

Grant County Personnel Policy

1602 – Purchasing Process & Procedure					
Issue Date	02/16/16	Effective Date	02/16/16	Revision Date	09/14/21

1602.01 Procurement of materials, supplies, equipment, goods, and services (public works) Processes

The following guide is created to help those in the County who perform procurement of any kind through the various processes the County has adopted to procure materials, goods, and services. While following these guidelines one should go back to the general procurement section of this policy to help in the decision-making process and the public works contracting process.

This guide is not meant to be the absolute authority for procurement. It is a living document that may change based on legislative changes, policy changes, and input from those that perform procurement of any kind for the County. Changes to this policy should be reviewed by the Directors of Central Services and/or Public Works, then sent to the BOCC and Human Resources for approval and publication.

Anyone performing procurement should always research the Revised Code of Washington (RCW), the Washington Administrative Code (WAC) and other official publications directing the work of procurement by Counties in Washington State. This policy may be updated from time to time. If you perform procurement for Grant County, your engagement in this process is valued, and important. Share changes and ideas with others that perform these same tasks to ensure all of Grant County is following the procurement guidelines as established while building efficiency and performing as the best steward they can be with the public funds.

1602.02 Before you start

All public works projects in Grant County require the selected contractor to pay at least the "prevailing wage." If performing a formal bid process, and by formal, the intent is that your department is publishing a bid to the MRSC roster for a public work or in the paper of record or regardless of publication will hold a bid opening, and subject to that bid opening, award a public works project to a responsible bidder, you should at a minimum have the following.

- the time and place where bids will be opened.
- the time after which bids will not be received.
- the materials, equipment, or supplies, to be purchased; and
- that the specifications may be seen at the office of the clerk of the county legislative authority (or a location as specified by your department)

There are two different RCWs that speak to the time a bid must be published, one is 13 days and the other 15. 15 days is the amount of time Central Services typically utilizes; ensure you understand the RCWs for your procurement.

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1602.03 Requests

Requests and approvals are performed through the established "consent" process and are not immediate. Departments requesting purchases above \$5000.00, and/or approval of public works or any purchase not previously approved shall perform the following.

- a) During the budget process, ascertain all projects you believe to be required for the upcoming year. Attempt to be as accurate as possible with the expected costs of purchases and projects and add them to the capital outlay requests as required through instructions during the budget process and submitting them for approval.
 - 1) Simultaneously check to see if the capital purchases or projects need to be included in the Capital Facilities Plan, while doing so, inspect that list for anything no longer required or that has been completed and notify the Development Services designee so it may be corrected on the CFP.
 - 2) After the budget has been approved, verify all projects/purchases were included and prepare "Requests for Bids/Proposals/Qualifications/Quotes" as needed. If your purchases require the coordination of other departments, coordinate their purchase or installation with them directly.
 - (a) No department is authorized to purchase or procure technology related items or software without first conferring with Central Services and the technology services department. Departments must keep in mind that many software vendors require ongoing licensing that must be accounted for in each year's budget.
 - (b) If making any purchase that requires secondary approval from the Board of County Commissioners (BOCC) the EO/DH should submit a letter on department letterhead to the Clerk of the Board with the following for submission on the next weeks BOCC Consent Agenda. The deadline for adding items to the BOCC Consent Agenda is any Thursday by 12pm (noon) or as otherwise directed by the Clerk of the Board.
 - (1) Reason for request and type of purchase
 - (2) Whether it is or is not a public work
 - (3) Whether it is a service or a lease (Information may not need to be included)
 - (4) Which method of procurement is intended to be used from 1504.06 (2)?
 - (5) Whether you are performing an RFB/RFP/RFQ/ or gathering informal quotes
 - (6) Identify the funding source.

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- (c) If approved during the Consent Agenda, perform the purchase if nothing else is required. If any advertisement for bid or roster process is required, after completing the process another letter shall be provided through the same consent process with the following information,
 - (1) Describe the type of process that was performed and if it was or was not successful.
 - (2) The number of responsive submissions that meet all requirements of bidder responsibility as per RCW 39.04.350.
 - (3) The names and amounts for each responsive submission.
 - (4) The recommendation to, or not to award the work or purchase.
- (d) Departments should be ready at this time to provide a contract to the Contractor or a purchase order to the vendor if required. If providing a contract, have the contract signed by the contractor first, then provide to the civil prosecutor for approval where it will then be forwarded to the BOCC for signature.
- (e) Complete your purchase or project, RCWs regarding the process of completing a Public Work are specific and will be discussed in further detail later in this policy.

1602.04 Purchases from Amazon

Grant County enjoys the use of a County wide Amazon account maintained by Central Services. Each department has their own departmental logon and can make purchases and have them delivered to the Courthouse or where your county business requires it. It is not a membership for movies, music, or for personal use. No County employee should have any personal items shipped to the County or use the County Amazon account for personal purchases. There is the possibility of disciplinary action if the Amazon account is being used for personal use. If you need to utilize this account, your EO/DH should have the information needed as they administer the accounts for their departments.

1602.05 Purchases from the Vendor Roster

RCW 36.32.245 and 39.04.190 sets out advertising requirements for the purchase of materials, equipment, or supplies in all counties. Grant County includes the minimum as per RCW but also adds requirements. If the purchase is between \$10,000 and \$50,000

- A request to at least 3 vendors on the vendor roster at least once, 13 days prior to the final date for receiving bids and must state:
- the time and place where bids will be opened.
- the time after which bids will not be received.

