Over \$300,000 (but can be for smaller projects)
  - ◆ Formal Advertisement
  - ◆ Bid Bonds
  - ◆ Sealed Bids
  - ◆ Public Bid Opening
  - ◆ Formal Award
  - ◆ P/P Bonds Required
  - ◆ Retainage Required

Note that performance and payment bonds are required for public works contracts under Chapter 39.08 RCW, except as noted below under the limited public works process. In addition, 5% retainage is required under Chapter 60.28 RCW, except as noted below. Insurance is not required by the statutes, but is essential to protect the district's assets from crippling claims. Your district's risk manager and/or attorney can best advise you on the proper limits and types of insurance.

Regardless of contract size, a conservation district must award public works contracts **only** to responsible bidders (quoters) that meet the minimum requirements of RCW 39.04.350 (1):

- (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
  - (a) At the time of bid submittal, have a certificate of registration in compliance with chapter [18.27](#) RCW;
  - (b) Have a current state unified business identifier number;
  - (c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title [51](#) RCW; an employment security department number as required in Title [50](#) RCW; and a state excise tax registration number as required in Title [82](#) RCW; and
  - (d) Not be disqualified from bidding on any public works contract under RCW [39.06.010](#) or [39.12.065](#)(3).

RCW 39.04.350(2) allows an agency to establish relevant supplemental bidder responsibility criteria if warranted. Most small public works roster projects do not warrant development and use of supplemental criteria. For more information and sample criteria contact the MRSC Public Works Consultant and/or go to [Suggested Guidelines to Bidder Responsibility/Approved by CPARB 10/11/07](#).

The MRSCs 2009 [Small Public Works Roster Manual for Local Governments: Second Edition](#) has detailed information on bid bonds, performance/payment bonds, retainage, sales tax issues and prevailing wages. For this reason, these topics are not covered in detail in these Guidelines.

### **Small Works Roster Process**

Conservation districts do not have direct statutory authority to use small works roster procedures under RCW 39.04.155, nor do they have “bid limits”, as do most other units of local government. However, as most district public works projects are under \$300,000, formal bids for each project place an unwarranted administrative burden on district staff. Therefore, each conservation district board of supervisors should adopt by reference the small works roster process in RCW 39.04.155. Conservation districts will also want to adopt and utilize MRSC’s 2009 *Small Public Works Roster Manual for Local Governments: Second Edition*.

The small works roster process utilizes a competition following notification to some or all public works contractors who have requested placement on a roster kept by the local governmental unit. This differs from competitive bids in which there is competition following advertisement in designated legal newspapers and other media that is open to all public works contractors. A small works roster lists contractors who have requested placement on the roster and who are properly licensed or registered to perform work in this state.

Conservation districts may create their own small works roster. They may not, however, use the small works roster of another governmental unit through a negotiated, interlocal agreement. Use of a contracted service provider, such as MRSC Rosters, is permitted, however, as there is no interlocal agreement involved.

Procedures include:

- ❖ Small Public Works Roster (SPWR) Projects
  - ◆ Under \$300,000
  - ◆ RFQ to all interested contractors on SPWR
  - ◆ No advertisement required, just notice to SPWR
  - ◆ Bid Bonds Optional
  - ◆ Electronic, Faxed, or Telephone Quotes Allowed
  - ◆ Informal Quote Opening(s)
  - ◆ Award Can Be Delegated
  - ◆ P/P Bonds Required
  - ◆ Retainage Required

### **Limited Public Works Process**

A subset of the Small Works Roster Process - available only if a conservation district has established a small works roster – is the Limited Public Works Process under RCW 39.04.155(3) for work, construction, alteration, repair, or a improvement project estimated to cost less than thirty-five thousand dollars (\$35,000). Advantages to using the Limited Public Works Process Public are that the distinct may waive retainage and performance/payment requirements and use a combined intent and affidavit form for prevailing wages under RCW 39.12.040(2).

