



CITY OF  
BAINBRIDGE ISLAND

**PROCUREMENT POLICY**  
**PURCHASING GUIDELINES**  
**CONTRACT AND SURPLUS AUTHORITY**

Effective Date: June 14, 2016

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## I. GENERAL

### 1.1 PURPOSE

This document is intended to direct the purchase of goods and services at a reasonable cost. An open, fair, documented, and competitive process is to be used whenever reasonable and possible. The purchasing function's integrity, efficiency, and effectiveness are critical elements of sound government.

### 1.2 OBJECTIVES

The objectives of the City's purchasing program are as follows:

- To provide a uniform system to obtain supplies, materials, equipment, and services in an efficient and timely manner;
- To facilitate responsibility and accountability with the use of City resources;
- To ensure equal opportunity and competition among vendors and contractors;
- To promote effective relationships and clear communication between the City and its vendors and contractors;
- To comply with State procurement statutes governing expenditures of public funds;
- To promote use of recycled materials and products, and dispose of surplus and scrap materials with regards to cost savings and the environment.

### 1.3 SCOPE

These guidelines apply to purchases of:

- Supplies, materials and equipment
- Professional services (including architectural and engineering services)
- Non-professional services (purchased services)
- Public works projects

The guidelines do not apply to the acquisition, sale or lease of real property, except as described in Section 15.3.

If grant or debt funding is involved in the proposed purchase, applicable requirements should be obtained from the funding agency. Such requirements may be more restrictive than the City's policy.

## 1.4 CONTROLLING LAWS

All purchases shall comply with appropriate and relevant Federal, State, and City laws and policies. If the appropriate and relevant Federal or State laws, regulations, grants, debt, or requirements are more restrictive than these guidelines, such laws, regulations, grants, debt, or requirements should be followed.

The City Attorney shall be consulted when questions regarding potential conflicts arise. Applicable laws and regulations will be cited throughout this document.

## 2.0 DETERMINING TOTAL PURCHASE COST

### 2.1 USE ANTICIPATED COST

The anticipated annual need for a good or service (when it can reasonably be projected) shall be used to determine the cost of that good or service, and thus which contract approval level, cost threshold, and other related purchasing requirements apply.

### 2.2 NO "BID SPLITTING"

Requirements shall not be divided to come up with a lower total cost to avoid contract approval levels or competition requirements. If one item being purchased requires another item to "make a whole," the total accumulated costs of the two items (when they can reasonably be projected) should be considered together to determine which approval level and cost threshold apply, unless the two items are not available from a single vendor.

### 2.3 COSTS TO INCLUDE

Include costs such as taxes, freight, and installation charges when determining which cost threshold applies. Do not include the value of a trade-in. Trade-in value should be considered, however, to determine the lowest bid when competitive bidding is used.

### 2.4 INCLUDE TOTAL QUANTITY NEEDED

Requirements for the total quantity of an item (when they can be reasonably projected) should be considered when determining which cost threshold and related purchasing requirements apply.

### 2.5 MULTIPHASE PROGRAMS

If a project is to be completed in phases, the total accumulated cost for all phases should be considered when determining which cost threshold applies.

### 3.0 CONTRACT APPROVAL LEVELS

These approval levels are designed for contracts whose costs are covered by budget appropriations previously approved by the City Council. Contracts requiring additional appropriations must be approved by the Council.

#### 3.1 PURCHASING OF EQUIPMENT, SUPPLIES & MATERIALS

##### 3.1.1 \$10,000 or Less

Purchases in this price range are to be approved by the Department Director.

##### 3.1.2 \$10,001 to \$50,000

Purchases in this price range are to be approved by the City Manager.

##### 3.1.3 \$50,001 or More

Purchases in this price range are to be approved by the City Council.

#### 3.2 PROFESSIONAL SERVICES (PERSONAL SERVICES AND ARCHITECTURE & ENGINEERING SERVICES)

##### 3.2.1 \$50,000 or Less

Contracts in this price range are to be approved by the City Manager.

##### 3.2.2 \$50,001 or More

Contracts in this price range are to be approved by the City Council.

#### 3.3 NON-PROFESSIONAL SERVICES (PURCHASED SERVICES)

##### 3.3.1 \$10,000 or Less

Contracts in this price range are to be approved by the Director.

##### 3.3.2 \$10,001 to \$50,000

Contracts in this price range are to be approved by the City Manager.

##### 3.3.3 \$50,001 or More

Contracts in this price range are to be approved by the City Council.

### 3.4 PUBLIC WORKS PROJECTS

#### 3.4.1 \$10,000 or Less

Contracts in this price range are to be approved by the Public Works Director.

#### 3.4.2 \$10,001 to \$50,000

Contracts in this price range are to be approved by the City Manager, provided they are included in the Capital Improvement Plan (CIP).

#### 3.4.3 \$50,001 or More

Contracts in this price range are to be approved by the City Council.

#### 4.0 COST THRESHOLD REQUIREMENTS – PURCHASING AND NON-PROFESSIONAL SERVICES (PURCHASED SERVICES)

The following cost thresholds apply for purchases of supplies, equipment, non-professional services, and information services.

Non-professional services (referred to as purchased services by Municipal Research Services Center (MRSC)) are for routine and continuing functions, mostly related to physical activities that:

- Follow established or standardized procedures
- Contribute to the day-to-day business operations
- Completion of assigned and specific tasks
- Require only routine decisions
- May require payment of prevailing wages

Examples include delivery services, landscaping and janitorial services, vehicle inspection and repair services, HVAC system maintenance, and office furnishings installation and repair service. Consult with the City Attorney prior to contracting for these services for advice on bidding and prevailing wage requirements.

The cost thresholds below do not apply to the purchase of services that are considered to constitute a *public work* – see Section 5.0 on public works projects.