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- the materials, equipment, or supplies, to be purchased; and
- that the specifications may be seen at the office of the clerk of the county legislative authority (or a location as specified by your department)
- If the purchase is over \$50,000, you must publish it in the paper of record, you can still use the vendor roster, but you must take this extra step.
 - 1) Quotes should be inclusive of all costs including tax and be a lump sum.
 - 2) Departments or representatives will not inform a vendor of other vendors quote.
 - 3) A written record shall be made by the County representative of each vendor's quote on the materials, supplies, or equipment, and of any conditions imposed on the quote by such vendor.
 - 4) All the quotes shall be collected and presented at the same time to the appropriate designee as appropriate for consideration, determination of the lowest responsible vendor and award of purchase.
 - 5) Whenever there is a reason to believe that the lowest acceptable quote is not the best price obtainable, all quotes may be rejected, and the County may obtain new quotes or enter direct negotiations to achieve the best possible price. In this case, the department shall document, in writing, the basis upon which the determination was made for the award.

- 1602.06 To recap: if you are going to make a purchase between \$10,000-\$50,000. Write an invitation to submit a price for your intended purchase on your department letterhead, include the information as stated above as needed, select the appropriate vendors, and publish your request. If you do not have any vendors on the list that can supply your need, mail it to all vendors. Do your best to try and get 3 quotes. Try to use local companies. When the date and time arrives for opening any submitted proposals, see if they are within your budgeted expectations, if secondary BOCC approval is required, it should have been provided prior to the advertisement. If it is above your budgeted expectation, ascertain why, is it \$10.00 or \$10,000 above your expectation?
- a) If it is well above the expected amount, decide on the possibility of rejecting all bids, be realistic with your budget amount, your department should have a good idea of the cost prior to requesting submittals,
 - b) If the price is in keeping with industry standards, is competitive and a department was mistaken on its estimate? Try to ensure it is a good and fair price for the project or purchase, if it is found to be a good price and it is above your budgeted amount? Submit a request to the BOCC through the consent process, explain the discrepancy and the cost, identify where you plan on procuring funds from your budget or request a budget extension and request BOCC approval for the purchase.

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- c) If no vendors provide a submission, you may directly negotiate with the vendor of your choice however, you must perform your due diligence and ensure the County is receiving this purchase at a fair price, competitive with market conditions. Note your efforts and keep in a file with the purchase documents.

1602.07 Determining the Lowest Responsible Vendor

The following factors, in addition to price, may be taken into consideration by the County in determining the lowest responsible vendor. These criteria shall also apply in selecting products or services either offered with, or associated indirectly with, County programs or facilities.

- a) Any preferences provided by law to local products or vendors.
- b) The ability, capability, and skill of the vendor to perform the contract.
- c) The character. Integrity, reputation, judgment, experience, and efficiency of the vendor
- d) Whether the vendor can perform the contract within the time specified
- e) The quality or performance of previous contracts or services
- f) The previous and existing compliance by the vendor with laws relating to the contract.
- g) Life Cycle Costing: in considering the purchase of materials, equipment, supplies whenever there is a reason to believe that applying the "life cycle costing" method of quote evaluation would result in the lowest total cost to the County, first consideration shall be given to purchases with the lowest life cycle cost which complies with the specifications.
- h) Recycled Products: The Count shall also seek to maximize the purchase of products using recycled materials and products suitable for recycling unless the purchase will result in an unreasonable increase in price or degradation of quality or performance over comparable products.

1602.08 Informal Competitive quotes: up to \$10,000

- a) A County representative shall try to contact at least three vendors. The number of vendors contacted maybe reduced if the item being sought is only available from a smaller number of vendors. When fewer than three quotes are requested or if there are fewer than three replies, an explanation shall be placed in the procurement file.
- b) Whenever possible, quotes will be solicited on a lump sum or fixed unit price basis.
- c) At the time quotes are solicited, the County representative shall not inform a vendor of any other vendor's quote.
- d) A written record shall be made by the County representative of each vendor's quote on the materials, supplies, or equipment, and of any conditions imposed on the quote by such vendor.

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- e) All the quotes shall be collected and presented at the same time to the appropriate designee as appropriate for consideration, determination of the lowest responsible vendor and award of purchase.
 - f) Whenever there is a reason to believe that the lowest acceptable quote is not the best price obtainable, all quotes may be rejected, and the County may obtain new quotes or enter into direct negotiations to achieve the best possible price. In this case, the department shall document, in writing, the basis upon which the determination was made for the award.
- 1602.09 Public Works: RCW 36.32.250 sets out the advertising requirements for the public works bidding process in our County. Advertisements for bids should contain specifications and procedures for bidders to use in estimating their bids. At a minimum, a bid notice for a public work should include the following items:
- the time and place where bids will be opened.
 - the time after which bids will not be received.
 - the character of the work to be done.
 - the materials and equipment to be furnished: and
 - that specifications for the project may be seen at the office of the clerk of the county legislative authority (or at a place that is specified).
 - A statement that a public agency cannot accept a bid as responsive without a bid bond.
 - A copy of the prevailing wage rates with the date key code the same as the date the bid is published.

