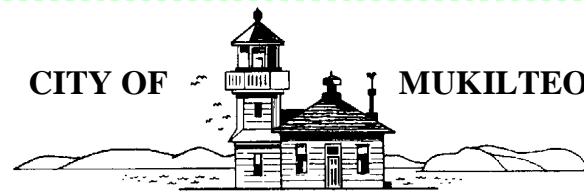


City of Mukilteo



4480 Chennault Beach Road, Mukilteo, WA 98275

Procurement Policies & Procedures

July 28, 2008

City of Mukilteo
Procurement Policies & Procedures
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Policy

All employees must follow established policies and procedures for procurement of equipment, materials, and services. Adherence to policies and procedures will ensure that public purchases and contracts are open, fair, and at the best value to the public.

Procedures are divided into four major areas: 1) Procurement of Goods and Services, 2) Bidding Requirements, 3) Reimbursement of Expenses, and 4) Other Issues.

Procurement of Goods and Services

City purchases are subject to authorization & quote/bid requirements as follows:

General Purchases:

- < \$5,000 No Competitive Bids Required, Department Selection
- \$5,000 - \$15,000 3 Verbal Quotes, Department Selection
- \$15,001 - \$20,000 3 Written Quotes, City Administrator or Mayor Approves
- > \$20,001 - \$40,000 Competitive Bid Required, City Administrator or Mayor Approves
- > \$40,000 Competitive Bid Required, City Administrator or Mayor Approves / Council Awards

Public Works Projects: (when Small Works Roster is not used) (RCW 35.22.620)

- < \$5,000 No Competitive Bids Required, Department Selection
- \$5,000 - \$15,000 3 Verbal Quotes, Department Selection
- \$15,001 - \$30,000 3 Written Quotes, City Administrator or Mayor Approves

One Craft or Trade, or street signaling or street lighting

- >\$30,000 Competitive sealed bid; City Administrator or Mayor Approves / Council Awards

Two or more Crafts or Trades

- \$30,001 - \$50,000 3 Written Quotes, City Administrator or Mayor Approves
- >\$50,000 Competitive Sealed Bid, City Administrator or Mayor Approves / Council Awards

Professional and Personal Services Contracts: (Ongoing contracts must be approved by Council bi-annually)

- < \$5,000 No Competitive Bid Required, Department Selection
- \$5,000 - \$30,000 No Competitive Bid Required, City Administrator or Mayor Approves
- >\$30,000 No Competitive Bid Required, City Administrator or Mayor Approves / Council Awards

Architectural & Engineering Services: (RCW 39.80) (Contract cannot exceed 3 years without new RFQ)

- < \$5,000 Advertise, Request For Qualifications Required, Department Selection
- \$5,000 - \$30,000 Advertise, Request For Qualifications Required, City Administrator or Mayor Approves
- >\$30,000 Advertise, Request For Qualifications Required, City Administrator or Mayor Approves / Council Awards

NOTE: Purchases may not be broken into multiple projects or purchases to avoid compliance with state statutes and City policies.

Public Works Projects and Prevailing Wage Laws

Public works projects (“...all work, construction, alteration, repair or improvement that is executed at the cost of the state or any other local public agency...”) including maintenance when performed by contract, are governed by chapter 39.12 RCW Prevailing Wages on Public Works requirements, *regardless of contract amount*. It is the *responsibility of the contracting employee to notify the vendor of prevailing wage requirements and obtain compliance documentation prior to awarding any public works contract*. Public works contracts will only be awarded to contractors who document compliance with the Washington State Prevailing Wage Law. The department head or designee managing the project is responsible for collecting compliance documents. *Failure to follow prevailing wage laws will result in delayed or denied payment to the vendor. The City CANNOT pay for public works projects that are in violation of prevailing wage laws.* (See Exhibit 7.)

Professional and Personal Services

Professional or personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, bond brokerage, insurance brokerage, legal, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing. Procurement of professional and personal services will be in accordance with RCW 39.80 and RCW 39.29.

A competitive process is not required for professional or personal services, other than professional engineering or architectural services for the design of City improvements.

Non-Architectural and Engineering Services

Professional and technical services include disciplines such as attorneys, computer programmers, financial analysts, bond counsels, artists, planners, and real estate appraisers.