- ❖ Limited Public Works Projects (Less than \$35K)
  - ◆ SPWR required
  - ◆ Three or more quotes required
  - ◆ No advertisement required, just notice to SPWR
  - ◆ Bid Bonds Optional
  - ◆ Electronic, Faxed, or Telephone Quotes Allowed
  - ◆ Informal Quote Opening(s)
  - ◆ Award Can Be Delegated
  - ◆ P/P Bonds Can Be Waived
  - ◆ Retainage Can Be Waived

### **Small Public Works Projects**

Almost all municipalities (other than conservation districts) have statutory “bid limits” for public works projects, below which they can simply contract without using either the competitive bid processes or the small public works process. A conservation district may adopt such a policy. MRSC recommends an upper limit for this policy of \$35,000.

- ❖ Small Public Works Projects (Less than \$35K)
  - ◆ Three or more quotes recommended
  - ◆ No SPWR Required
  - ◆ No advertisement required
  - ◆ Bid Bonds Optional
  - ◆ Electronic, Faxed, or Telephone Quotes Allowed
  - ◆ Informal Quote Opening(s)
  - ◆ Award Can Be Delegated
  - ◆ P/P Bonds Required
  - ◆ Retainage Required

### **Prevailing Wages**

The Washington State Public Works Act, also known as the "Prevailing Wage Law," is a worker protection act that requires that workers be paid prevailing wages when employed on public works projects. Public works projects include all work, construction, alteration, repair or improvement that is executed at the cost of the state or of any municipality. There is no minimum dollar amount below which prevailing wages need not be paid.

District subcontracts involving services which are reimbursed using Commission funding are classified as public work projects and are subject to the prevailing wage law. Primarily developed for "blue collar" job classifications, the prevailing wage law does not apply to work that is clerical, executive, administrative or professional in nature; nor does it apply to district employees.

Prevailing wages are 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 (L & I) 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. *(For specific county information contact your local L & I office, or visit their website at <http://www.lni.wa.gov/tradeslicensing/prevwage/> .* Rather than trying to include just those classifications that may fit a specific project (such as stream restoration) MRSC recommends including all the current classifications and wage rates; i.e. download the entire county listing.

Failure to comply with the provisions under the Prevailing Wage Law may subject the district to liability for all unpaid prevailing wages and penalties. A district must stipulate - both in the solicitation document and in the subcontract - that workers will receive the prevailing rate of wage and include applicable prevailing wage rates.

After the subcontract is awarded by the district, the subcontractor submits a Statement of Intent to Pay Prevailing Wages to the Department of Labor and Industries. The district may not make any payments to the subcontractor until they receive evidence that the Intent form has been approved by L & I.

After the work is completed, the subcontractor submits the Affidavit of Wages Paid to the Department of Labor and Industries. The district may not make the final payment to the subcontractor until they receive evidence that the Affidavit form has been certified by L & I.

<b>Type of Activity</b>	<b>Prevailing Wages Must Be Paid</b>	<b>Subcontractor must submit Statement of Intent to Pay Prevailing Wages to L&amp;I</b>	<b>Subcontractor must submit Affidavit of Wages Paid to L&amp;I</b>
District hires full-time or part-time permanent staff who provide technical assistance to landowners in the field	No	Not applicable	Not applicable
District requests bids and awards a contract to a work crew for seasonal work (if stream restoration only, district may pay the lower rates established by L&I and shown in Appendix L)	Yes	Yes	Yes
District hires its own intermittent or temporary work crew for seasonal work	No	Not Applicable	Not Applicable
District solicits and awards a contract for heavy equipment work to a contractor who is a sole proprietor and who actually performs the work himself	No	Yes	Yes
District solicits and awards a contract for heavy equipment work to a contractor who uses employees to carry out the work, whether or not he performs any of the work himself	Yes	Yes	Yes
Landowner hires a crew or an individual to install a cost shared project	No	No	No

\_\_\_\_\_ Conservation District  
**MODEL SMALL WORKS ROSTER RESOLUTION**

**Resolution No. \_\_\_\_\_**

A RESOLUTION OF THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, ON THE SUBJECT OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

WHEREAS, RCW 39.04.155 allows certain public works contracts to be awarded by a small works roster process; and

WHEREAS, conservation districts are not authorized agencies pursuant to this preceding statute, but are allowed and encouraged by Chapter 89.08 RCW to adopt policies for prudent and proper use and accounting for public moneys; and

WHEREAS, in order to implement small public works roster processes, the District desires to adopt the statutory framework in the preceding statutes as the policy of the District.