There are many facets to procuring a public work not outlined here. The process of writing a bid, inviting the public to provide a submittal for goods or services, and the processes behind these documents can involve a great amount of risk to the County. One performing this process should be aware of the requirements for bonds, (performance, payment, bid), for the insurance requirements of the County, of hold harmless agreements, and other issues that are important to include in documents that are being published. There are many examples of these on the County website. Do not simply cut and paste into your own document and expect that it is correct. Anyone performing this process should understand each line in the documents they publish to the public and the risks involved in not performing this in a correct manner.

The following processes were compiled by the Central Services Director and reviewed by the Public Works Director. There are differences between the "public works" performed through Central Services and "public works" performed through the Public Works department including some state laws. The following process while detailed are not exact. If one has questions or

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concerns, they should reach out to either of the Directors of those departments or the Civil Prosecuting Attorney for Grant County.

For the following dollar thresholds, there are differences in how and where you report them, how the projects are managed, and how our agency is required to communicate with the public. The following thresholds assume the use of the MRSC roster.

Grant County is statutorily authorized to dispense with public bidding, (what does this mean), It means we utilize the MRSC roster to advertise for public works and that under the conditions in 1504.34 we do not advertise to the public unless a public work is valued over \$350,000. What is required is that after a bid opening of a project published to the roster, the opening log sheet is open to public inspection.

- a) After the bid opening, copy the bid opening log sheet and send (through a Spiceworks request) along with the original bid document (RFB/P/Q) to GCTS and ask that it be posted under the correct header on the County web site. (header being request for bids, proposals, or qualifications)

1602.10 \$350,000 value or greater

For any public work expected to be above this amount, an advertisement is required in the paper of record. If you are unsure which paper that is, you may ask the staff of the BOCC office. You should also post it on the County website. You may also publish your bid to members of the MRSC roster. Remember, we desire to have numerous contractors providing submissions so we may evaluate the best value or lowest responsible bidder for the project. Except in rare instances, we are required by law to accept the bid from the lowest responsible bidder, not the best "value". For those instances, please consult with either the Director of Central Services or the Director of Public Works. As a practice for projects of this size you may also elect to publish your bid to statewide "plan centers" for the widest possible distribution.

Your bid document should be very complete, with a detailed scope, an engineer's estimate of the cost of the project, and all the following items should be placed in your document at a minimum.

(This list is not in a specific order)

- Who is requesting the bid?
- Time and Date of the public bid opening
- A statement providing the objective of the bid.
- A statement regarding the requirement or lack thereof of a site walkthrough or meeting with the County.
- Instructions for Bonds and insurance with the statement of the required timing of these documents.

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- Instructions for the cover letter that is required and the expectations of how the bid form shall be filled out.
- Checklist of those items required for a proper bid submittal.
- The process for Bid protests, Bid withdrawal, Responsive or non-responsive bids.
- A statement as to how the bids will be evaluated, that mathematical corrections may be made and that we will award to the lowest responsible bidder.
- A statement that the bid opening is an initial opening, and the award will not be made until the bids have been fully evaluated and when that will be completed.
- A detailed scope of work with clear expectations
- A deadline for when any technical questions can be received and when all questions will be answered.
- Hold harmless statement.
- A statement that Grant County reserves the right to reject any and all bids for any reason.
- A copy of the proposed contract
- Statement explaining how the County will pay the contract.
- Any engineering data that has been prepared for the bid.
- Any supplemental information such as maps, locations, specifications for equipment or otherwise.
- Statement inviting minority, veteran, women owned businesses.
- Any security requirements or special conditions that may be present for a contractor to perform their work.
- Timing of the work, if it will require weekends, holidays, nights, or expected overtime.
- A copy of the prevailing wage rates with a date keycode equal to the day of your bid publication.
 - 1) In the spirit of attempting to receive the best price, select as many appropriate contractors as possible (or all in a category) on the MRSC roster and publish via email to those contractors, as well as the paper of record. The advertisement in the paper of record should be kept short and direct anyone reading it to the place where they can download the documents. (Example), "Grant County is inviting all interested, appropriate, and responsible firms to submit bids for contract #XXXXXX" the building of a widget factory in Ephrata WA. To download all bid documents and ask questions please visit,

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www.grantcountywa.gov/request for bids, or proposals, or qualifications". (Whatever it may be) These bids must run for a minimum of 13 days (not including the bid publication date) prior to opening. In the paper of record this advertisement must run at least once 13 days prior to the bid opening date, not including the publication date.