Purchase of professional services requires completion of a City professional services contract that describes services to be performed and negotiated price.

Prior experience with the City, time-frame for completing projects, and the value of a negotiated agreement will be considered when choosing a consultant/firm to perform professional services, as defined in this section.

Architectural, Engineering and Design Services

State statutes require advance notice of the requirement for architectural, engineering and design services, evaluation of firms’ qualifications and performance, and negotiation with firms in accordance with adjudged qualifications. Architectural, engineering and design services contracts will be reviewed by the City Attorney to ensure RCW compliance.

Verbal Quotes

Purchases requiring verbal quotes must be documented by a properly completed verbal quote log. Verbal quote logs are included on the back of the City of Mukilteo Order Form, which may be obtained from Finance. (Exhibit 1).

Sole Source Purchases

A “sole source” is characterized as meeting one or more of the following standards: (a) the City department has conducted a screening process whereby it can justify purchase of a specific product; (b) the City requires legitimate specifications to which only one vendor can successfully respond; or (c) the product is available only through one manufacturer (or distributor) and the manufacturer so certifies. In any such case where the purchase exceeds \$5,000, the vendor shall certify that the City is getting the lowest price it offers anyone. Purchases in

excess of \$5,000 from a sole source vendor require prior approval of the Finance Department Director or designee and must be signed by requesting Department Director or Designee (Exhibit 2).

Conflicts of Interest

The City will not accept donations of materials or services in return for a commitment to continue or initiate a purchasing agreement. No employee will participate in procurement when they are aware of a conflict of interest, or accept gifts or gratuities from existing or potential vendors in return for a commitment to continue or initiate a purchasing relationship.

Bid Procedures

1. Authorization Request

Request from City Administrator authorization to call for bids. In special circumstances, the City Administrator may waive portions of the bid procedures. The “special circumstances” are limited to items where publication of bids may impinge on the safety of staff or City assets (Drug Task Force vehicles for example).

2. Publication of Notice

After City Administrator authorization, the requesting department director (or designee) will publish the Call for Bids in the official newspaper or a newspaper of general circulation most likely to bring responsive bids and ensure notice is posted on the City web page, at least 13 days prior to bid submittal deadline.

3. Notice Contents

Notice (or advertisement) for bids should contain definite specifications and procedures for bidders to use to estimate their bids. At a minimum, a bid notice for public works must include:

- Project title;
- Nature and scope of work;
- Where contract documents (plans and specifications) can be reviewed or 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,;
- Statement that the City retains the right to reject any and all bids and to waive minor irregularities in the bidding process;
- Statement that the contract involves “public work,” and that workers shall receive the prevailing rate of wage pursuant to the Prevailing Wages on Public Works Act (Chapter 39.12 RCW);
- List of the applicable prevailing wage rates; and
- Statement that the City is an equal opportunity employer and invites responsive bids from all qualified responsible bidders.

In addition, provide evaluation criteria; minimum qualifications; date, time, and location of pre-bid conference (if applicable); name, address, and telephone number of the project contact; and number of required copies will help bidders prepare responsive submittals.

4. Bid Opening

Bids are submitted to the City Clerk, where they are time and date stamped and processed. Bid opening will be announced to Mayor, City Administrator and department heads by department head or designee responsible for the project.

5. Report on Bids

The responsible department head or designee will prepare a report and recommendation on all bids received.

6. Bid Award

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered.

7. Rejection of Bids

The City reserves the right to reject any bid not in substantial compliance with the bid documents, or all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the City that it is in the public interest to do so.

The following shall apply to bid solicitations:

- Selection of a winning offer is based primarily on lowest responsive bid. Quality and expertise, however, must also be a consideration.
- To ensure consistency and fair process, the City will use standard forms, documents, contracts, and terms and conditions, when practical. The Finance Department will maintain templates for bid-related documents for use by departments. The City will use an evaluation selection committee to promote an open, proper selection. The requesting department director will appoint committee members to act in an advisory capacity.
- Minimum qualifications are stated to ensure respondents are reasonably qualified. Minimum qualifications cannot be used to eliminate qualified vendors. Minimum qualifications should be tested against the marketplace to ensure they aren't overly restrictive.
- When practical, the City will conduct a pre-bid conference to allow a thorough discussion of the City's intent, scope, specifications, and terms. Interested companies should be encouraged to attend.

