

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised June 10, 2009 * Effective 7/26/09



What you need to know before using this chart:

- My agency is a _____?
- If my agency is a city or county, the population is _____?
- If my agency is a city, we are a: (First Class City), (Code City), (2nd Class City) (Town)?
- If my agency is a school district, we have _____ number of students district-wide?
- If my agency is a county, we (have) (do not have) a central purchasing department?

Our purchase/project is: [Note - "Tabs" are hyperlinked in the electronic version.]

Tab A:	Purchase of equipment, supplies or materials unrelated to a public works project?
Tab B:	Purchase of architectural, engineering, surveying or landscape architectural services?
Tab C:	Purchase of other consulting services?
Tab D:	Purchase of other services? Janitorial services? Official Newspaper?
Tab E:	Purchase of solid waste collection and disposal services?
Tab F:	Purchase of electronic data processing and telecommunications systems?
Tab G:	Purchase or construction of pollution control equipment?
Tab H:	Lease of equipment without option to purchase?
Tab I:	Possible emergency, sole source purchase or special facility or market condition?
Tab J:	Purchase at auction?
Tab K:	Participation in - or lease of - a privately constructed project?
Tab L:	Public works project:
Tab L1:	Project (including sales tax) is estimated to cost more than \$300,000?
Tab L2:	Project (including sales tax) is estimated to cost less than \$300,000?
Tab L3:	Project may be below bid limits? Single craft? Multiple crafts?
Tab M:	Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?
Tab N:	Purchase of energy?

Tab A Purchase of equipment, supplies, services, or materials unrelated to a public works project?

	Quotes Allowed	Vendor List Allowed (Note A)	Competitive Bids Req'd
Cities and Towns			
First Class City Over 150,000	Purchasing policies are set by City Council.		
First Class City Under 150,000	Purchasing policies are set by City Council.		
Code City Over 20,000	Purchasing policies are set by City Council.		
Code City Under 20,000	< \$7,500	< \$15,000	> \$15,000
2nd Class City & Towns	< \$7,500	< \$15,000	> \$15,000
Counties			
Over 400 K w/ Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Under 400 Kw/ Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Under 400 K w/o Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Water & Sewer Districts (Title 57 RCW)	< \$40,000	< \$50,000	> \$50,000
Fire Districts (Title 52 RCW)	< \$10,000	< \$50,000	> \$50,000
Port Districts (Title 53 RCW)	No bid limits.		
Public Utility Districts (Title 54 RCW)	See RCW 54.04.070 & 54.04.082		
Public Hospital Districts (Ch. 70.44 RCW)	N/A	< \$15,000	> \$15,000
Housing Authorities (Ch. 35.82 RCW)	??	??	??
School Districts (Title 28A.335.190 RCW)	< \$40,000	< \$75,000	> \$75,000
	Except for book purchases.		
Metropolitan Park Districts [Ch. 35.61 RCW]	< \$40,000	< \$50,000	> \$50,000

Note A: See RCW 39.04.190.

Tab B Purchase of architectural, engineering, surveying or landscape architectural services?

Contracts for professional architectural, landscape architecture, surveying and engineering services require quality based selection (QBS) and an advertising and negotiation process in accordance with Ch. 39.80 RCW. Look at: <http://www.mrsc.org/pubworks/construct/conman2.htm>

Tab C Purchase of other consulting services?

Contracts for other professional services (defined as activities such as consulting that have a primarily intellectual final product) may or may not require an advertising and negotiation process, depending on individual agency policies and/or grant funding agency policies.

Tab D Purchase of other services? Janitorial services? Official Newspaper?

Services are activities or projects for which an agency contracts and which are not considered a public work. Washington cities or towns are not required to seek competitive bids for services, except towns, second class cities and code cities with a population under 20,000 who must call annually for bids to select a city's official newspaper. Counties are not required to seek bids for any services, except annually for bids to select a county's official newspaper. Other agencies are generally not required to seek bids for services. However, the agency's attorney should be consulted if there is a question about bidding for specific services. Prevailing wages are required on public building service (janitorial) contracts (RCW 39.12.020). While RCWs generally do not require that services be put out for competitive bid, more restrictive policies may be/may have been adopted by an entity's governing body.

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Tab E Purchase of solid waste collection and disposal services?

Solid waste collection and disposal contracts do not have to be bid. An RFQ/RFP process as noted in RCW 35.21.156 is allowed (and recommended).

Tab F Purchase of electronic data processing and telecommunications systems?

