

Public Hospital District Procurement: 2023 Legislative Updates

Association of Washington Public Hospital Districts

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Presenters



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Agenda

- General Procurement Overview;
- Useful MRSC Tools for Procurement;
- The latest changes to procurement laws and how they apply to public hospital districts.



Public Work



RCW 39.04.010

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



Public Work: Competitive Bidding Overview



- If estimated cost is \$75,000 or less, you may use a minimal competition process, a small works roster, or formal competitive bidding.
- If estimated cost is more than \$75,000 but less than \$350,000, you may use a small works roster or formal competitive bidding.
- If estimated cost is more than \$350,000, you must use formal competitive bidding.



DEFINING MATERIALS, SUPPLIES, EQUIPMENT



CONSIDERATION

If materials, supplies, or equipment are part of a public work project, they would be included in the cost estimate and bid with the rest of the project following public work requirements.

Materials, Supplies, Equipment: Competitive Bidding Overview



- State law does not establish any specific bid limits or competitive processes that public hospitals must follow for *supplies* and *equipment*.
- For *materials*, if your estimated purchase is \$15,000 or less, you may use a vendor list in the process provided by RCW 39.04.190 or formal competitive bidding established by your policy.
- See RCW 70.44.140 and the [AWPHD Legal Manual](#) (pp. 93-94) for more information.



Purchased Services



- Provided by vendors for routine, necessary, and continuing functions of a local government agency, mostly relating to physical activities.
- Usually repetitive, routine, or mechanical in nature, support the agency's day-to-day operations, involve the completion of specific tasks or projects, and involve minimal decision-making.
- Don't forget that prevailing wage requirements apply to some purchased services.



Purchased Services Examples



- Delivery/courier Service
- Landscaping and building maintenance
- Herbicide application
- Recycling/disposal/litter pickup service
- Vehicle inspection, lubricating, and repair services



Personal Services



- Involves technical expertise provided by a consultant to accomplish a specific study, project, task, or other work.
- Activities and products are mostly intellectual in nature.
- Does not include architecture and engineering (A&E) services, which have their own requirements.
- The state has not established bid limits or advertising requirements.



Personal Services Examples



- Meeting Facilitation
- Strategic Planning Development
- Management Analysis
- Legal Services
- Comprehensive Plan



Professional Services



Architecture and Engineering (A&E) Services under the general statutory definitions of:

- Architecture (RCW 18.08)
- Engineering (RCW 18.43)
- Land surveying (RCW 18.43)
- Landscape architecture (RCW 18.96)



A&E Services Contract Requirements



State statutes do not establish formal competitive requirements . All local governments must follow the uniform requirements of RCW 39.80.

Unlike other types of contracts which are awarded to the lowest responsible bidder, A&E contracts are awarded primarily based on qualifications, rather than cost, a process known as "qualifications-based selection" (QBS).

- Requests for Qualifications (RFQs) ask only for a firm's general capabilities, price not considered.
- Consultants submit qualifications and/or a non-cost proposal to an agency. The agency then assesses the expertise of the competing firms, selects the most highly qualified firm, and negotiates the final project scope and associated fee.
- If the agency and most highly qualified firm cannot reach an agreement on project scope, schedule, and budget, the agency then negotiates with the next most highly qualified firm.

Procurement Tools



To navigate procurement requirements, you just need a couple tools from the MRSC website!





THE Website Procurement Tools

[Find Your Contracting Requirements](#)

[Purchasing and Contracting](#)

[MRSC - Sample Documents](#)
[Sample Documents](#)

Don't forget to check the
AWPHD Legal Manual!



2023 Legislation

SB 5268: Modifications to Small Works Roster



Small Works Roster



For projects under \$350,000:

- Hospital district can (1) create their own rosters, or (2) use roster from another agency.
- Hospital districts do this by resolution.
- Establish procedures for obtaining quotes.
- Advertise at once a year to interested vendors.
- Develop policy to add vendors.





Small Works Roster (continued)

Current notification requirements when using Small Works Roster:

Estimated Cost	Vendors Notified
Less than \$50K	Minimum of 3
Less than 250K	All on Roster Category or Minimum of 5
250K to 350K	If Minimum of 5, Then Notify All on Roster Category

SB 5268: Purpose



- **Administratively Efficient**
- **Promote Small and Diverse Businesses**
- **Maintain Labor Protections**



SB 5268: July 1, 2024



Small Works Roster Projects up to \$350,000

- Agency estimate does **not** include sales tax
- Agency invite **all** Contractors from the applicable roster
- For contracts greater than \$5,000:
 - Agencies may reduce or waive retainage
 - Agencies no longer allowed to waive bonds



SB 5268: July 1, 2024 (continued)



Direct Contracting Option up to \$150,000

- Agencies may direct contract through negotiation with a contractor from the appropriate roster
- Agencies must notify all contractors on the applicable roster when direct contracting utilized
- Small business preference: six or more rule