Exemptions to competitive bidding requirements

Section 39.04.280 RCW provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases.

Competitive bidding requirements may be waived for:

1. Purchases that are clearly and legitimately limited to a single source of supply (Sole Source Vendor):

If, after conducting a good faith review of available resources, the requesting department director determines that there is only one source of the required materials, supplies, or equipment, a purchase contract may be awarded without complying with established bid requirements. The requesting department director will submit a written request for sole source procurement to the Finance Director for approval, and conduct price, terms, and delivery negotiations, as appropriate. The vendor must certify in writing that the City is getting the lowest offered price.

2. Purchases involving special facilities or market conditions:

The City Administrator may waive established bidding requirements if an opportunity arises to purchase favorably-priced equipment at an auction, or supplies or used goods that will be sold before the City can conduct the bid process.

3. Surplus Property:

The City may acquire surplus property from another government without the use of bids (RCW 39.33.010).

4. Purchases in the event of an emergency:

"Emergency" is defined as "...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." If an emergency situation has been declared, the City Administrator may waive competitive bidding requirements and the City may award all necessary contracts to purchase goods, materials, or services to address the emergency situation. Purchase order(s) must be properly documented as pertaining to an emergency as soon as possible following the event. If a contract is awarded without competitive bidding due to a declared emergency, the City Council must adopt a resolution certifying the emergency situation existed no later than two weeks following the award of the contract.

5. Interlocal Agreements

Interlocal Cooperative Purchasing Agreements

Pursuant to RCW 39.34, bidding is not required when purchases of materials, supplies, or equipment are made under State standard contracts or similar contracts executed by and through other local governments which have complied with state bidding requirements. The other government's bid process must have been conducted within the previous 12 month period to be valid for use by the City of Mukilteo. In addition, the City of Mukilteo must conduct a screening process whereby it can justify the purchase through an Interlocal Agreement. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

Approval and authority for entering into an Interlocal Cooperative Purchasing Agreement will be determined by the anticipated cost of the procurement. Blanket Interlocal Cooperative Purchasing Agreements where the costs of the potential purchases are not known will be treated as purchases over \$15,000.

In addition, the City may make a bid call with another government entity as a joint purchase complying with the bid requirements of the participating jurisdictions. Purchases made pursuant to any such agreement shall be separately invoiced to the respective purchasers in accordance with the purchases made by each; and each such purchaser shall be responsible for payment for its own purchases only. Purchases made for the City under a purchasing contract executed by a state, or agency or subdivision thereof, or by another governmental unit or public benefit nonprofit corporation shall be exempt from competitive bidding and related requirements.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from the City of Mukilteo's bids or quotations, provided that the other agencies allow similar rights and reciprocal privileges to the City of Mukilteo.

US Communities Shared Purchasing

US Communities is a national collective of local and state agencies that have gathered together under a non-profit to bid on items for shared purchasing. The City of Mukilteo has registered with US Communities, allowing the City to use any US Communities contract that meets our needs.

The US Communities contracts are bid by cities and counties from around the country. They are all subject to bid laws that are similar to those in Washington, and they conduct competitive sealed bids or proposals in much the same way, if not exactly the same way, as we do in Washington. However, use the same care to review the US Communities contracts to verify that they do not violate the City's bid and award rules.

As with any interlocal agreement as noted above, the City must conduct a screening process whereby it can justify the purchase through US Communities. The screening process and results must be clearly documented in writing. All other procurement approval requirements must be met.

6. Competitive Negotiations Telecommunication Systems/Services

Competitive negotiation can be used as an alternative to the competitive bidding procedures for the acquisition of electronic data processing and telecommunications systems; energy saving or energy related equipment or services; or when it is determined in writing that the use of competitive bidding is neither practical nor advantageous to the City.

“Electronic data processing” includes, but is not limited to, systems that comprise a combination of equipment or units to provide input of source data, and storage and processing of data and output in predetermined form, including a central processing unit (CPU) or main frame (RCW 36.92.020). In other words, hardware, software, firmware, “smart cards” or any combination thereof.