They also do not apply to the purchase of *professional services* (including architectural or engineering services) – see Section 7.0 on professional services and Section 8.0 on architectural and engineering services.

Refer to Section 10.0 in situations involving *sole source* or *emergency* purchases.

#### 4.1 \$10,000 OR LESS – DIRECT NEGOTIATION

Purchases in this price range may be entered into through direct negotiation. Competition is not required, though departments should still make every effort to receive the best price possible. Documentation on all quotes should be retained.

#### 4.2 \$10,001 TO \$50,000 – 3 QUOTES NEEDED

For purchases in this price range, at least three quotes shall be obtained. Quotes may be obtained by telephone or in writing. Documentation on all quotes will be retained. The

documentation will include the date, time, vendor contact name, phone number, email (if applicable), price quoted and any reasons for acceptance or refusal of the quote.

#### 4.3 \$50,001 OR MORE– COMPETITIVE BIDS

For purchases in this price range, competitive bids shall be obtained from at least 3 vendors. Bids do not need to be sealed, but shall be in writing. See Section 8.0 on competitive bidding for a detailed description of the procedures to be followed.

#### 4.4 AUCTIONS

RCW 39.30.045 allows for the purchase of any supplies or equipment at auctions rather than through competitive bidding, if the items can be obtained at a competitive price. This authority allows the City to make a purchase on an internet-based auction service, such as eBay, as well as through in-person auctions. The City may also use federal, state or local governmental auctions.

#### 4.5 PURCHASING SURPLUS PROPERTY FROM OTHER GOVERNMENTAL AGENCIES

RCW 39.33.010 allows for the purchase of surplus property from other governmental agencies without regard to bid laws.

#### 4.6 CONTRACTING FOR SERVICES WITH OTHER GOVERNMENTAL AGENCIES

RCW 39.04.080 authorizes one public agency to contract with another public agency to perform any function which each agency is authorized by law to perform itself.

## 5.0 PUBLIC WORKS PROJECTS

As defined in RCW 39.04.010, *public works* include (but are not limited to) all work, construction, alteration, repair, or improvement (other than *ordinary maintenance*, engineering analysis, and design and other professional services) executed at the City's cost, or which is by law a lien or charge on any property therein. If the City contracts out for maintenance or repairs, the work is a public work for bidding and prevailing wage purposes.

### 5.1 DEFINING PROJECT COST

The cost of a public works project includes the costs of materials, supplies, equipment, and labor on the construction of that project.

### 5.2 BID REQUIREMENTS

Washington State law requires the City to call for bids whenever the cost of a public work will exceed \$65,000, if more than one craft or trade is involved. If only a single craft or trade is involved, or if the project is for street signalization or street lighting, bids must be called for if the cost is greater than \$40,000. The City has established the following additional guidelines for the bidding process:

- 5.2.1 Public Works Projects \$0 to \$500: No competitive bidding is needed.
- 5.2.2 Public Works Projects \$501 to \$2500: Solicit 3 informal quotes by telephone or in writing.
- 5.2.3 Public Works Projects \$2501 to \$10,000: Solicit 3 informal quotes by telephone or in writing, preferably from the small works roster.
- 5.2.4 Public Works Projects \$10,001 to \$35,000: Solicit 3 quotes from the small works roster.
- 5.2.5 Public Works Projects \$35,001 to \$150,000: Solicit quotes from at least five contractors on the small works roster in a manner that will equitably distribute opportunities among contractors on the roster.

“Equitably distribute” means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

5.2.6 Public Works Projects \$150,001 to \$300,000: Solicit 5 quotes from small works roster and notify the remaining contractors on the roster that quotes on the work are being sought. This notice can be made by:

- Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; or
- Mailing a notice to these contractors; or
- Sending a notice to these contractors by electronic means such as email or fax.

5.2.7 Public Works Projects More than \$300,000: Advertise and call for bids using the formal bid process.

All contracts are to be awarded to the lowest responsible bidder. RCW 39.04.350 outlines criteria that a bidder must meet in order to be considered responsible.

### 5.3 SMALL WORKS ROSTER

RCW 39.04.155 authorizes cities to use a small works roster to award public works contracts of less than \$300,000.

Using a small works roster provides a streamlined method for soliciting competitive bids for public works projects costing less than \$300,000.

A small works roster consists of all responsible contractors who have requested to be listed, and are properly licensed or registered to perform such work in the State of Washington.

As an alternative to creating and maintaining the City’s own small works roster for construction of public works projects, the City Manager is authorized to enter into agreements with the Municipal Research Services Center (MRSC) or any other agency for use of their small works roster, as long as such small works rosters are in compliance with the latest State of Washington rules, regulations, requirements and laws regarding the establishment, maintenance and use of small works rosters for public works projects. The City is currently using MRSC’s small works roster.

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 does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

Performance bonds are required on small works roster projects, and the City requires bid bonds for small works roster projects with an estimated cost of more than \$100,000. Although not required for small works roster projects below that threshold, bid bonds are recommended to ensure that the contractor enters into the contract.

The City Council will award contracts with a value of more than \$50,000.

The Public Works Director shall post a list of the contracts awarded using the small works roster at least once a year. The list shall contain the names of the contractors awarded the contracts, the amount of the contracts, a brief description of the type of work performed under the contracts, and the date the contracts were awarded. The list shall also state the location where the bid proposals for the contracts are available for public inspection.

#### 5.4 LIMITED PUBLIC WORKS PROCESS

The limited public works process is a type of small works roster process that applies only to contracts estimated to cost less than \$35,000. To use this process, the City must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. This process is described in RCW 39.04.155(3) and allows the City to waive the payment and performance bond requirements of Chapter 39.08 RCW and the retainage requirements of Chapter 60.28 RCW (See Section 5.9). Consult with the City Attorney for prior approval when waiving both of these requirements.