- 2) Departments should keep a detailed "questions and answers" log during the bid process. Stipulate in your bid document how these will be handled. Typically, there is a deadline for when these questions can be received and a stated date when all will be answered, Central Services as an example, anonymizes the questions and responds to these questions as quickly as possible and sends them out to all who received the original bid. Unless a contractor specifically states they do not wish to receive them, you must send it to all contractors on your list. At the deadline for submitting questions one last log is sent out with the notice that the question period has ended and no further questions regarding a project or a purchase will be answered, you may always answer questions regarding the bid process itself. You cannot answer any question that would provide an advantage to any one contractor over another.
- 3) Keep a file of the Bid, the advertisement in the paper of record, the list of contractors selected, if narrowed, also keep the narrowed list of contractors, the question-and-answer log, and all pertinent communications with any contractor regarding your bid. All pertinent project information such as the contract, bid bond, insurance certificate, P&P bonds if required. Remember, there are differing retention schedules for documents of winning and losing bidders.
- 4) Hold your bid opening at the appointed time and place, record the bid opening on a bid opening log sheet your department creates. Somewhere on your log sheet you may write "Apparent low bidder" based on the initial bid opening. The bid opening shall be immediately available by phone or electronic request and the log sheet sent to GCTS (through a Spiceworks request) for publication on the County website within 24 hours of the opening.
- 5) Fully evaluate your bids, ensure all your contractors are responsive. Did they meet the responsible bidder criteria and supplemental criteria as laid out in RCW 39.04.350? Did they include all documents as required? If you are unsure as to material or immaterial irregularities, consult the civil prosecuting attorney.
- 6) If all bids are in order, select the lowest responsive bidder and submit a letter to the BOCC with your departments recommendation to award the project to said contractor. Simultaneously, inform all bidders of the intent to award to said contractor by email or phone, or by direct communication, also in the same notice if sent electronically, state the

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names of any contractor that was non-responsive, you do not need to state the reason why, you may do this directly with the contractor in a separate notification or phone conversation.

- 7) If you deem a contractor non-responsive, you need to inform them immediately, this action may cause the contractor to file a bid protest if the contractor does not agree, thus typically the contractor is informed as soon as practical as bid protest are typically required within 24 hours (or as per the instruction is your bid document)
- 8) If there are no protests and the BOCC has signed your recommendation, you may enter a contract with the selected contractor. To do this you should in anticipation of awarding to said contractor, have been adding the pertinent information to the proposed contract included in the bid document. Ensure all required items of the contract are correct. If questions arise regarding the contract, seek the advice of the civil prosecutor's office. Have the contractor sign the contract and return it to you, turn this contract over to the civil prosecutor's office for review and for their approval as to form, the prosecutor will notify you that it is approved and send it to the BOCC for signature. Once signed, send to the Contractor and you have a "fully formed contract". Keep a copy on file with the bid documents and provide the original to the Administrative Services Coordinator in the BOCC office for inclusion into their records. The contractor shall as soon as possible, provide a certificate of insurance as described in your bid and provide P&P Bonds if required. The Contractor also must file an "intent to pay prevailing wage" with L&I. A contractor generally should not start work until the intent is approved by L&I. You can track this in your L&I portal.
- 9) Perform your project, understand the retention schedule, communicate any financial needs early and often, if any action such as budget transfers or extensions will be required you will need to do those expeditiously. Understand retention of your documents. Understand the need for reporting to Labor and Industries (L&I), notice of completions, (NOC), certified payroll reporting, intents & affidavits and how to communicate with L&I through the L&I portal.
- 10) Remember to budget for retention if retention will not be paid during the current fiscal year. For guidance on this, contact the Accounting department. Understand the process for A19's if utilizing grant funds. Understand the needs for grant tracking if utilizing grant funds for your project.

1602.11 Project Values \$0.00-\$350,000

RCW 39.04.155 stipulates the process for projects within the following dollar limits. Although it is printed here, best practice would be to apply the same guidance as in the section above, although it is only required that we follow the RCW as stated.

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- a) There is no need to publish a project within these dollar values in the paper of record OR on the County web site if utilizing the MRSC roster, if you are not utilizing the roster, it shall be placed on the web site and in the paper of record.
- b) In the spirit of attempting to receive the best price, select as many appropriate contractors as possible (or all in a category) on the MRSC roster and publish via email to those contractors. You may elect to only publish your request to five (5) appropriate contractors, but you shall be fair and equitable in your distribution of bids. In other words, if you select 5 contractors to bid on a steel building (for example), the next steel building cannot be published only to the same 5 contractors, you may invite them again however, you must invite others for a fair and equitable process.
- c) Keep a file of the Bid, the list of contractors selected, if narrowed, also keep the narrowed list of contractors, the question-and-answer log as in the section above and all pertinent communications with any contractor regarding your bid. All pertinent project information such as the contract, bid bond, insurance certificate, P&P bonds if required.
- d) Follow sections (i) through (x) as above.

1602.12 Limited Public Works Process for projects less than \$50,000

In lieu of awarding contracts under the previous section, Grant County may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than fifty thousand dollars using the limited public works process found in RCW 39.04.155 (3). For limited public works projects, your department shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. For this process you should follow the same process as stated in 1504 (a) and (b) above. After an award is made, the quotations shall be open to public inspection and available by electronic request. You must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work.

As Per RCW 39.04.010, Grant County shall maintain a list of the contractors contacted and the contracts awarded as limited public works projects during the previous twenty-four months under the limited public works process, including,

- The name of the contractor,
- The contractor's registration number,
- The amount of the contract,
- A brief description of the type of work performed,
- The date the contract was awarded.

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Departments utilizing this process should (if desired) report these projects to the Director of Central Services where a list will be maintained on the Central Services web page. If electing not to report, all items shall be kept by the department performing the work.