Eligible purchases (RCW 39.35A.030) are those for “equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance.” (RCW 39.35A.020(1)) The procurement may be structured on a performance basis, rather than a design specification, so that the City may specify a result, rather than the type or model of equipment. (RCW 39.35A.020(3))

The approval requirements found in Authorization & Quote/bid requirements as listed on page1 also apply to procurement by competitive negotiation. The approving officer shall determine in writing that competitive bidding is either not practical or not advantageous to the City.

Requisitions for electronic data processing systems shall be routed through and approved by the Finance Director or designee for compatibility certification prior to purchase. This will allow for the appraisal of the present supply of devices, and the possible elimination of an unnecessary expenditure of City funds.

A request for proposals should be prepared and submitted to enough qualified sources, to permit reasonable competition consistent with the requirements of the purchase. The request for proposal should identify significant evaluation factors, including price, and their relative importance. The City reserves the right to determine the number of sources considered to be adequate.

The City will provide procedures for technical evaluation of the proposals received, identification of qualified sources, and selection criteria for awarding the contract.

The City may select the qualified vendor whose proposal is most advantageous to the City, with price and other factors considered. If the City is unable to negotiate a contract successfully, the City may terminate negotiations and proceed to negotiate with the second most advantageous proposer, and so on.

Small Works Roster

RCW 39.04 provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property. The Small Works Roster may be used for public works projects valued below \$200,000.

The Small Works Roster maintained by the Municipal Research and Services Center (www.mrscrosters.org) allows the City to evaluate the professional qualifications on file when a proposed project is scheduled. Use of the Small Works Roster allows the City to preclude the advertisement requirements of the formal competitive process. *All other bidding requirements are the same.*

- For each project, the City will secure telephone or written quotations from (whenever possible) at least three appropriate contractors on the Roster. Whenever possible, at least one of the contractors invited to submit a proposal will be a minority- or woman-owned firm. The City may invite proposals from more than three or all appropriate contractors on the Roster.
- The contract must be awarded to the contractor submitting the lowest responsible quote.
- Once a contractor has been invited to submit a proposal, that contractor will not be offered another opportunity until all other appropriate contractors on the Roster have been given the opportunity to submit a proposal on a project.

Vendors/contractors selected from the Small Works Roster are not relieved from observing applicable legal requirements such as Performance Bond, Prevailing Wage, Labor and Material Bonding, etc.

Change Orders

City of Mukilteo Resolution No. 2005-18 establishes the Change Order Authorization Policy as follows”

For Change Orders Within City Council Authorized Budget Appropriations

Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary and reasonable, the City Administrator is authorized to approve any and all Change Orders that do not exceed the legally authorized budget limit established by the City Council for the applicable project or contract.

For Change Orders in Excess of City Council Authorized Budget Appropriations

Upon recommendation of the project/contract manager, and demonstration that a Change Order is necessary the City Administrator shall submit to the City Council, a Change Order Request to include the amount of requested funds and a written justification describing why the additional funds are necessary and the benefits to be derived.

If the City Council approves the Change Order Request, the City Administrator shall take the necessary actions to enact the Change Order and complete the work in an expeditious manner in accordance with the City Council’s direction.

If the City Council denies the Change Order Request, the City Administrator shall report back to the Mayor and City Council with options as to how to accomplish the project/contract within the funds allocated.

In the event of an emergency or the need to take immediate or expeditious action necessary to protect or maintain the public health, safety, or welfare; or to prevent damage to public or private property, and with approval of the Mayor, the City Administrator is authorized to enact Change Orders in excess of the legally authorized expenditure level. The City Administrator shall timely report such actions to the City Council.

Travel Expenses

All expense payments or reimbursements for travel and/or subsistence expenses must meet the requirements set forth in the City of Mukilteo Travel Policy, which establishes policy and procedure related to obtaining travel authorization, advance travel funds, and expenditure or reimbursement for travel and subsistence expenses incurred in conduct of business of the City. Refer to the City of Mukilteo Travel Policy and Procedures for details.