#### 5.5 PUBLIC WORKS PERFORMED BY CITY EMPLOYEES

RCW 35.23.352 allows City employees to perform public works projects as long as the project's estimated cost is lower than the bidding limits (\$40,000 single craft/trade or \$65,000 multiple craft/trade).

Work performed within the City by other public employees under an interlocal agreement shall also be included in these limits.

The City is required to provide a report to the state auditor of the costs of all public works in excess of \$5,000 that are not let by contract (RCW 35A.40.200 and 35.23.352(4)). For any project using City employees in excess of \$25,000, the City must publish a description of the project and its estimated cost in the official newspaper at least fifteen days before beginning the work (RCW 39.04.020).

## 5.6 PREVAILING WAGES

The City is required by RCW 39.12.040 to require contractors to pay prevailing wages on all public works contracts.

A “Statement of Intent to Pay Prevailing Wages” must be received from a contractor before any payment is made, and an “Affidavit of Wages Paid” must be received following final acceptance of the work.

## 5.7 PERFORMANCE AND PAYMENT BONDS

RCW 39.08.010 mandates that the City require a performance bond for every public works contract, except as described below. This ensures that the job will be completed and that all workers, vendors, and subcontractors will be paid.

The bond shall be executed by a surety company authorized to do business in Washington State, in an amount equal to 100% of the price specified in the contract.

For contracts of \$35,000 or less, the City is allowed (at the option of the contractor) to forego requiring a performance bond. Instead, the City may retain 50% of the contract for 30 days after final acceptance, or until receipt of all necessary releases from the Department of Revenue, Department of Labor & Industries, and Employment Security Department, and settlement of any liens filed under RCW 60.28 (whichever is later). The intent of this exception is to assist small contractors who may have difficulty securing a bond.

RCW 39.08.015 subjects the City to claims of “laborers, materialmen, subcontractors, and mechanics” if the required performance bond is not obtained.

RCW 60.28.011 prohibits agencies from withholding retainage on public works projects funded in whole or in part by federal transportation funds. Instead, agencies must rely on the contractor’s bond.

## 5.8 PUBLIC WORKS OVER \$1 MILLION

RCW 39.30.060 specifies that in order for their bid to be considered responsive, every bidder for a public works contract of over \$1 million must submit (either with their bid or within one hour of the bid submittal time) the names of all subcontractors that will be used for heating, ventilation and air conditioning, plumbing and electrical work.

## 5.9 CHANGE ORDERS

Change orders are to be approved in accordance with the cost thresholds outlined in this section, provided that the changes do not increase the project's cost in excess of previously approved budget appropriations.

The City Council must approve any change order that increases a project's cost beyond previously-approved budget appropriations.

Public Work Contract total remains below \$300,000 – Change orders are to be approved by the City Manager.

Public Work Contract total moves to \$300,000 or more, but the total cumulative amount of change orders is 10% or less – Change orders are to be approved by the City Manager.

Public Work Contract total moves to \$300,000 or more and the total cumulative amount of change orders is more than 10% – Council must authorize the City Manager to approve the revised contract.

In the event unforeseen conditions necessitate an immediate change to avoid a contractor's claim against the City for delays, the City Manager may authorize and direct work irrespective of the limits above, provided any work change directive issued in excess of the City Manager's authority shall be incorporated into a change order and presented to the City Council as soon as practicable.

## 5.10 PROJECT ACCEPTANCE

At the completion of a public works project, as confirmed by the Director of Public Works or designee, the City Manager is authorized to accept the work.

The Director of Public Works, Director of Planning and Community Development and the Director of Finance are further authorized to sign exoneration and release forms for bonds and other security devices submitted with respect to a project.

## 6.0 COMPETITIVE BIDDING PROCEDURES

### 6.1 PUBLIC NOTICE

RCW 35.23.352(1) sets out the advertising requirements for the public works bidding process. For all contracts that require bids, notice shall be published in the official newspaper at least 13 days prior to the due date for bids.

Advertisements for bids should include the following items:

- Title of the project
- Nature and scope of the work
- Materials and equipment to be furnished
- Where contract documents (plans, *specifications*) may be obtained
- Cost to obtain a set of contract documents
- Place, date, and time that bids are due
- Statement that a *bid bond* must accompany the bid
- Statements that the City retains the right to reject any or all bids, and to waive minor irregularities in the bidding process

### 6.2 BID SPECIFICATIONS

Bid specifications should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be purchased. Such descriptions should not contain features that unduly restrict competition.

When it is impractical or uneconomical to make clear and accurate description requirements, a “brand name or equal” description may be used. The responsibility of demonstrating to the City’s satisfaction that a product is “equal” to that specified shall be on the vendor proposing the substitution.

Requests for approval of substitutions must be made with sufficient time to allow the City to adequately review the proposal, including time for vendors to respond to questions and requests for additional information or clarification. The City has no obligation to accept proposed substitutions.

Acceptance of a substitute product proposed as an “equal” to that specified will be made in writing. If this acceptance occurs prior to the bid, other bidders will be notified to the extent practical.

## 6.3 AWARD

The contract will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria included in the invitation for bids, or all bids will be rejected. RCW 39.04.350 outlines criteria that a bidder must meet in order to be considered responsible. The City may not negotiate with any of the bidders.