For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of RCW 39.08 and may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

1602.13 Accepting a Bid and understanding what a Responsible Bidder Is (The following is from MRSC)

1602.13.01 What is a Responsive Bid?

Responsive bids are bids that are submitted on time with all of the information the agency requested. Agencies should identify in the bid documents an official bidding clock located in the room where the bids will be opened. This clock should be checked on a bid opening day to verify its accuracy.

Bids submitted after the submittal deadline or at the wrong location should be rejected as non-responsive – in other words, agencies should neither accept nor open late bids. If a contractor claims extenuating circumstances, refer them to your agency's attorney.

Typically, bidders must provide the following information at the time of bidding:

- Sealed bids, with the name of the project and the time and date of the bid opening clearly stated on the outside of the bid packet.
- Bid guarantee in the form of a bid bond, cashier's check, certified check, or personal money order.
- Lump sums, unit prices, and total prices in the spaces provided on all of the bid forms, including all appropriate sales taxes.
- Receipt of addenda acknowledged.
- Acknowledgment of attendance at mandatory pre-bid meeting, if so required by the agency (agency to verify).
(Deciding to require a mandatory pre-bid meeting should be

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evaluated for each project based on the particular circumstances of the project. Such process should then be managed very carefully.)

- Non-collusion affidavit certificate
- Mandatory bidder responsibility questionnaire with all items filled in.

While it is possible to do a brief check when the bids are first opened, the agency must reserve the right to ascertain full compliance with the bid proposal requirements after a more detailed review.

Additional items may be required shortly after bid opening:

- If supplemental bidder responsibility criteria are required (see below), a separate questionnaire must be filled out and submitted within 72 hours after bid opening. However, this questionnaire should only be required of the apparent low bidder and the next two lowest bidders.
- For projects that cost an estimated \$1 million or more, a list of all subcontractors for HVAC, plumbing, or electrical work must be submitted (RCW 39.30.060). The bidder may also submit itself for any of these categories. This list may either be submitted within one hour after the bid opening (the preferred method) or at the time the bid is submitted.

1602.13.02 What is a Responsible Bidder?

Responsible bidders, as defined in RCW 39.04.010 and 39.04.350, must meet a number of mandatory criteria. The bidder must:

- Be a registered contractor.
- Have a current Unified Business Identifier (UBI) number
- Have industrial insurance/workers' comp coverage, which means they normally cannot be sued for damages if a work-related injury or illness occurs. For more details, see L&I's publication Employers' Guide to Workers' Compensation Insurance in Washington State.
- Have an Employment Security Department (ESD) account
- Have a state excise tax registration number
- Not be disqualified from bidding under RCW 39.06.010 or 39.12.065(3)
- Not have any apprenticeship violations, if applicable

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- **Effective July 23, 2017:** Certify through a sworn statement or an unsworn declaration under penalty of perjury that they are not a willful violator of labor laws in reference to RCW 49.48.082 within the past three years. MRSC has developed a model statement (.docx) to satisfy this requirement. We updated this form in July 2019 to reflect SSB 5017.
- **Effective July 1, 2019:** Have received training, provided by the Department of Labor and Industries or by a provider whose curriculum has been approved by L&I, on the requirements related to public works and prevailing wages. However, bidders that have completed three or more public works projects and maintained a valid business license in Washington for at least three years are exempt from this requirement.

1602.13.03 Verifying Responsible Bidder Status

The certification that the bidder has not violated labor laws in the last three years is the only criteria that may be satisfied by a sworn statement. All other criteria must be verified by the agency, except for the ESD number which cannot be verified online and must be provided by the bidder. However, public agencies may ask bidders to submit a Bidder Information sheet to help verify these criteria.

State agencies provide several resources to verify the status of a contractor:

- Verify a Contractor, Tradesperson or Business provides information about every registered contractor, including the UBI number, status of the industrial insurance/workers comp account, and contractor training status.
- Debarred Contractors List provides a list of contractors disqualified from bidding. Print out the search results and keep them in the project file.
- Check Status of a Business or Professional License verified an active Department of Revenue tax registration.
- Employment Security Department regulations do not allow online verification of a contractor's ESD account. To verify the account, agencies may request a Bid Letter or require the contractor to file the account number with the agency as part of a bid submittal or small works roster application.

1602.13.04 Retainage

Grant County is required to hold retainage for public works projects. Retainage laws require the County to withhold 5% of a

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contract value and we cannot pay that retainage until certain conditions are met.

For contracts over \$35,000 Grant County is required to file a "Notice of Completion" (NOC). This is found and completed through the L&I portal. You cannot file an NOC until the Contractor has filed all affidavits of wages paid. If there were subcontractors on the project, they too, are required to file affidavits of wages paid, until all are filed, the County is not allowed to begin the process. (the form is unavailable until these items by the contractors are completed). Once you submit the NOC, it sent to the Department of Revenue (DOR), to L&I, and to the Employment Securities Department (ESD). You cannot pay retainage to the Contractor until you have received a letter from each of those agencies stating it is OK to release the funds. The letters are haphazard, some coming to email, some to the HR department, to public works, or to another County department. Be attentive to your Contractors needs and remind yourself to check on the NOC status by going to the L&I portal or calling the other two agencies and checking the status of the NOC.

This retainage process is tricky requirement, RCW 60.28.011(3) (a) states the following: "After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 39.12 and this chapter".

"Furthermore, 60.28.011 (3) (b) 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 chapter RCW 39.12 and this chapter".