NOW, THEREFORE, THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1.** Resolution No. \_\_\_\_\_ is hereby repealed.

**Section 2.** The following small works roster procedures are established for use by the District pursuant to and RCW 39.04.155.

1. **Cost.** The District need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the District may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The District may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the District as a condition of being placed on a roster or rosters.

4. **Publication.** At least once a year, the District shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The District may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between \_\_\_\_\_ Conservation District and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the District may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The District shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the District may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The District has the sole option of determining whether this notice to the remaining contractors is made by:

- (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (ii) Mailing a notice to these contractors; or
- (iii) Sending a notice to these contractors by facsimile or other electronic means.

c) For purposes of this resolution, "equitably distribute" means that the District may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are

solicited, the District representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

d) A written record shall be made by the District representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

7. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the District may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the District will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the District may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the District shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The District shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

8. **Small Business Incentives (RCW 39.04.155(5))**  
An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return. An agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars (\$250,000) annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.
9. **Determining Lowest Responsible Bidder.** The Board of Supervisors shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Board of Supervisors may call for new bids. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350 (2).
10. **Award.** All of the telephone bids or quotations shall be collected and presented at the same time to the Board of Supervisors for consideration, determination of the lowest responsible bidder, and award of the contract.

OR [If the governing body delegates the authority to award bids of certain amount(s) to an officer of the agency.]

10. **Award.** The [executive officer] or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the Board of Supervisors. However, for public works projects under \$\_\_\_\_\_, the [executive officer] shall have the authority to award public works contracts without Board of Supervisors approval, provided that the Board of Supervisors shall ratify the [executive officer]'s approval at the next scheduled Board of Supervisors meeting by means of the consent agenda. For public works projects over \$\_\_\_\_\_, the Board of Supervisors shall award all public works contracts by resolution.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and signed in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Executive Officer]

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_ Conservation District  
**MODEL SMALL WORKS ROSTER RESOLUTION**

**Resolution No. \_\_\_\_\_**

A RESOLUTION OF THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, ON THE SUBJECT OF ESTABLISHING A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

WHEREAS, RCW 39.04.155 allows certain public works contracts to be awarded by a small works roster process; and

WHEREAS, conservation districts are not authorized agencies pursuant to this preceding statute, but are allowed and encouraged by Chapter 89.08 RCW to adopt policies for prudent and proper use and accounting for public moneys; and

WHEREAS, in order to implement small public works roster processes, the District desires to adopt the statutory framework in the preceding statutes as the policy of the District.

NOW, THEREFORE, THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1.** Resolution No. \_\_\_\_\_ is hereby repealed.

**Section 2.** The following small works roster procedures are established for use by the District pursuant to and RCW 39.04.155.

1. **Cost.** The District need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the District may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The District may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the District as a condition of being placed on a roster or rosters.

4. **Publication.** At least once a year, the District shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The District may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between \_\_\_\_\_ Conservation District and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.
5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the District may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The District shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the District may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The District has the sole option of determining whether this notice to the remaining contractors is made by:

- (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (ii) Mailing a notice to these contractors; or
- (iii) Sending a notice to these contractors by facsimile or other electronic means.

c) For purposes of this resolution, "equitably distribute" means that the District may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are

solicited, the District representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

d) A written record shall be made by the District representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

7. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the District may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the District will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the District may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the District shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The District shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

8. **Small Business Incentives (RCW 39.04.155(5))**  
An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return. An agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars (\$250,000) annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.
9. **Determining Lowest Responsible Bidder.** The Board of Supervisors shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Board of Supervisors may call for new bids. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350 (2).
10. **Award.** All of the telephone bids or quotations shall be collected and presented at the same time to the Board of Supervisors for consideration, determination of the lowest responsible bidder, and award of the contract.