RCW 39.04.350 established bidder responsibility criteria. Before the City may accept a Contractor's bid, the contractor must:

- Be a registered contractor at the time of bid submittal (RCW 18.27.020)
- Have a current Unified Business Identifier (UBI) number
- Have industrial insurance coverage
- Have an employment security department number
- Have a state excise tax registration number
- Have never been disqualified from bidding under RCW 39.06.010 or 39.12.065(3)

The City also requires that the contractor must:

- Have or agree to obtain a current City business license
- Be current with all applicable licenses, taxes, and fees owed to the City of Bainbridge Island

In addition, the City adopts the following supplemental criteria which may be used in connection with specified projects:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder
- Whether the bidder can perform the contract within the time specified
- The quality of performance of previous contracts or services
- The previous and existing compliance by the bidder with laws relating to the contract or services
- Such other information as may be secured having a bearing on the decision to award the contract

When using the supplemental criteria described above, the City will include the supplemental criteria in the bidding documents, together with a basis for evaluation, deadline for bidder to submit responsibility documentation, and deadline for bidder to appeal a "not responsible" determination.

Contracts over \$50,000 are awarded by the City Council.

When a trade-in option exists and is in the City's best interest, the price offered on the trade will be considered when determining the lowest responsive and responsible bid.

RCW 39.30.040 allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Other preferences favoring local businesses are not permitted.

## 6.4 CANCELLATION

An invitation for bids may be cancelled. Additionally, the City (at its sole discretion) may choose to reject any or all bids, in whole or in part.

## 6.5 SUBMITTAL OF BIDS

Bids will be submitted as specified in the invitation for bid by the appointed date and time listed in the invitation. Each bid will be dated and time stamped as it is received. Late bids will not be accepted. If the bid is a sealed bid, all qualified bids will be opened and read aloud publicly at the appointed time.

No City representative shall inform a contractor of the terms or amount of any other contractor's bid for the same project prior to the bid opening date and time. Once bids have been submitted (and opened, if the bids are sealed), the City may not negotiate with bidders. The contract must be awarded to the lowest responsive and responsible bidder, or else all bids must be rejected.

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

Original specifications and the original bid responses will be retained for review and audit as required.

## 6.6 BID SECURITY

Bid security shall be required for all competitive bidding for public works contracts, and shall be included in the bid package. Security shall be in the form of a bond with a value of at least 5% of the amount of the bid, provided by a surety company that is authorized to do business in Washington State, or the equivalent in cash or certified check.

Bid bonds are not required when small works procedures are used for projects under \$100,000.

Bid security shall be required on all bids for materials, supplies, and equipment only if it is determined to be necessary.

When the invitation for bids requires submittal of bid security, noncompliance will result in rejection of the bid.

If a bidder is permitted to withdraw a bid before award, its bid security shall be returned.

## 6.7 NON-COLLUSION AFFIDAVIT

Each bidder shall be required to warrant that their bid is genuine, and that they have not entered into collusion with other bidders, by submitting with their bid an executed and notarized affidavit on a form approved by the City Attorney.

## 7.0 PROFESSIONAL SERVICES

*Professional services*<sup>1</sup> are services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement.

Professional services include, but are not limited to:

- Architectural, engineering, or design services
- Accounting and auditing
- Bond or insurance brokerage
- Consulting services
- Legal services
- Real estate appraisal or title abstracts
- Relocation assistance
- Surveying
- Soils analysis or core testing

### 7.1 COMPETITIVE PROCESS

A competitive process is recommended but not required for professional services, other than professional architectural engineering, or surveying services (see Section 8.0 for procedures to be followed when obtaining these services). The contract approval levels outlined in Section 3.0 still apply.

### 7.2 SOLICITATION OF PROPOSALS

The City may request a Request for Qualification (RFQ) as an initial submission or together with a Request for Proposals (RFP) in connection with a formal solicitation. An RFQ asks a company to submit their general capabilities, list of principal employees, previous projects, and other qualifications for a project. An RFP asks a company to both submit their qualifications and a proposed scope of services for a specific project, including information on the schedule and deliverables.

An RFP should include:

- a detailed scope of work describing the project tasks
- an estimated budget
- an estimated schedule
- evaluation criteria

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<sup>1</sup> MRSC uses the terms “personal services” and “architecture and engineering services” in their contract guidelines.

- instructions regarding the submittal information (page limitations, number of copies, etc.)
- proposal deadline
- copy of agreement for professional services

A department director may evaluate proposals for smaller projects, but a review panel of at least three employees is recommended for more complex projects. City staff should review all submittals received prior to the deadline to ensure they comply with the requirements of the RFP. The director or review panel should then use the evaluation criteria to evaluate each proposal.

Guidelines for issuing RFPs and RFQs are as follows:

Dollar Threshold: \$0 to \$25,000

Competitive Process: Minimal competition

Major Activities:

- Select qualified firms (1-3) based on established criteria from MRSC roster
- OR advertise for statements of qualifications and proposals from interested firms
- Ask for proposals from selected firm(s)
- Select most qualified firm
- Negotiate a contract with the firm deemed the most highly qualified
- Document the process

Dollar Threshold: \$25,000 to \$100,000

Competitive Process: Informal Competition

Major Activities:

- Select 3-5 qualified firms based on established criteria from MRSC roster
- OR advertise for statements of qualifications and proposals from interested firms
- Prepare written solicitation, 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
- Send to a minimum of 3 firms
- Evaluate responses and select most qualified firm
- Negotiate a contract with most qualified firm
- Document the process for file, including selection criteria, names of firms considered, all responses to RFP, basis for award decision, and copy of contract

Dollar Threshold: Over \$100,000

Competitive Process: Formal Competition

Major Activities:

- Prepare formal solicitation document (RFP or RFQ/RFP)
- Publish legal notice in major daily newspapers

- Post solicitation document on City website
- Develop score sheets for use by evaluators
- Issue RFP or RFQ/RFP to a minimum of six firms.
- Conduct pre-proposal conference, if required in RFP or RFQ/RFP and issue addendum
- Provide answers to bidders' questions via addenda and post on website
- Date and time stamp proposals received by the due date
- Evaluate proposals strictly against criteria set forth in the RFP or RFQ/RFP and score. Use 3 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine ranking of proposers
- Schedule and conduct oral interviews of top finalists, if desired
- Determine final scoring and select most qualified firm
- Notify successful and unsuccessful firms
- Negotiate a contract with most qualified firm
- Conduct debriefing conferences with unsuccessful proposers, if requested

## 8.0 ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

Services for professional architectural (including landscape architectural), engineering or surveying services are procured using the qualifications based selection requirements in Chapter 39.80 RCW. Examples include architectural blueprints, road design, and sewer and water system design. The requirements outlined in that chapter, as stated in these guidelines, or as may be amended by the State Legislature, must be carefully followed.