This is tricky why? because after the filing of an NOC, ESD has stated that they will only provide letters to public agencies for the release of retained funds on a quarterly basis. Sometimes they are released quickly but this statement by ESD equals a 90 day period, so what do you do? Grant County has experienced lengthy delays not only due to this ESD policy, but at times that same department was overwhelmed with requests and shorthanded causing longer delays.

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If this occurs, work directly with the Contractor, communicate openly and often, contact ESD and remind them of the 60-day requirement, do your part by,

- Remind the Contractor that although the work has been accepted, that you are unable to file an NOC and begin process of paying retainage unless all affidavits are filed. If the work has been accepted, the RCW states that this is the beginning of a 60-day window, but it may be 30 days or more before ALL contractors file their affidavits making the 60-day requirement all but impossible.
- Be complete with your recordkeeping, do not be the reason the NOC is delayed.
- There is no RCW that provides an exception to waiting for the releases from these agencies.

RCW 39.08.010 (3) On contracts of one hundred fifty thousand dollars or less, at the option of the contractor or the general contractor/construction manager as defined in RCW 39.10.210, the respective public entity may, in lieu of the bond, retain ten 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, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against retainage held by a state agency or authorized local government.

The requirements remain regarding the filing of NOCs, all public works projects require intents and affidavits regardless, the advantage here is that we do not have to wait for the release from the three agencies. When they do arrive, file them in your project folder. Just remember, this is for a public works project valued at less than \$150,000.

**Reminder, if closing out a project and holding retainage of the end of the fiscal year, budget the retainage in the next year's budget. **

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Below is helpful chart found on the MRSC website that provides guidance on holding and paying retainage.

Project Closure/Retainage Release Guidelines, adapted from MRSC 3/1/2021						
	Require in Contract (also see note 1)		Needed for Project Closeout Files (Before Releasing Retainage) (Also See Note 6)			
Contract Amount	Performance & Payment Bonds	Retainage	Sales and/or Use Taxes (Department of Revenue) (DOR)	Prevailing Wage (L&I)	Industrial Insurance (L&I)	Employment Security Taxes (ESD)
Over \$35,000	Yes	Yes	NOC & DOR Release (See Note 4)	Intent & Affidavit (See Note 4)	NOC & Ind. Ins. Certification (See Note 4)	NOC & Certificate of Payment (See Note 4)
\$50,000 or less, limited public works process	Can Waive (See Note 2 & 5)	Can Waive (See Note 2 & 5)	Not Required (See Note 4)	Intent & Affidavit (See Note 4 & 5)	Not Required (See Note 4)	Not Required (See Note 4)
\$150,000 or less	Can Waive (See Note 3)	10% Retainage (See Note 3)	Not required for projects less than \$35,000	Intent & Affidavit (See Note 4)	Not required for projects less than \$35,000	Not required for projects less than \$35,000
\$2,500 or less	May not be needed (See Note 7)	May not be needed (See Note 7)	Not Required	Small Works Form (See Note 5)	Not Required	Not Required
Note 1: Contract documents must require that prevailing wages must be paid and must contain the prevailing wage applicable to the project, regardless of the contract amount.						
Note 2: RCW 39.04.155 (3) allows a local government to waive the payment and performance bonds requirements of RCW 39.08 and the retainage requirements of RCW 60.28. To use this limited public works process, an authorized local government must solicit electronic or written quotations from a minimum of 3 contractors from the appropriate small works roster. A small works roster process is required.						
Note 3: RCW 39.08.010 states that on contracts of \$150,000 or less at the option of the contractor, the agency may, in lieu of performance & payment bond retain 10% of the contract amount for a period of 30 days after final acceptance of the project.						
Note 4: For contracts over \$35,000 agency files a Notice of Completion (NOC) through L&I this will be sent to DOR/ESD/and L&I from which you will receive a certificate of payment of excise tax from DOR (DOR may also demand payment for unpaid excise tax on other projects per chapter 423, 2009 session laws), a letter off release from L&I from liability for industrial insurance premiums for the project (L&I may also demand payment as DOR may demand) and a certificate of payment of employment security contributions, penalties, & interest and like DOR and L&I, may demand payment on other projects per chapter 423, 2009 session laws.						
Note 5: 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 do this see note 4. Chapter 210, 2007 laws allow use of this form for contracts up to \$35,000 if RCW 39.04.155 (3) is followed. (now \$50,000)						
Note 6: RCW 60.28.011 (3) (b) states that 60 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 RCW's 39.12 & 60.28. Therefore, an agency should release reattained funds, less the amount of any claims by laborers, suppliers, and subcontractors, at the end of 60 days to avoid possible ramifications under the Prompt Pay Act (RCW 39.76). If certificates from DOR, ESD, and approved affidavits from L&I per note 4 are not available at the time, contact the prosecuting attorney's office for direction.						
Note 7: Unless an agency waives bonding and/or retainage (B/R) under the notes 2 & 3 scenario, 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.						

1602.13.05 Concerning "Limited Public Works" projects: At the time of the creation of this guide, no law has been found regarding a Limited public works project and a requirement that it be to a single contractor with no sub-contractors, and that the contract be paid in a single lump sum. However, when filing combined forms through your L&I portal, you will find that when you fill out a combined form it states it can only be used for projects that have the following,

- (a) A single contractor with no sub-contractors up to \$50,000
- (b) While communicating directly with L&I they will state that it must be paid in a single lump sum.