OR [If the governing body delegates the authority to award bids of certain amount(s) to an officer of the agency.]

10. **Award.** The [executive officer] or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the Board of Supervisors. However, for public works projects under \$\_\_\_\_\_, the [executive officer] shall have the authority to award public works contracts without Board of Supervisors approval, provided that the Board of Supervisors shall ratify the [executive officer]'s approval at the next scheduled Board of Supervisors meeting by means of the consent agenda. For public works projects over \$\_\_\_\_\_, the Board of Supervisors shall award all public works contracts by resolution.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and signed in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Executive Officer]

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_ Conservation District

**VENDOR LIST**

**AND**

**SMALL WORKS ROSTER RESOLUTION**

**Resolution No. \_\_\_\_\_**

A RESOLUTION OF THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, repealing Resolution No. \_\_\_\_\_ and establishing new procedures relating to purchasing and public works contracting; establishing a vendor list process for the purchasing of supplies, materials, and equipment and a small works roster process to award public works contracts.

WHEREAS, RCW 39.04.190, regarding purchase of materials, supplies or equipment not connected to a public works project, allows certain purchasing contracts to be awarded by a vendor list process; and

WHEREAS, the RCW 39.04.155, allows certain public works contracts to be awarded by a small works roster process; and

WHEREAS, conservation districts are not authorized agencies pursuant to these preceding statutes, but are allowed and encouraged by Chapter 89.08 RCW to adopt policies for prudent and proper use and accounting for public moneys; and

WHEREAS, in order to implement vendor list and small public works roster processes, the District desires to adopt the statutory framework in the preceding statutes as the policy of the District.

NOW, THEREFORE, THE Board of Supervisors OF \_\_\_\_\_ Conservation District, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1.** Purchase of materials, supplies or equipment not connected to a public works project in an amount of \$\_\_\_\_\_ or less. The District is not required to use informal or formal sealed bidding procedures or the procedures set forth in this resolution to purchase materials, supplies, or equipment for the purchase of any materials, supplies of equipment where the cost of same will not exceed \_\_\_\_\_. The District will attempt to obtain the lowest practical price for such goods and services.

**Section 2.** The following vendor list procedures are established for use by the District pursuant to RCW 39.04.190. Purchase of materials, supplies or equipment not connected to a public works project in an amount between \$\_\_\_\_\_ and \$\_\_\_\_\_.

1. **Publication of Notice.** At least twice a year, the District shall publish, in the District's official newspaper, notice of the existence of a roster(s) of vendors for materials, supplies, and equipment, and shall solicit names of vendors for the roster.
2. **Electronic Rosters.** In addition to paper and/or electronic vendor lists kept on file in the appropriate department, the District may also use that state wide electronic database

developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).

3 **Telephone Quotations.** The District shall use the following process to obtain telephone quotations from vendors for the purchase of materials, supplies, or equipment:

a. A written description shall be drafted of the specific materials, supplies, or equipment to be purchased, including the number, quantity, quality, and type desired, the proposed delivery date, and any other significant terms of purchase;

b. A District representative shall make a good faith effort to contact at least three (3) of the vendors on the roster to obtain telephone solicitation quotations from the vendors for the required materials, supplies, or equipment;

c. The District representative shall not share telephone quotation from one vendor with other vendors solicited for the bid on the materials, supplies, or equipment;

d. A written record shall be made by the District representative of each vendor's bid on the material, supplies, or equipment, and of any conditions imposed on the bid by such vendor;

e. The District representative shall present to the Board of Supervisors all telephone quotations and a recommendation for award of the contract to the lowest responsible bidder.