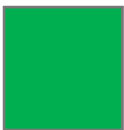




Six or more rule - direct contracting

Direct Contracting Under \$150,000

Certified Small Business



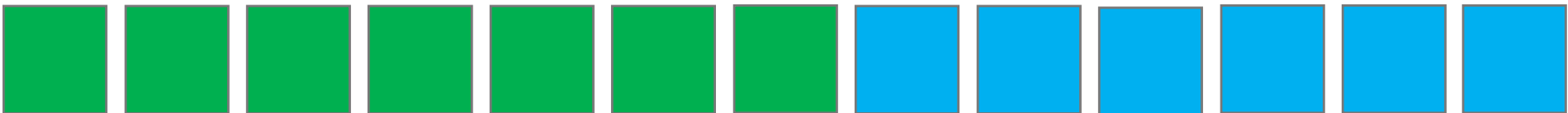
Not Certified

No small business

Contract with any



6 or more small
Contract with small



5 or less small
Contract with any



Previous Statute Overview:

PUBLIC WORKS CATEGORIES	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Limited Public Works	< \$50,000	Small Works Roster Process, Invite Quotes from All or select minimum of 3	Public Owners allowed the option to assess risk and determine waiver of retainage	Allows waiver of bonds	Allows for combined intent/affidavit forms per 39.12.040 (2) Otherwise, Individual Intent/Affidavits Required
Small Works	\$50,000 - \$250,000	Small Works Roster Process, Invite Quotes from All or select from minimum of 5	Public Owners allowed the option to assess risk and determine waiver of retainage	Allow 10% retainage in lieu of Bond for public works contracts under \$150,000	Individual Intent/Affidavits Required
	\$250,000 – \$350,000 *\$300,000 for Port and Irrigation Districts	Small Works Roster Process, Invite Quotes from all Contractors on Rosters	Public Owners allowed the option to assess risk and determine waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

Proposed Legislation Overview: Effective July 1, 2024

PUBLIC WORKS CATEGORY	THRESHOLD	COMPETITION REQUIREMENT	RETAINAGE REQUIREMENT	BOND REQUIREMENT	INTENT/AFFIDAVIT REQUIREMENT
Small Works	Under \$150,000	1) Contract through direct negotiation with equitable distribution OR 2) solicit quotes from all on the appropriate roster	Under \$5,000 – No retainage Required All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Under \$5,000 – No bond Required Allow 10% retainage in lieu of Bond	Under \$5,000 – Combo Forms allowed Individual Intent/Affidavits Required
	\$150,000 – \$350,000	Invite Quotes from all Contractors on Rosters	All remaining contracts - Public Owners allowed the option to assess risk and determine reduction or waiver of retainage	Performance & Payment Bond Required	Individual Intent/Affidavits Required

Next steps: SB5268 Implementation



Statewide Collaboration



MRSC

- ✓ Designates MRSC Roster as the official Statewide Rosters
- ✓ Intention to create a single sign-up process for businesses



Department of Enterprise Services

- ✓ Updating its Public Works rules (WAC 200-330)
 - Rotation
 - Documentation
 - Contract cap
 - Responsibility criteria
- ✓ Creating bidding templates



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

Department of Labor & Industries

- ✓ Updating prevailing wages rules for contracts under \$2,500 (WAC 296-127-050)
- ✓ Providing education and technical assistance to public works firms



Office of Minority & Women's Business Enterprises

- ✓ Creating a new public works Small Business Certification Program
 - Race & gender neutral
 - Automatic certification
- ✓ Evaluating registration process and requirements
- ✓ Updating Public Works Small Business Certification rules (WAC 326-20-087)



HB 1050: Apprentice Utilization





Current Apprenticeship Requirements

RCW 39.04.320 applies to school districts, four-year institutions of higher education, and certain state agencies.

Requirement for apprentices to contribute a minimum of 15% of total labor hours on:

- Public works projects estimated to cost \$1 million or more, and
- Washington State Department of Transportation projects estimated to cost \$2 million or more.



Current Apprenticeship Requirements (continued)



Awarding entities may adjust apprenticeship requirements for a specific project for the following reasons:

- (a) The demonstrated lack of availability of apprentices in specific geographic areas;
- (b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;
- (c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section; or
- (d) Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor.