### 8.1 ANNUAL ROSTER

As an alternative to creating and maintaining the City's own annual roster for the procurement of architectural, surveying, and engineering services, the City Manager is authorized to enter into agreements with the MRSC and/or any other agencies for use of their annual rosters as long as such rosters are in compliance with the latest state of Washington rules, regulations, requirements and laws regarding the procurement of architectural, surveying, and engineering services. The City currently uses MRSC's roster.

The City encourages architectural, engineering and surveying firms to submit to MRSC a statement of qualifications and performance data annually. When services are needed, the City will evaluate current statements of qualifications and performance data on file with those submitted by other firms regarding a proposed project.

### 8.2 CONTRACT NEGOTIATIONS

Discussions will be conducted with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Using criteria established by the City for the project, category, or type of services needed, a professional services contractor will be selected that is deemed to be the most highly qualified to provide the services required for the proposed project. See Section 7.2 for the RFQ and RFP process. RFPs for architectural, engineering, and surveying services may not request a price. The City must select the most qualified firm and then negotiate a price for the project.

The City will negotiate a contract with the most qualified firm at a price that the City determines is fair and reasonable. In making its determination, the City will take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the service to be provided. If the City is unable to negotiate a satisfactory contract with the firm selected at a price that is determined fair and reasonable, negotiations with that firm will be formally terminated. Another firm will then be selected and the process continued until an agreement is reached or the process terminated.

Contracts for these services will be approved in accordance with the contract approval levels outlined in Section 3.2.

## 9.0 CONTRACT AMENDMENTS

The City Manager may execute an amendment to a contract without City Council approval, provided that the amendment:

- Simply extends the time of completion for a project. Such an extension can be for up to one year from the original termination date of the contract.
- Provides for a cost increase that does not exceed 10% of the original contract cost (or \$50,000, whichever is greater), and is supported by the City's budget.
- Is solely for "On-Call" services to ensure compliance with City Codes and regulations by development applications and studies associated with development applications, when the cost of the work performed is recovered from applicant reimbursements or applications fees. Examples include agreements for geotechnical studies and traffic impact analysis.

All changes to the scope of work must be done by contract amendment. Substantial changes to the scope of work must be submitted to the City Attorney for a determination as to whether the work should be awarded as a new contract.

## 10.0 SOLE SOURCE AND EMERGENCIES

Situations may occur when competition among multiple vendors is not practical.

These situations, as outlined in RCW 39.04.280, include:

- There is clearly and legitimately only one source capable of supplying the good or service in a timely fashion.
- There are special circumstances or market conditions that result in only one appropriate source. (This includes parts and services for equipment, and technical support for computer software or hardware, that the City is already using. Other costs associated with a potential purchase, such as the need for additional staff training, may also be considered.)
- Purchases of insurance or bonds.
- In the event of an *emergency*.

Purchases may be made from a *sole source* vendor without soliciting other quotes or bids. In non-emergency situations, written documentation demonstrating the appropriateness of a sole source purchase shall be submitted to the Finance Department in advance of the purchase. Finance (and the City Attorney, when needed) will evaluate whether a vendor can legitimately be defined as a sole source.

If an *emergency* exists, the City Council or the person(s) designated by the Council to act in the event of an emergency may:

- Declare that an emergency situation exists.
- Waive competitive requirements.
- Award, on behalf of the City, contracts necessary to address the emergency situation (including, but not limited to, contracts for architectural and engineering services).

Chapter 2.44 BIMC contains additional provisions relating to emergency management. RCW 39.04.280 requires that a written finding of the existence of an emergency be made and entered into the public record no later than two weeks following the award of the contract.

## 11.0 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS

RCW 39.34.030 allows the City to join with other governmental agencies for the purchase of supplies, equipment, or services. This is done by entering into a written Intergovernmental Cooperative Purchasing Agreement (also known as an “Interlocal Agreement”).

Prior to making a purchase under such an agreement, the City must ensure that the procedure used by the agency that originally awarded the bid, proposal, or contract is allowable with the City’s purchasing policy. The originating agency must also have fulfilled one of two additional public notice requirements:

- Posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations.
- Provided an access link on the state’s web portal to the notice.

The City may also make a bid call with another government entity as a joint purchase that complies with the procurement requirements of both jurisdictions.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from City of Bainbridge Island’s contracts or purchase orders, provided that other agencies provide similar rights and reciprocal privileges to the City of Bainbridge Island.

Pursuant to RCW 39.34.030, the City may make purchases through state contracts. The City has signed a Master Contracts Usage Agreement with the Department of Enterprise Services (“DES”). The DES’ webpage provides information and instructions for making purchases with the state contract.

The City Council shall approval all Intergovernmental Cooperative Purchasing Agreements.

## 12.0 VENDOR RELATIONS

### 12.1 CODE OF ETHICS

Employees will follow applicable personnel policies in this subject area.

### 12.2 QUOTE OR BID REVISIONS

If a vendor is permitted to submit a revised quote or bid, other competitors will be given the same opportunity. Bidders are expected to offer their best bid first, and offering an opportunity to re-quote should be done only when absolutely necessary.