If while performing public works and you run into this issue, consider doing the following.

- (a) If filling out a combined form, follow the guidance as suggested by L&I

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- (b) If the contractor has sub-contractors, and the cost of the project is below \$50,000 and you plan to waive retainage and P&P bonds, simply fill out a standard NOC.

The previous paragraphs have detailed the processes for purchasing.

- Below \$10,000
- Between \$10,000 and \$50,000
- Public works contracts above \$350,000
- Public works contracts below \$350,000
- The limited public works process for projects below \$50,000
- Dealing with retainage, contracts, and communicating with the Board of County Commissioners

1602.14 The following guidance is regarding Interlocal Agreements (Piggybacking), State Contracts, and Cooperative Purchasing Contracts.

a) Definitions (followed by process recommendations):

- 1) **Interlocal Agreement:** As per RCW 39.34, the declarative purpose is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. This is commonly known as "Piggybacking."
- 2) **State Contracts:** A State contract is a competitively bid contract by Washington States purchasing arm known as "The Department of Enterprise Services" or DES. DES competitively bids contracts and provides these contracts for "Master Users" of the DES program. Grant County currently is a Master User with DES.
- 3) **Cooperative Purchasing Contracts:** (RCW 39.26.060) These are contracts let by joint powers usually from other states that we in Grant County may use. Not all Cooperative contracts are available, and a list is kept by Central Services and the Administrative Services Coordinator within the BOCC office. At least annually these purchasing contracts or agreement should be visited to ensure they are still available or meet our requirements, have not changed substantially (name changes are common) and that we are still considered active users.
- 4) **GSA Contracts:** The Government Services Administration maintains thousands of contracts. They are referenced through schedule numbers. As a County, we can utilize only two. GSA schedules 70 & 84, specific schedules related to technology and law enforcement.

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b) Commonality Statement:

Use of any of the following processes all have the following common requirements:

- A competitive bid must have been performed.
- The competitive bid and selection process must have been as restrictive or more than our own.
- You must keep in your purchase or project file all documents of the bid process including the original bid, questions, and agency responses (if available) scoring sheets, summaries, or notes (if available), bid opening log sheets, and all other items pertinent to the purchase or project you are completing should be kept with your project or purchase file.
- Any purchase should have been previously approved by the BOCC.
- Ensure the Contract is current and will be current at the time of your procurement is being purchased or contract signed.

****Important:** a sales representative is trying to do their job and sell, you may hear about a "state" contract from someone you have contacted, or they may have contacted you directly. It is not uncommon for a sales representative to NOT know or understand the contract they are speaking with you about or to confuse, cooperative contracts, interlocal, and state contracts. It is vital that you read the contract documents and ensure the contract may be used for your purposes. Many times, Central Services has found the contracts offered were either incorrect, did not cover the requested item, or had expired. Due Diligence is not a buzz term.

c) Interlocal agreements Process:

These are tremendously helpful; the entire chapter of RCW 39.34 should be reviewed if planning to utilize this procurement vehicle. To review the agreements the County currently has in place, visit the link for "interlocal agreements" on the BOCC intranet page.

- If you wish to use an interlocal agreement, you should have already had the purchase or service approved by the BOCC.
- You should ensure that this is the best value for the County.
- You are required to keep a copy of the contract in the project or procurement file.
- You should perform your due diligence, some steps you may take are.
 - 1) Call the holder of the contract (Whatever city, county or public agency that may be) and speak with the representative that administers the contract, has it worked, been of value, would they recommend, is it still valid, are they renewing the contract or bidding a new contract and if so? Why?

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- 2) Would they please send copies of the contract and bid documents, review the documents to ensure they have followed our processes or have been more stringent?
- 3) If the above conditions are satisfactory and you have approval, forward the contract for signature to the BOCC through Consent with a letter stating the work you have performed to get to this decision, that you have reviewed the material, concur it is the best value for the County, the cost, the length of the contract if applicable, and continue with the purchase or service.
- 4) Keep all records as per the retention schedule for your specific purchase or service and forward the original contract signed by Grant County, to the Administrative Service Coordinators office.

d) State Contracts

The Department of Enterprise Services (DES) is the purchasing arm for the State of Washington. Typically, when utilizing a contract from DES nothing more is required than Board approval and the requirements for retaining the contract documents. If you would like to search current contract DES administers, simply visit their website and search.

Grant County is authorized to use these contracts as a Master Agreement holder. Read the contract documents page and (typically) there is a statement regarding who may use whatever contract you are viewing.

Currently, Grant County must look to DES first and if a contract is NOT found, they may search for the contract on another cooperative purchasing platform, this can include some public works.

You do not always find a contract with DES that fits your requirements and are left to competitively bid whatever purchase you are requesting. Sometimes this can be difficult as you may not fully understand all the facets of your procurement and thus be unsure in writing a proper bid document. Because of this, Grant County has authorized the use of some (not all) cooperative purchasing platforms. Their use is details below.

e) Cooperative Purchasing Contracts:

Cooperative purchasing contracts are extremely useful, when looking to procure materials, goods, and sometimes services, it may be difficult to write a bid document and include everything one needs to be complete, especially if you are unfamiliar with the product or service you have a need to acquire. Just like DES these cooperative purchasing programs are competitively bid, and you need to ensure their bid documents, process and contracts were as stringent as ours. They must also be available by request the same as any other bid document you perform, so you must have them on hand.