RCW 39.04.270 authorizes municipalities to use a "competitive negotiation" process as an alternative to the competitive bid process when purchasing telecommunications and data processing (computer) equipment or software. This alternative process requires publishing a request for proposals (RFP) that identifies significant evaluation factors, including price, and their relative importance and provides reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.

Tab G Purchase or construction of pollution control equipment?

Note the following excerpt from the MRSC Bidding Book, pages 28 & 29:

Chapter 70.95A RCW, relating to pollution control facilities and enacted in 1973, may offer an important exception to bidding requirements. Although the primary emphasis of the chapter relates to financing pollution control facilities, one section may exempt certain projects from bidding requirements that might otherwise apply. RCW 70.95A.090 states in part: The [pollution control] facilities shall be constructed, reconstructed, and improved . . . in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for the award of contracts for such purpose . . . is not applicable to any action taken under authority of this chapter.

The term "facility" is defined to mean "any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof . . . which is used or to be used . . . in furtherance of the purpose of abating, controlling, or preventing pollution." "Pollution" is defined broadly to include water pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

Although there have not been any relevant appellate court decisions or attorney general opinions on the statute, it would appear that its terms could be used to forgo bidding whenever a city or town constructs or reconstructs a building or structure or acquires fixtures or equipment which will be used for pollution control. Given the broad scope of the statute, this exception to the bid laws could be far-reaching. Cities may be able to build a sewage lagoon, aerate a lake, or purchase a landfill scale, all without going out for bids.

However, in view of the lack of appellate or other authority regarding the chapter's use, cities should use caution in deciding to make use of its provisions. Asking the Department of Ecology to certify that the project is designed to abate, control, and/or prevent pollution would be a judicious step to take before ignoring the bid laws.

Almost all local government agencies can make use of this statute.

Tab H Lease of equipment without option to purchase?

In cities, leases without an option to purchase are not subject to bid limits and do not need to be competitively bid. Debt limits may apply, however. In counties, all leases must be competitively bid. All other agencies must follow their enabling statutes or board/commission policies.

Tab I Possible emergency, sole source purchase or special facility or market condition?

Competitive bidding requirements may be waived by the governing body of the municipality as noted in RCW 39.04.280 for:

- (a) Purchases that are clearly and legitimately limited to a single source of supply;
- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.



Tab J Purchase at auction?

All agencies can purchase at auctions (RCW 39.30.045)

Tab K Participation in - or lease of - a privately constructed project?

RCW 39.04.260 states that "Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW (prevailing wage laws).

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Tab L: Public works project:

See Tab L3 to see if the estimated project cost is below bid limits for your agency.

If the cost of a public works project exceeds applicable bid limits, a local government **must** use a competitive bid process, small works roster process or limited public works process for public works projects. [RCW 39.04.010](#) defines the term "public work" as follows:

"The term public work shall include 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. (Emphasis added.)" Note that this definition of public work includes construction and repair but excludes ordinary maintenance. But what is "ordinary maintenance"? The statutes provide no definition. However, [WAC 296-127-010\(7\)\(b\)\(iii\)](#), which defines "ordinary maintenance" in the context of prevailing wages, can be used to craft a definition that distinguishes ordinary maintenance from a public work for bidding purposes:

[Ordinary maintenance is] defined as work *not performed by contract* and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary. (Emphasis supplied.)

To correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid, the total cost of each project or purchase must be estimated. The total construction cost - estimated as if the project were to be bid - is used to make that determination. To be included are materials, supplies, equipment, and labor on the construction of that project **AND** applicable sales and use taxes. However, the value of volunteer labor, material, or equipment need not be included in the cost estimate for a public works project, as these are not a cost to the agency.

Tab L1: Project (including sales tax) is estimated to cost more than \$300,000?

Projects over \$300,000 must be competitively bid except for agencies who are authorized to use the alternate public work contracting procedures of chapter 39.10 RCW or if the project is for pollution control project which may qualify under chapter 70.95A RCW.

Tab L2: Project (including sales tax) is estimated to cost less than \$300,000?

If the estimated project cost is less than \$300,000, the agency may use the small works roster process of RCW 39.04.155.

\$150,000 - \$300,000

If the estimated cost of the work is \$150,000 to \$300,000, a local government, other than a port district, that solicits bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors that quotations on the work are being sought. The local government has the sole option of determining whether this notice to the remaining contractors is made by publishing notice in a legal newspaper in general circulation in the area where the work is to be done; mailing a notice; or sending a notice by facsimile or other electronic means.