Payment Processing

Approvals

Vendor invoices shall be signed for approval by the department head or designee. Reimbursements payable to City employees shall be signed for approval as follows:

- Council – approved by the Mayor, City Administrator, or designee.
- Mayor – approved by the City Administrator or designee.
- City Administrator – approved by the Mayor or designee.
- Department Director – approved by the City Administrator or designee.
- Other employees – approved by the direct supervisor or Department Director or designee.

Employees may not approve their own reimbursement.

Accounts Payable

Invoices that are received by accounts payable via the US Postal Service will be date-stamped and routed to department heads the day that they are received. Other invoices may be received directly by the department head or other staff, such as when items are picked up at will-call or services are performed on-site. For all invoices, department heads or designees will verify that the invoiced items have been received and that the invoiced amount is correct. The accounts payable coding stamp will be stamped on the invoice in a conspicuous place, the account coding and approval signature entered, and the approved invoice will be routed to accounts payable for payment. There are two accounts payable check cycles scheduled each month, generally on the 10th and 25th of each month, unless the date falls on a weekend or holiday.

Hand-Issued Checks

Departments should avoid requests for hand-issued checks by submitting approved invoices to Accounts Payable as soon as invoices are received. If extenuating circumstances exist, a check may be hand-issued to avoid incurring penalties, interest, or late charges. Submit requests for hand-issued checks to Finance. Manual checks must be pre-approved by the Finance Director or the Accounting Services Manager.

Store-Issued Charge Cards

It is sometimes necessary to use store-issued charge cards. The Finance Director or Accounting Services Manager will establish the authorized account in such cases.

Bank Credit Cards

Bank credit cards may be issued with the approval of the City Administrator. They are to be used solely for City-authorized business purposes. Please see Credit Card Policy for additional details.

Petty Cash

Petty cash funds cover minor disbursements. Employees may be reimbursed from petty cash funds for authorized purchases that do not exceed the established petty-cash limit. Refer to Petty Cash Policy for additional details.

Budget Adjustments

Each department's authorizing staff must ensure that purchases are initiated only when departmental appropriations are sufficient to cover the anticipated cost. Expenditures that exceed departmental appropriations require the City Administrator's approval via the Budget Adjustment Request Form (Exhibit 5).

Exhibit 2

Sole Source Vendor Statement



Sole Source Vendor Statement

Date:

To: Finance Director & Accounts Payable

From: Fill – in Dept name and name of person signing this form

To Whom It May Concern:

This form justifies the proposed sole source purchase described below. In accordance with State of Washington regulations, City of Mukilteo must procure material, equipment, supplies and services by competitive means when the purchase is in excess of \$5,000. However, in unusual circumstances the competitive process may be waived and sole source purchasing approved, provided the requesting party can adequately justify its use. In any such case where the purchase exceeds \$5,000, the vendor shall certify in writing that the City is getting the lowest price it offers. Purchases in excess of \$5,000 from a sole source vendor require prior approval of the Finance Director or designee.

“Sole source” means the product is unique and can be purchased from only one vendor.

If one of the reasons 1 through 4 below applies to this purchase, you need only to check the applicable reason and describe item being purchased below. If reasons 5 or 6 apply, please provide the item description and explanation below.

- 1. [] Proprietary. The item is under patent, copyright, or proprietary design.
- 2. [] Replacement parts. The purchase is for replacement parts or components.
- 3. [] Technical service. The purchase is for technical service in connection with the assembly installation or servicing of equipment of a technical or specialized nature.
- 4. [] Continuation of work. We now require additional work, additional item or additional service, but we did not know it would be needed when the original order was placed.
- 5. [] Urgent requirement. Need must be met immediately. Please explain below the nature of the urgency, including an explanation of why the purchase is critical and why only the suggested vendor can meet it.
- 6. [] Exclusive capability. Only one supplier qualified. No other suppliers known. Please explain below.

Item Description:

If explanations 5 or 6 were used, please provide an explanation below. Explain why the identified vendor is recommended:

Signed Department Director or Designee

Finance Director or Accounting Services Manager

Exhibit 3

Bid Recap Worksheet



Purchases which require written competitive bids are summarized here and included as part of the purchase request.