### 12.3 SAMPLES

When vendors offer samples for evaluation, they will be accepted only under the following conditions:

- The sample is accepted as property of the City.
- The product is of a type presently in use by the City, or is of potential use. Samples of goods not likely to be purchased are not to be accepted.
- The quantity or size of the sample is relatively small and of minimal value.
- Any chemicals offered as vendor samples shall not be accepted unless accompanied by an OSHA product safety data sheet or material safety data sheet (MSDS).
- If vendor samples are accepted, they must be sent to the appropriate location or department for testing.
- Samples that are requested for evaluation must be purchased.

### 12.4 LOCAL BUSINESS PARTICIPATION

The City will take affirmative steps not only to encourage local businesses to apply to participate in the procurement process, but to the extent legally possible, the City will consider the use of those local businesses.

## 13. VENDOR APPEALS

Vendors may appeal or protest a proposal solicitation or award of contract issued by the City of Bainbridge Island, provided that the vendor strictly follows the procedures described below.

Prior to the deadline for submitting bids or proposals, vendors may appeal or protest specifications, terms, or requirements. After the deadline for submission of bids or proposals, vendors may appeal or protest the award or pending award to the apparent low bidder, or the selection of the apparently most advantageous proposal.

### 13.1 PROCEDURES FOR INITIAL APPEAL OR PROTEST

The appeal or protest must:

- Be submitted in writing;
- Explicitly identify itself as an appeal or protest;
- Explicitly identify the bid/project/request for which the appeal or protest is made;
- Explicitly state all reasons and bases in law and fact supporting the appeal or protest (including, but not limited to, identification of any and all specifications, terms, requirements, or conditions to which the vendor objects);
- Include any and all supporting documents; and
- Be filed with the City Clerk within the following deadlines:
  - For appeals or protests involving specifications, terms, conditions, or requirements, no later than 7 business days prior to the bid deadline.
  - For appeals or protests involving an award or pending award – no later than 5 business days after the award is made.

### 13.2 CONSIDERATION OF INITIAL APPEAL OR PROTEST

A vendor's initial appeal or protest will be reviewed by the City Manager, the City Attorney, the Director of the procuring department, and the Finance Director, or their designees.

The initial appeal or protest will be decided based upon the written materials, supporting documents, and other information obtained by those reviewing the appeal or protest. In the event that a meeting or conference with the appellant or protestor would materially assist the City in making its decision, a meeting may be scheduled.

Only those issues identified by the appellant or protestor in the initial written appeal or protest filed with the City Clerk will be considered. The City Attorney or designee will issue a written decision no later than 10 business days after the filing of the initial appeal or protest with the City Clerk.

### 13.3 APPEALS FROM DENIAL OF INITIAL APPEAL OR PROTEST

A vendor may only appeal the City's initial decision by following the procedures described in this section. The appeal will be decided by the City Council.

The appellant or protestor must file the appeal or protest in writing with the City Clerk no later than 7 business days after the date of the City's written decision. The appeal must state the basis in law for the appeal, include a copy of the initial appeal or protest, and the decision from which the appellant or protestor appeals, and state whether the appellant requests time to appear before the Council to present the appeal.

Council will not consider any issues that were not raised in the initial appeal or protest. At its sole discretion, Council may decide to allow the appellant to make any presentation other than the written submission if the Council finds that such a presentation would materially aid its decision.

Council may form a committee of less than the entire Council to consider the appeal and recommend a decision to the entire Council.

The Council's decision shall be final and binding.

## 14.0 SALE OR DISPOSAL OF CITY PROPERTY

### 14.1 AUTHORIZATION

The City Manager may authorize the sale or disposal of City property, provided that the property is no longer needed and that notice of intention to sell is given as provided in this section. The property will be deemed as *surplus* or *scrap*.

Permission must be obtained from the grantor before selling or disposing of any property which was purchased with grant funding. Failure to obtain permission could obligate the City to repay grant funding used to purchase the property.

### 14.2 SALE VERSUS DISPOSAL

Sales of surplus items to other governmental agencies may occur via private sale. Other sales of surplus items shall be sold via public auction. It is the City's policy to utilize third-party auction services rather than conduct the auction itself.

Scrap may be sold via public auction, via private sale at prices established by current market conditions, or may be disposed of if there is not a viable market. The City Manager may donate items with a nominal value to a charitable organization which is tax exempt pursuant to Internal Revenue Code Section 501(c)(3).

### 14.3 TRADE-INS

Trade-in of old equipment to upgrade similar or reasonably related equipment is permitted when it is in the best interest of the City. The requesting Department Director shall be responsible for the sale, trade, or other disposition of surplus property and scrap belonging to the City of Bainbridge Island when used for a trade-in.

### 14.4 PUBLIC NOTICE OF SALE

If the City opts not to use a third-party auction service and instead chooses to conduct an auction itself, the notice of intent to sell surplus or scrap at a public sale shall be published once a week for two consecutive weeks in the City's official newspaper immediately prior to the sale. The notice shall state the time and place at which the property will be sold. Any other reasonable means to attract potential buyers to the sale may be used in conjunction with the notice posted in the official newspaper.

### 14.5 CONFLICT OF INTEREST

Because City employees have more information than the general public about City property to be auctioned and an appearance of fairness is necessary to maintain the public trust, employees, their spouses, and their agents are not permitted to bid on or buy property auctioned or sold directly by the City.

## 14.6 INVENTORIED ITEMS

Surplus, scrap or trade-in of any inventoried item will be confirmed by the employee responsible and approved by the Department Director. A Property Disposition form will be completed and submitted to the Finance Department.