Cooperative purchasing platforms may be led by a state, a county, or association that follows a state's procurement law. You look for contracts on these platforms the same as DES, you verify it is the best value for the County

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and that you cannot by performing the work yourself, provide the County with a better outcome. The point of using these is twofold and both are of equal importance. You are attempting to quickly procure needed materials, goods, and services but you also must strive to be the best steward of the public funds you can be.

A list of current cooperative purchasing platforms can be found on the Central Services intranet web page. Some of these require a username and password which can be received by contacting Central Services who manages and maintains memberships with these platforms.

As with DES you should first have been authorized by the BOCC for the procurement, have performed your due diligence to ensure that a cooperative purchase or DES contract is the best way to procure your needs. Received a copy of all available bid documents, responses, contracts, and any other pertinent information that will show this was the best value and that it was competitively bid.

f) GSA:

The GSA holds thousands of contracts for the federal government and many contracts for states. You will find many contracts that have excellent pricing structures, but Counties in Washington State are only allowed to utilize two very specific (but wide ranging) schedules.

Schedules 70 & 84 are specific to IT related equipment, software, and services, and Law enforcement needs, ranging from weapons to Xray scanning machines, to vehicles.

The largest difference in these contracts is the way they are structured. Typically, one or more vendors has been selected to provide a service, you need to read the contract documents to see if those selections were based on geographic location or for the purpose of providing a ready supply by utilizing multiple vendors and multiple supply chains.

Most of the contracts are structured in such a way that you do not ever contact the GSA but the vendor directly. The contract documents will lay out specifically what the pricing structure is and what is available, this may include options regarding your procurement. It is structured so that you work directly with the vendor to meet your specific needs. All the while, the vendor must honor the pricing structure as documented in the contract. They should also make you aware if any part of your purchase is not covered under the specified contract.

Like all other cooperative purchases, it should have first been approved by the BOCC, all bid, and contract documents should be readily available and kept with your procurement file, and you should have performed your due diligence to ensure it is the best price/value for Grant County and that you have made your purchase in the spirit of being the best steward you can be for the citizens of Grant County.

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This guide is intended to help those who procure materials, goods, and services. As stated earlier it is not intended to be the "end all be all" of purchasing for Grant County. Many items require nuance, thoughtful interpretation, and an overarching effort to procure anything for the County with an end goal of being the best steward we can be while also building efficiencies within the procurement process. Please be a part of the process, our County has a stated goal to meet current and future needs, serving together with public and private entities, while fostering a respectful and successful work environment.

It works better when we work together.

Laws affecting purchasing and procurement of public works for Grant County.

RCW	Effects	Short answer
36	Counties in General	Laws that define our operating procedures as a County.
36.32	County Commissioners	Complete Chapter
36.32.240 (we do not have central purchasing)	Procurement	Creation of Purchasing Department, County under population of 400,000
36.32.245 (39.04.190)	Public Works / Vendor Roster / Procurement	Competitive Bids; Requirements, Advertisements, Exceptions-Bid limit for Vendor Roster \$10,000-\$50,000
36.32.250	Public Works	Competitive Bids; Contract Procedure, Contracts under \$40,000, Small Works Roster Process
36.32.280	Public works / Procurement	Exemptions to competitive bidding
39.04 (39)	Public Works	Complete Chapter, Overall chapter that defines how we perform public works
39.04.010	Public Works	Definitions
39.04.105	Public Works	Bid Protest
39.04.155 (1) (2) (c) (3)	Public Works	Explains MRSC use and \$350,000 Limitation. Also contains reference to \$250,000-\$350,000 & contains Limited Public Works for less than \$50,000, Speaks to the following: Bid splitting, Interlocal agreements, Use of DES, Waiving of retainage and bonds,
39.04.190 (36.32.245)	Public Works / Vendor Roster / Procurement	Purchase contract process—Other than formal sealed bidding (Vendor Roster)
39.04.280	Competitive bidding requirements	Actual list of reasons to exempt from a competitive bid process
39.08.010	Public Works	Bond required, retainage of contract in lieu of bond.
39.12	Public Works	Prevailing Wage Laws
39.26.060 (39.34.30)	Procurement	Cooperative purchasing
39.30.045	Procurement	Purchases from Auctions
39.34.030	Procurement	Joint powers—Agreements for joint or cooperative actions.
43.19	Department of Enterprise Services	Complete chapter for the administration of DES
42.52	Ethics in Public Service	Not a short answer, numerous sub sections apply
60.28.011 (1) (a)	Public Works Transportation Projects (Federal Money)	Retainage can be waived (with additional requirements)
Grant County Polices and Resolutions		
Resolution or Policy	Administered by	Located
R-No. 09-080-cc	Clerk of the Board	Establishes procedures Purchasing and Public Works Contracting; Vendor Lists
P-No. 1503.8	Human Resources	Approval thresholds for purchases without BOCC approval
P-No. 1503.92	Human Resources	Capital Planning (CIP)
P~1504	Human Resources	Purchasing Policies