Description of item placed on competitive bid:

Company Name & Location	Quantity Units Required	Unit Quote	Total Quote

Finance Director Signature

Requesting Dept Director or Designee Receiving Quote

Budget Adjustment Request



4480 Chennault Beach Road, Mukilteo, WA 98275

**Current Year
Budget Adjustment Request**

1. To: Finance Director	Date: _____
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Please transfer the following revenues and/or appropriations:

<i>Decrease (from)</i>			<i>Increase (to)</i>		
category	acct. number	amount	category	acct. number	amount
		\$			\$
		\$			\$
		\$			\$
		\$			\$
		\$			\$

Reason:

Requested By: _____
(Department Director)

FINANCE DIRECTOR:

Comments: _____

_____ Approved _____ Not Approved Signature _____

2. To: CITY ADMINISTRATOR	Date: _____
----------------------------------	--------------------

Comments: _____

_____ Approved _____ Not Approved Signature _____

3. To: Financial Services Division	Date: _____
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Adjustment Recorded: AJ# _____ Date: _____

Prepared By: _____ Approved By: _____

Exhibit 6

Employee Purchasing and Accounts Payable Agreement



City of Mukilteo
**EMPLOYEE PURCHASING AND
 ACCOUNTS PAYABLE AGREEMENT**

As an employee, I understand that the City of Mukilteo has authorized my use of the Purchasing and Accounts Payable system for purchasing approved business related expenses. In accepting this privilege, I agree to the following terms and conditions:

- The Purchasing and Accounts Payable system may be used only for payment of authorized expenses on behalf of the City of Mukilteo.
- The Purchasing and Accounts Payable system may not be used to obtain pay advances or other expenses that are not allowed as established by the City of Mukilteo’s Purchasing Policy.
- The Purchasing and Accounts Payable system may not be used for personal purchases of any type. I understand if I use the Purchasing and Accounts Payable system for personal purchases, such use will result in disciplinary action up to and including termination of my employment with the City of Mukilteo and I will be held personally and financially responsible for unauthorized purchases.
- I understand if I violate the terms and conditions of the Purchasing and Accounts Payable system, such use or violation will result in disciplinary action up to and including termination of my employment with the City of Mukilteo and I will be held personally and financially responsible for unauthorized purchases.
- The Purchasing and Accounts Payable system may not be utilized as a substitute for professional service agreements, public works contracts, and/or personal services contracts.
- I understand that when using the Purchasing and Accounts Payable system for travel and meal expenses that I am governed by the City of Mukilteo’s travel policies.
- Whenever a purchase is made, I will retain all receipts, packing slips and shipping documents for submission with payment requests.
- I understand that I will forfeit my Purchasing and Accounts Payable system purchasing privileges if, (1) I use the Purchasing and Accounts Payable system in a manner which is inconsistent with any City or Department policies and procedures and/or the requirements of this Agreement, (2) I transfer to another department, resign, or otherwise terminate City employment, (3) if I do not timely process payments, and (4) if finance charges are incurred as a result of my negligence.

I have read and understand the above conditions as well as the referenced policies and procedures and certify that I will be in compliance with required policies and procedures.

Dated this _____ day of _____, 20__

Signed: _____

Employee Signature

Employee Name Printed

Department Director Approval

Exhibit 7**Washington State Prevailing Wage Law**

The Prevailing Wages on Public Works Act (Chapter 39.12 RCW) requires that employees of government contractors be paid prevailing wages for all public work. Agencies awarding public works contracts include state agencies, counties, municipalities and all political subdivisions of the state.

All public agencies, contractors performing public work, and construction workers on public works construction should be aware of their rights and legal responsibilities. Failing to comply with the provisions of Chapter 39.12 RCW may subject contractors and/or public agencies to liability for all unpaid prevailing wages and penalties.

The Department of Labor and Industries (L&I) administers the prevailing wage law. The Office of the Attorney General provides legal counsel to L&I and prosecutes violators. The State Auditor's Office ascertains if a public agency's policies, procedures and practices meet the requirements of the law.

Do not rely on this plain language description without reading the laws and regulations. The informal discussions below are meant to be helpful when read in conjunction with the laws and WAC rules. They are not meant to be a substitute for reading and understanding the laws. After reading the laws and regulations, please do not hesitate to contact the Prevailing Wage Office with any questions you may have.