<150,000

Quotations may be invited from all appropriate contractors on the appropriate small works roster for all projects less than \$300,000. 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.

< \$35,000

RCW 39.04.155(3) allows authorized local governments to solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and to award the contract to the lowest responsible bidder as defined under RCW 43.19.1911 for contracts of less than \$35,000. For these "limited public works projects," a local government 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 local government has the right of recovery against the contractor for any payments made on the contractor's behalf. SHB 1328 (Chapter 210, 2007 Laws) allows use of the combined intent and affidavit process of RCW 39.12.040(2) for projects using this limited public works process.

SHB 1328 (Chapter 210, 2007 Laws) Added RCW 39.04.155 (5):

(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section 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.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts .



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< \$35,000

RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less - 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 the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

< \$2,500

Intent to pay prevailing wages for any size project must be approved by Department of Labor and Industries before payment is made under contract. Affidavit that prevailing wages have been paid is always required following completion of contract. For contracts under \$2,500, the Intent and Affidavit may be combined and sent to Department of Labor and Industries after contract completion.

Small Works Roster Setup - The municipality must first pass a resolution or ordinance authorizing use of the SWR process and establishing procedures for the award of public works contracts using the SWR process for contracts up to \$200,000 and limited public work process up to \$35,000. An agency may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. 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 agency as a condition of being placed on a roster or rosters. At least once a year, the municipality 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 agency may require master contracts to be signed that become effective when a specific award is made using a small works roster. Several agencies may agree to use the same small works roster. However, an interlocal contract or agreement among local governments establishing a small works roster or rosters must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

Tab L3: Project may be below bid limits? Single craft? Multiple crafts?

Agency	RCW Cite	Contracting Bid Limits	Day/Agency Labor Limits
First Class Cities	RCW 35.22.620	None (1)	\$45K, \$90K (2)
Code Cities, 2nd Class Cities and Towns	RCW 35.23.352	\$40K, \$65K	\$40K, \$65K
Counties Over 400K	RCW 36.32.235 & 250	\$40,000	\$45K, \$90K (4)
Counties Under 400K	RCW 36.32.240 & 250	\$40,000	None, (2) (4)
Water & Sewer Districts (Title 57 RCW)	RCW 57.08.050	\$20,000	\$20,000
Fire Districts (Title 52 RCW)	RCW 52.14.110	\$20,000	None
Port Districts (Title 53 RCW)	RCW 53.08.120	\$300,000	40K? (3)
Public Utility Districts (Title 54 RCW)	RCW 54.04.070	\$25,000	\$25,000
Public Hospital Districts (Ch. 70.44 RCW)	RCW 70.44.140	\$75,000	\$75,000
Housing Authorities (Ch. 35.82 RCW)	RCW 35.82.070	???	???
School Districts (RCW 28A.335.190)	RCW 28A.335.190	\$40,000	\$40,000
Metropolitan Park Districts [Ch. 35.61 RCW]	RCW 35.61.135	\$20,000	\$20,000

(See RCW 35A.40.210)



Notes:

1) See City Bidding Book, Page 7

2) See County Bidding Book, Page 6

3) If cost is over \$40K, a port must determine if it is less expensive to contract. If contracting out is less expensive, the port district may contract out such project.

4) Also subject to county road force limitations for road funds under RCW 36.77.065

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Tab M Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?

Chapter 39.34 RCW allows cooperative purchasing between public agencies (political subdivisions). For the purposes of this chapter, the term "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement (ICPA) with the each other may make purchases from each others contract awards, if the Vendor has agreed to such participation. The awarding agency does not accept any responsibility for orders placed by other public agencies. A public agency purchasing under another agency's contract accepts responsibility for compliance with statutes (including bid limits) governing purchase by or on behalf of itself.

Each participating agency must have the power to do individually what it agrees to do jointly. Public agencies may purchase from contracts entered by other public agencies if

- The contract is determined to have been awarded in compliance with bidding requirements of the agency seeking to purchase, except note HB 2615 (2004).
- There is no statutory provision prohibiting such a purchase.

HB 2615 (2004) added this language to RCW 39.34.030:

- With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either
 - (i) 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,
 - or ii) provided an access link on the state's web portal to the notice.



Tab N Purchase of energy?

RCW 39.35A states that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under RCW 39.35A, no otherwise applicable statutory procurement requirement applies. A performance based energy contract is defined as: "... one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy."

The Washington State Department of General Administration is to maintain a registry of energy service contractors and provide assistance to municipalities in identifying available performance-based contracting services.