4. **Determining the Lowest Responsible Bidder.** The District shall purchase the materials, supplies or equipment from the lowest responsible bidder (RCW 43.19.1911(9)), provided that whenever there is reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the District may call for new bids. The District, in determining the lowest responsible bidder may take the following factors, to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Board of Supervisors may call for new bids. RCW 43.19.1911(9) states:

"In determining "lowest responsible bidder", in addition to price, the following elements shall be given consideration:

(a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

(c) Whether the bidder can perform the contract within the time specified;

(d) The quality of performance of previous contracts or services;

(e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Such other information as may be secured having a bearing on the decision to award the contract:

PROVIDED, That in considering bids for purchase, manufacture, or lease, and in determining the "lowest responsible bidder," whenever there is reason to believe that applying the "life cycle costing" technique to bid evaluation would result in lowest total cost to the state, first consideration shall be given by state purchasing activities to the bid with the lowest life cycle cost which complies with specifications. "Life cycle cost" means the total cost of an item to the state over its estimated useful life, including costs of selection, acquisition, operation,

maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life. The "estimated useful life" of an item means the estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner. Nothing in this section shall prohibit any state agency, department, board, commission, committee, or other state-level entity from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

5. **Award.** Board of Supervisors shall review quotations and recommendation by city staff and award the contract to the lowest responsible bidder. A written record of each vendor's quotations shall be made open to public inspection or telephone inquiry after the award of the contract. Any contract awarded under this subsection need not be advertised.
6. **Posting.** A list of all contracts awarded under these procedures shall be posted at District main administrative offices once every two months. The list shall contain the name of the vendor awarded the contract, the amount of the contract, a brief description of the items purchased, and the date it was awarded.

**Section 3.** The following small works roster procedures are established for use by the District pursuant to RCW 39.04.155.

1. **Cost.** The District need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Three Hundred Thousand Dollars (\$300,000.00), which includes the costs of labor, material, equipment and sales and/or use taxes as applicable. Instead, the District may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process
2. **Number of Rosters.** The District may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Said small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor.
3. **Contractors on Small Works Roster(s).** The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the District as a condition of being placed on a roster or rosters.
4. **Publication.** At least once a year, the District shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The District may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between

\_\_\_\_\_ Conservation District and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

5. **Electronic Rosters.** In addition to paper and/or electronic rosters kept on file in the appropriate department, the District may also use that state wide electronic database developed and maintained by the Municipal Research and Services Center of Washington (MRSC Rosters).
6. **Telephone or Written Quotations.** The District shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

- a) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

- b) Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster.

If the estimated cost of the work is from one hundred fifty thousand dollars (\$150,000) to three hundred thousand dollars (\$300,000), the District may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The District has the sole option of determining whether this notice to the remaining contractors is made by:

- (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (ii) Mailing a notice to these contractors; or
- (iii) Sending a notice to these contractors by facsimile or other electronic means.

- c) For purposes of this resolution, "equitably distribute" means that the District may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the District representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project;

- d) A written record shall be made by the District representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

7. **Limited Public Works Process.** If a work, construction, alteration, repair, or improvement project is estimated to cost less than thirty-five thousand dollars (\$35,000), the District may award such a contract using the limited public works process provided under RCW 39.04.155(3). For limited public works project, the District will solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder, as defined under RCW 39.04.010 and RCW 39.04.350. After an award is made, the quotations shall be open to public inspection and available by electronic request.

For limited public works projects, the District may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material men, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However, the District shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

The District shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four (24) months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded.

8. **Small Business Incentives (RCW 39.04.155(5))**  
An agency may use the limited public works process of RCW 39.04.155(3) to solicit and award small works roster contracts small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return. An agency may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars (\$250,000) annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.
9. **Determining Lowest Responsible Bidder.** The Board of Supervisors shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Board of Supervisors may call for new bids. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350 (2).
10. **Award.** All of the telephone bids or quotations shall be collected and presented at the same time to the Board of Supervisors for consideration, determination of the lowest responsible bidder, and award of the contract.

OR [If the governing body delegates the authority to award bids of certain amount(s) to an officer of the agency.]