Each Department will be responsible for storing and retaining an inventory of such property until issued disposition instructions.

## 15.0 ADDITIONAL SIGNING AUTHORITY

### 15.1 GRANTS

If a grant would require material matching dollars or impact policy, the Administration will seek City Council approval prior to applying. The Administration will bring grant opportunities it becomes aware of to the full Council. The Council may also initiate the process of pursuing a grant. If other entities, such as non-profit organizations or community interest groups, wish to apply for a grant on behalf of the City, the group must first obtain the approval of City Council.

Amendments to grants that simply extend the term of the grant may be approved by the City Manager.

### 15.2 INTERLOCAL AGREEMENTS

All interlocal and interagency agreements must be approved by City Council. Amendments to interlocal agreements that simply extend the term of the agreement may be approved by the City Manager.

### 15.3 REAL PROPERTY

Contracts and agreements that relate to City-owned real property (other than as described below) must be approved by the City Council.

The City Manager is authorized to enter into licenses, permits or other agreements in order to manage the use of the City's right-of-way. Any such license, permit, or other agreement shall contain the provisions set forth in Resolution No. 2013-09.

The City Manager, Director of Public Works and Director of Planning and Community Development are authorized to accept dedications, easements, rights-of-way, fee estates or other interests in real property for use by or on behalf of the city. Pursuant to this authority, the City Manager, the Director of Public Works, or the Director of Planning and Community Development are each authorized to sign and accept delivery of real property acquisition documents on behalf of the City.

The Director of Planning and Community Development is further authorized to sign and accept documents relating to any notice to title recorded with Kitsap County in connection with the Critical Areas ordinance.

### 15.4 SETTLEMENT AUTHORITY

The City Manager is authorized to sign settlement agreements requiring the City to pay less than \$50,000 to resolve and settle any damage claims or suits against the City and to execute all necessary documents pursuant to the resolution of such claims. The City Manager shall have the

further authority to approve the issuance of checks pursuant to the resolution of such claims. Claims settled by the City Manager under this authority will be reported to the City Council at the next City Council meeting following the settlement.

## 16.0 COMPLIANCE WITH POLICY

A violation of any of the provisions of this policy may result in discipline to the individual involved where, in the opinion of the City Manager (in the case of employees) or the City Council (in the case of an elected official or City Manager), such discipline is in the interest of the public and good government.

Officers and employees should be aware of possible personal penalties, termination, and financial liability for intentional or willful violation of competitive bidding laws. RCW 39.30.020 states:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution, or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution, or other enactment requiring competitive bidding upon such contract shall be held liable to civil penalty of not less than three hundred dollars and may be liable, jointly and severally, with any other such municipal officer for all consequential damages to the municipal corporation.

If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit their office. For purposes of this section “municipal officer” shall mean an “officer” or “municipal officer” as those terms are defined in RCW 42.23.020(2). [Emphasis added.]

## 17.0 SUMMARY OF PURCHASING GUIDELINES

### PUBLIC WORKS PROJECTS

| Estimated Cost      | Signing Authority     | Purchase/Bidding Process  | Contract Mechanism            |
|---------------------|-----------------------|---|-------------------------------|
| \$0 - \$500         | Public Works Director | No competition needed   | Estimate/Invoice              |
| \$501 - \$2500      |                       | Minimal competition – call for 2-3 quotes/bids (phone or written )  | Small Project Contract        |
| \$2501- \$10,000    |                       | Minimal competition – call for 2-3 quotes/bids (phone or written) at a minimum via the small works roster         |                               |
| \$10,001 - \$35,000 | City Manager          | Solicit 3 quotes/bids from small works roster   | Limited Public Works Contract |
| \$35,001- \$50,000  |                       | Solicit 5 quotes/bids from small works roster. Provide notice to others on roster for projects \$150,000 or more. | Small Works Contract          |
| \$50,001- \$300,000 | City Council          | Formal bidding process with advertisement   |                               |
| \$300,001- Greater  |                       |   |                               |

### PURCHASING

This matrix is to be used for purchasing charges that includes, goods, equipment, materials and supplies that are **not** part of a Public Works project (telecommunications is not included and is governed by RCW 39.04.270).

For items that are defined as a purchased service, please see “Non-professional Services” matrix. For purchases relative to a public works project, please see “Public Works Projects.”

| Purchasing Procedure   | Signing Authority | Purchase \$10,000 Or Less | Purchase \$10,001 - \$50,000 | Purchase Over \$50,001 |
|--|-------------------|---------------------------|------------------------------|------------------------|
| Direct Negotiations – Informal                               | Directors         | X                         |                              |                        |
| Quotes (3 minimum) Telephone, fax or email – Informal        | City Manager      |                           | X                            |                        |
| Bids (3 minimum) Must be in writing – Formal Competitive Bid | City Council      |                           |                              | X                      |

## NON-PROFESSIONAL SERVICES

### (PURCHASED SERVICES)

Services provided by vendors for routine, necessary and continuing functions of a local agency, relative to a physical activity. Examples include courier, janitorial, disposal, vehicle inspection repair or up-fitting, office furnishing install.