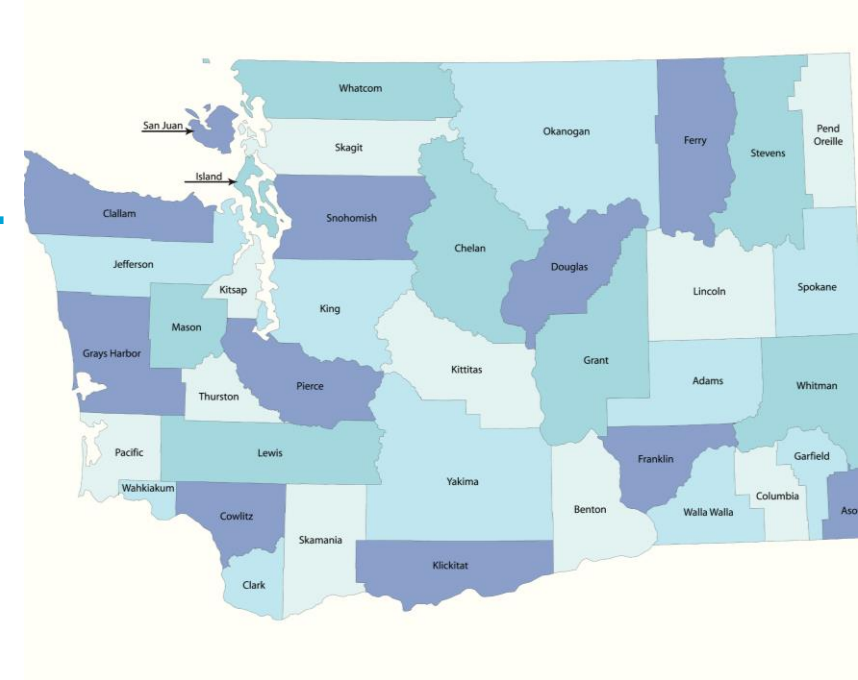
See [RCW 39.04.320 \(2\)](#)

HB 1050: Key Updates



RCW 39.04.320 revised to include
"Municipality", as defined in RCW 39.04.010
to:

- Counties
- Cities
- Towns
- Port districts
- Other public agencies
 - Public Hospital District





HB 1050: Key Updates (continued)

L&I along with MRSC will provide ongoing training, information, and technical assistance to help you comply with the apprentice utilization requirements."





HB 1050: Municipality Requirements for Public Works

Require no less than 15% of total labor hours be performed by apprentices.

July 1, 2024

Contracts estimated
to cost more than \$2
million

July 1, 2026

Contracts estimated
to cost more than
\$1.5 million

July 1, 2028

Contracts estimated
to cost more than
\$1 million

L&I Apprenticeship Resources



- Questions? L&I Apprenticeship Staff:
James Kaltenbaugh
James.Kaltenbaugh@Lni.wa.gov
360-902-5373
- L&I Apprenticeship Consultants can help! Please call (360) 902-5320 for referral to the Apprenticeship Consultant in your area.

SB 5088: Expanded Contractor Registration Requirements



SB 5088:Key Updates



Effective July 23, 2023:

- Bidder responsibility criteria amended in RCW 39.04.350 now includes licensing requirements for plumbing, elevator, and electrical contractors.
- With elevator and electrical contracts already in law, contractor verification for subcontractor responsibility criteria in RCW 39.06.020 is amended to include verification of a plumbing contractor license.



SB 5088:Key Updates (continued)



Effective July 23, 2023:

- Prohibition on bidding on future contract provisions in RCW 39.12.055 is expanded to include violations of unregistered plumbing, elevator, and electrical contractors.
- Independent contractor criteria in RCW 39.12.100 now includes plumbing and elevator contractors that have a valid contractor license registration on the effective date of a public works contract.



HB 1777: Contracts for Energy Services & Equipment



HB 1777:Key Updates



Effective July 23, 2023:

- RCW 39.35C.010 is amended to add definition for 'energy as a service'.

'Energy as a service' is a performance-based contract in which a state agency, public school district, public university, or municipality makes service payments to a third party or entity for energy services, which may include the provision of energy equipment that is owned and operated by a third party or entity.



HB 1777:Key Updates (continued)



Effective July 23, 2023:

- Additional language is added to define a 'performance-based contract' in RCW 39.35A.020 and RCW 39.35C.010.
- RCW 39.35C.050 is amended to authorize state agencies, public school districts, public universities, and municipalities to enter into an 'energy as a service' contract by acting independently or through the Department of Enterprise Services (DES).
- RCW 39.35C.060 is revised to include public school districts, public universities, and municipalities as defined in RCW 39.04.010. These entities now have the ability to use financing contracts in addition to performance-based contracts for energy conservation projects.



MRSC Resources



CLICK ON EACH LINK TO LEARN MORE

[2023 Legislative Session Outcomes for Procurement and Contracting, Part 1](#)

[2023 Legislative Session Outcomes for Procurement and Contracting, Part 2](#)

[Public Agency MRSC Roster Information Flyer](#)

[Find Your Contracting Requirements](#)

The MRSC Digging Into Public Works Project provides free public works training virtually and in multiple locations around the state.

Agency Training - Digging into Public Works Contracts - Spokane

Thursday, September 28| 8:00 AM – 3:30 PM

Learn more at mrsc.org/Home/Training/Digging-Into-Public-Works.aspx

Questions?

Submit your inquiries at [Ask MRSC](#) or call us at 206-625-1300.

You can also reach Josh and Oskar by email: jklika@mrsc.org and orey@mrsc.org.