10. **Award.** The [executive officer] or his designee shall present all telephone quotations/bids and recommendation for award of the contract to the lowest responsible bidder to the [governing body]. However, for public works projects under \$\_\_\_\_\_, the [executive officer] shall have the authority to award public works contracts without Board of Supervisors approval, provided that the Board of Supervisors shall ratify the [executive officer]'s approval at the next

scheduled Board of Supervisors meeting by means of the consent agenda. For public works projects over \$\_\_\_\_\_, the Board of Supervisors shall award all public works contracts by resolution.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and signed in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Board Chair

ATTEST:

\_\_\_\_\_  
CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY

**MRSC Project Closure/Retainage Release Guidelines (Effective 07/26/09)**

Contract Amount	Require in Contract (also See Note 1)		Needed for Project Closeout Files (Before Releasing Retainage) (Also See Note 9)			
	Performance and Payment Bonds	Retainage	Sales and/or Use Taxes	Prevailing Wages	Industrial Insurance	Employment Security Taxes
Over \$ 35,000	Yes	Yes	Notice of Completion (NOC) and DOR Release (See Note 4)	Intent and Affidavit (See Note 5)	NOC and Ind. Ins. Certification (See Note 6)	NOC and Certificate of Payment (See Note 8)
\$35,000 or less Limited PW Process	Can Waive (See Notes 2 & 7)	Can Waive (See Notes 2 & 7)	Not Required (See Note 4)	Intent and Affidavit (See Note 5 & 7)	Not Required	Not Required
\$35,000 or less	Can Waive (See Note 3)	50% Retainage (See Note 3)	Not Required	Intent and Affidavit (See Note 5)	Not Required	Not Required
\$ 2,500 or less	May Not Be Needed (10)	May Not Be Needed (10)	Not Required	Small Works Form (7)	Not Required	Not Required

Note 1: Contract documents must require that prevailing wages must be paid and must contain the prevailing wages applicable to the project, regardless of contract amount.

Note 2: RCW 39.04.155 (3) allows a local government to waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW. To use this limited public works process an authorized local government must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. A SWR process is required.

Note 3: RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less (Chapter 210, 2007 Laws) - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from DOR and L&I and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

Note 4: City files Notice of Completion of Project with DOR and will receive Certificate of Payment of Excise Taxes from DOR for the project. DOR may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 5: Contractor files Intent to Pay Prevailing Wages and Affidavit of Wages Paid with L & I. The public agency will receive approved Intent and Affidavit forms from the Contractor. L & I sends the forms to the Contractor who in turn sends them to the public agency.

Note 6: L&I issues 'Letter of Release' from liability for industrial insurance premiums for the project (online?). L&I may also demand payment for unpaid premiums on other projects per Chapter 423, 2009 Session Laws.

Note 7: RCW 39.12.040 (2) allows the local government agency to process combined Intent and Affidavit short forms and forward them to L & I monthly. If the agency chooses not to use this process, see Notes 5 & 6. Chapter 210, 2007 Laws allows use of this form for contracts up to \$35,000 if RCW 39.04.155 (3) is followed.

Note 8: DOR forwards Notice of Completion to ESD. ESD issues Certificate of Payment of employment security contributions, penalties and interest. ESD may also demand payment for unpaid excise taxes on other projects per Chapter 423, 2009 Session Laws.

Note 9: RCW 60.28.011(3)(b) states that "Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW." (But not chapter 50.24 RCW.). Therefore, an agency should release retained funds, less the amount of any claims by laborers, suppliers and subcontractors, at the end of sixty (60) days to avoid possible ramifications under the Prompt Pay Act (RCW 39.76). If Certificate from DOR and approved Affidavits from L&I per notes 4-6 are not available at that time, contact your agency attorney. An agency should also try to have the ESD Certificate in its files as well. See MRSC Contract Closeout Paperwork and Deadline Summary also.

Note 10. Unless an agency waives bonding and/or retainage (B/R) under the Notes 2 and 3 scenarios, both are theoretically required, even for very small projects. However, as a practical matter, payment for small projects is usually well after completion and – in effect – there is a 100% retainage for 2-4 weeks, so there is very little risk if an agency does not require B/R. Be sure, as much as practical, that suppliers have been paid and that an approved Affidavit of Wages Paid from the contractor is on file.