The Prevailing Wages on Public Works Act

Enacted in 1945, the Washington State Public Works Act, also known as the "prevailing wage law", is a worker protection act. It requires that workers be paid prevailing wages when employed on public works projects, and on public building service maintenance contracts. (RCW 39.04.010, RCW 39.12.010, and RCW 39.12.020)

The Public Works Act is modeled after the federal Davis-Bacon Act, which was enacted to protect the employees of contractors performing public works construction from substandard earnings, and to preserve local wage standards.

The Public Works Act regulates wages paid to workers, laborers and mechanics performing public work. It does not apply to work that is clerical, executive, administrative or professional in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, unless they are performing construction work, alteration work, repair work, etc. Prevailing Wage application depends on the work that is performed, regardless of the worker's job title. Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Office. (RCW 39.12.020 and WAC 296-128-510 through 530)

What Is Public Work?

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. (RCW 39.04.010)

What Is Prevailing Wage?

Prevailing Wage is defined as 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, 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.

Awarding Agencies' Responsibilities

A. Contracts for Public Work: Employers are not responsible for making the legal determination of whether a contract does or does not meet the definition of a "public works" contract. Public agencies, in awarding a contract,

must make the determination of whether that contract involves “public work” and communicate it to the employers in the bid specifications and contracts. The law does not allow public agencies to place this burden upon the employer. For example, it is insufficient to state, “Contractors shall comply with the prevailing wage law, if applicable”. Agencies should seek the advice of legal counsel regarding when a contract is for public work. Before acting on advice that a contract is not for public work, agencies should contact the Prevailing Wage Office for a determination of the applicability of the statute. (RCW 39.04.010, RCW 39.12.030, RCW 39.12.040, and RCW 39.12.042)

B. Prevailing Wage Provisions: Awarding agencies must stipulate in bid specifications and contracts for public work that workers shall receive the prevailing rate of wage. Those documents must also contain a list of the applicable prevailing wage rates. Compliance with the law is not met by referring contractors to the department or other sources to obtain wage rate information.

RCW 39.12.030

C. Public Building Service Maintenance Contracts: Public building service maintenance (janitorial) contracts of more than one year duration must include wage language recognizing the potential for future variance in applicable prevailing wages each year after the first year of the contract.

RCW 39.12.020 and WAC 296-127-023

D. Disbursal of Public Funds: Agencies may not make any payments where employers have not submitted an Intent form that has been approved by the Industrial Statistician. Agencies may not release retainage until all employers have submitted an Affidavit form that has been certified by the Industrial Statistician. The requirement to submit these forms should also be stated in the contract.

RCW 39.12.030, RCW 39.12.040 and RCW 39.12.042

E. Turnkey Projects (lessee/lessor relationships between public and private parties): Prevailing wages must be paid for 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. RCW 39.04.260. It is the responsibility of the awarding agency to make an accurate determination as to whether the entire project falls within RCW 39.04.260 prior to entering into a lease relationship for space in a privately owned building. The determination is based on whether the awarding agency is causing the work to be performed and when at least fifty percent of the leased space is going to be occupied by one or more public agencies. If RCW 39.04.260 applies, all work performed in conjunction with the project is covered, not just the tenant improvements, and the project is subject to all provisions of RCW 39.12. Should the awarding agency fail to comply with all the provisions of RCW 39.04.260 and RCW 39.12.040, the awarding agency can be held responsible for any unpaid prevailing wages.

F. Contract Administration: Though not legally required, the following activities are recommended to ensure compliance with the Public Works Act.

I. Job site inspections should be performed on a routine or periodic basis to verify compliance. These inspections should include checking to see that a copy of the Intent is posted at the job site. Workers should be randomly interviewed to verify that prevailing wages are received. Apprentice workers should be asked to show their registration cards.

II. References should be checked when the agency is empowered to select the lowest responsible bidder. The department can advise an agency regarding an employer’s history of wage claims. Check the Contractor Debarment List to find out if a contractor is debarred from bidding on public works projects.

III. Verify Contractor Registration Status and Verify Workers’ Compensation Premium Status. Find out whether a contractor or other employer has an industrial insurance (workers’ compensation) account with L&I and that their premiums are up to date.