Note that prevailing wages may need to be paid in connection with the contract.

| <b>Bidding Procedure</b>                                     | <b>Signing Authority</b> | <b>Purchase \$10,000 or Less</b> | <b>Purchase \$10,001 - \$50,000</b> | <b>Purchase Over \$50,001</b> |
|--|--------------------------|----------------------------------|-------------------------------------|-------------------------------|
| Direct Negotiations – Informal                               | Directors                | X                                |                                     |                               |
| Quotes (3 minimum) Telephone, fax or email – Informal        | City Manager             |                                  | X                                   |                               |
| Bids (3 minimum) Must be in writing – Formal Competitive Bid | City Council             |                                  |                                     | X                             |

## PROFESSIONAL SERVICES

### (PERSONAL SERVICES AND ARCHITECTURE & ENGINEERING SERVICES)

RCW 39.80 must be followed for architectural, engineering and surveying services (see Section 8.0) and price may not be considered in the initial selection process.

| <b>Agreement Amount</b> | <b>Signing Authority</b> | <b>Recommended Solicitation Process</b>                                |
|-------------------------|--------------------------|--|
| \$25,000 or Less        | City Manager             | Minimal competition needed. Contact 1-3 qualified firms.               |
| \$25,001 to \$50,000    |                          | Informal competition. Prepare RFQ/RFP and contact 3-5 qualified firms. |
| \$50,001 to \$100,000   | City Council             |  |
| Over \$100,000          |                          |  |

## 18.0 GLOSSARY

*Appropriation* - City Council authorization to expend funds for a specific purpose.

*Bid* – The executed document submitted by a bidder in response to a notice inviting bids, a proposal, or a request for quotations.

*Bid Bond* – A bond or deposit submitted with a bid, for a sum not less than 5% of the bid amount (including sales tax). Designed to help ensure that a bid has been made in good faith and that the bidder will enter into a contract if a bid is accepted.

*Bidder* – A person or legal entity who submits a bid in response to a solicitation.

*Change Order* – Written modification or addition to a purchase order or contract authorized by the appropriate authority.

*Competitive Bidding* – The submission of prices by individuals or firms competing for a contract, privilege, or right to supply merchandise or services.

*Contract* – A verbal or written, legally binding mutual promise between two parties.

*Designee* – A duly authorized and appointed representative of an employee that holds a superior position to the person appointed to represent him or her.

*Emergency* – Unforeseen circumstances beyond the City's control that present a real, immediate threat to the proper performance of essential functions, or that will likely result in material loss to property, bodily injury, or loss of life if immediate action is not taken.

*Lowest (Responsive and) Responsible Bidder* – The bidder submitting the lowest price that is also capable of performing the proposed contract. See also “responsive bidder” and “responsible bidder.”

*Non-Professional Services or Purchased Services* – Services provided by vendors for routine, necessary and continuing functions of a local agency, relative to a physical activity. Examples include, but are not limited to:

- Courier services
- Janitorial services
- Disposal services
- Vehicle inspection, repair or up-fitting
- Office furnishing installation
- HVAC system maintenance

*Non-Responsive Bid* – A bid that does not conform to the essential requirements of the notice inviting bids.

*Ordinary Maintenance* – Work not performed by contract and that is performed on a regular basis (daily, weekly, monthly – but not less than once per year) to service, check or replace items that are not broken. Also defined as work not performed by contract that is not regularly scheduled, but is required to maintain an asset so that repair does not become necessary.

*Prevailing Wages* – The hourly wages, 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 Washington State Department of Labor and Industries for each trade and occupation employed in the performance of public work. They are established separately for each county, and are reflective of local wage conditions.

*Professional Services* – Services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement. Examples include, but are not limited to:

- Architectural, engineering or design services
- Accounting and auditing
- Bond or insurance brokerage
- Consulting services
- Legal services
- Real estate appraisals or title abstracts
- Relocation assistance
- Surveying
- Soils analysis or core testing
- Water quality monitoring

*Public Work* – All work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or which is by law a lien or charge on any property therein.

*Quotation* – A statement of price, terms of sale, and description of goods or services offered by a prospective seller to a prospective purchaser, usually for purchases below the amount requiring formal bidding. For professional service contracts, quotes would typically include the qualifications of the provider and may or may not include pricing information depending on the situation.

*Request for Proposal (RFP)* – All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals. The RFP procedure permits negotiation of proposals and prices, as distinguished from competitive bidding and a notice inviting bids. The procedure allows changes to be made after proposals are opened and contemplates that the nature of the proposals and/or prices offered will be negotiated prior to award.

*Request for Quotation/Qualification (RFQ)* – A document generally used for obtaining a summary of qualification from prospective providers of professional services.

*Responsible Bidder* – A person or legal entity who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability which will assure good faith performance.

*Responsive Bidder* - A person or legal entity who has submitted a bid conforming in all material respects to the terms and conditions, specifications and other requirements in a request for bids.

*Scrap* – Any equipment or material which cannot service its original purpose.

*Sealed Bid* – A bid which has been submitted in a sealed envelope to prevent its contents from being revealed before the deadline for the submission of all bids.

*Sole Source* – An award for a purchase to the only reasonably known capable vendor due to the unique nature of the requirement, the vendor, or market conditions.

*Specifications* – A description of what the purchaser seeks to buy or accomplish – and consequently what a bidder must be responsive to in order to be considered for award of a contract. May be a description of the physical or functional characteristics, or the nature of a supply or service. May also include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

*Surplus property* – Any tangible, personal property owned by the City that is no longer needed or usable, presently or in the foreseeable future.

# MRSC PROJECT CLOSURE RETAINAGE GUIDELINES

### MRSC Project Closure/Retainage Release Guidelines (Reviewed April 2015)

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

Note 1: Contract documents must require that prevailing wages must be paid and must contain or link to 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. NOC and Certificate **not** required for projects under \$35,000.

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. Or the agency can view them online.

Note 6: City files Notice of Completion of Project with L&I, which issues 'Release' from liability for industrial insurance premiums for the project. L&I may also demand payment for unpaid premiums on other projects per Chapter 423, 2009 Session Laws. NOC and Release **not** required for projects under \$35,000.

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. NOC and Certificate **not** required for projects under \$35,000.

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.

## REFERENCES

“City Bidding Book, Washington State” by MRSC (2015)

“Contracting for Services: Guidelines for Local Governments in Washington State” by MRSC (November 2013)