# RETAINAGE RELEASE

## CHECKLIST

### Basic Information

Project Name:		Project #:
Contractor's Name:		
<b>Retainage Status</b>		
<input type="checkbox"/> Escrow Agreement	<input type="checkbox"/> Agency Holding Retainage	<input type="checkbox"/> Retainage Bond
<b>Dates</b>		
Substantial Completion Date	Final Acceptance Date	45 Days from Final Acceptance

### Documentation Required

Description:	Responsible Party:	Date Recvd or Compltd:	
<b>Acceptance Notices</b>			
<input type="checkbox"/> Final Acceptance Letter (to Contractor)	CPO Contracts		
<input type="checkbox"/> Notice of Completion of Public Works Contract to DOR	CPO Accounting		
<input type="checkbox"/> Notice of Completion of Public Works Contract to ESD	CPO Accounting		
<input type="checkbox"/> Notice of Completion of Public Works Contract to L&I	CPO Accounting		
<b>Releases from State Agencies</b>			
<input type="checkbox"/> Department of Revenue <small>Certificate of Payment of State Excise Taxes by Public Works Contractor</small>	Revenue		
<input type="checkbox"/> Employment Security Department <small>Certificate of Payment of Contribution, Penalties &amp; Interest on Public Works Contract</small>	Employment Security		
<input type="checkbox"/> Department of Labor and Industries <small>Employer Liability Certificate</small>	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
<b>Prevailing Wages</b>			
<input type="checkbox"/> Statements of Intent to Pay Prevailing Wages	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
<input type="checkbox"/> Affidavits of Wages Paid	<input type="checkbox"/> Contractor <input type="checkbox"/> All Subcontractors		
<b>Other</b>			
<input type="checkbox"/> Certificate of Payment of Labor and Materials	Contractor		
<b>Claims and Liens Against the Retainage and Payment Bond</b>			
<input type="checkbox"/> Type of Action*	Claimant	Amount	Date Received

\*Claim, Renewal, Release

**Appendix G - WAC 458-20-170 & 171 Matrix** (September 2004)

Applicable B&O, Use Taxes and Sales Taxes Are to be Included in (Unit) Bid Prices for: (Rule 171)	Sales Tax Added to (Unit) Bid Prices for: (Rule 170)
<p>building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)</p> <p>The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry.</p>	<p>railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields;</p>
<p>docks used primarily by ferry boats operated in connection with a street, road or highway, (and which is owned by a municipal corporation or political subdivision of the state or by the United States)</p>	<p>ferry boats purchased by the state or municipal corporations are exempt from retail sales taxes (WAC 458-20-189(6)(f))</p>
<p>roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.</p>	<p>constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid</p>
<p>constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting;</p>	
<p>constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.</p>	<p>constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.</p>
<p>includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.</p>	

WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

#### Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. owned by the state of Washington. (See WAC 458-20-170 for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting, crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

#### Business and Occupation Tax

Such contractors are taxable under the public road construction classification upon their total contract price.

The business and occupation tax does not apply to the cost of or charge made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel or rock is

- (a) Stockpiled in said pit or quarry for placement on the street, road, or highway by the county or city itself using its own employees, or
- (b) Placed on the street, road, or highway by the county or city itself using its own employees, or
- (c) Sold by the county or city at actual cost to another county or city for road use.

#### Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

#### Use Tax

The use tax applies to the use by all contractors of all materials including prefabricated and precast items, equipment and supplies upon which the retail sales tax has not been paid. This tax also applies in respect to articles produced or manufactured by them for commercial use. (See WAC 458-20-134.)

The use tax does not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is either (1) stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself (i.e., by its own employees), or (2) sold by the county or city to a county or a city at actual cost for placement on a street, road, place, or highway owned by the county or city. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(For lien of unpaid taxes on the retained percentage withheld on public improvement contract, see WAC 458-20-217.)

[Order ET 71-1, § 458-20-171, filed 7/22/71; Order ET 70-3, § 458-20-171 (Rule 171), filed 5/29/70, effective 7/1/70.]