BACK TO PUBLIC WORKS CONTRACT ADMINISTRATION BASICS WITH ESSENTIAL DOCUMENTATION
Your Presenter:

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Public Works Contract Administration Procedures with Essential Documentation for...

• Major Public Works
• Small Public Works
• Limited Public Works
• Public Works performed by Day Labor
• Emergency Contracts
DEFINITIONS

• RCW 39.04.010 contains the basic, universal public works definitions.

• RCW 39.04.010 ‘defines’ these things:
  – Public Work
  – Award
  – Contract
  – Municipality
  – Responsible Bidder
PUBLIC WORKS – RCW 39.04.010

– shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance,

– executed at the cost of the state or of any municipality, *(regardless of the source of funding)*

– or which is by law a lien or charge on any property therein. *(includes LIDs and GO bond issue projects)*
Is Maintenance a Public Work?

• Court Cases & Rules
  - **Court:** “Maintenance is a ‘public work’ subject to prevailing wage law” (City of Spokane & Wheelabrator Spokane v. Department of Labor & Industries)
  - **WAC:** Public work includes “maintenance when performed by contract” (WAC 296-127-010)
Is Maintenance a Public Work?

- "Public work" means all work, construction, alteration, repair, or improvement *other than ordinary maintenance*... RCW 39.04.010

- If “Ordinary Maintenance” is not a Public Work, what is it?
  – Ordinary Maintenance is work performed by public agency employees. WAC 296-127-010 (7)(b)(iii)

- Maintenance is defined as keeping existing facilities in good usable, operational condition.” WAC 296-127-010 (7)(a)(iv)
PUBLIC WORKS

• **Applicability of Prevailing Wages:** All public works, including maintenance when performed by contract, shall comply with chapter 39.12 RCW (prevailing wages).
AWARD

• ‘Award’ means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder.
CONTRACT

• ‘Contract’ means a contract in writing for the execution of public work for a fixed or determinable amount
MUNICIPALITY

– every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work

– but not drainage and diking districts, etc
Major Public Works
Solicitation Phase – Engineer’s Estimate

39.04.020, .050, .060

• Detailed cost of work
  – estimated quantities of each class of work
  – estimated unit cost for each class
  – estimated total cost for each class
  – Trench safety system must be included (if applicable 39.04.180)
Major Public Works
Solicitation Phase – Engineer’s Estimate

39.04.020, .050, .060

- Estimated dates of commencement and completion
- Time limit allowed for completion of the work
Major Public Works
Solicitation Phase – Engineer’s Estimate

Not required by statute but commonly included:

• All construction related work:
  – Permitting
  – Design
  – Engineering
  – Project Management/Agency Staff cost
  – Taxes
  – Contingency
Major Public Works
Solicitation Phase – Engineer’s Estimate

39.04.020, .050, .060

- Estimate must be Approved by Director, Supervisor, Commissioners....
- Original draft or a certified copy must be filed before further action on the project is taken.
Major Public Works
Solicitation Phase – Engineer’s Estimate

39.04.020, .050, .060

• If supplemental plans/specs cause probable cost of work to change by more than 10%, engineer’s estimate must be revised at same level of detail as the original estimate.

• Plans and specifications must be filed and available to the public.
Major Public Works
Solicitation Phase – Advertisement for Bids

Know your Statutes!

Agencies may have different statutory requirements for advertising, and bid openings for public works contracts.
Major Public Works
Solicitation Phase – Advertisement for Bids

Examples:

• First class Cities - ..”may” have public works performed by contract pursuant to public notice and call for competitive bids.

• If all work performed in budget period is maximum permitted for that budget period, all remaining public works within that period “shall” be done by contract pursuant to public notice and call for competitive bids.

35.22.620
Major Public Works
Solicitation Phase – Advertisement for Bids

Examples:
- Second Class City, Town, Counties, Ports
  Notice published in official newspaper at least 13 days
  Sealed bids
  Public bid opening

What are some other agency requirements?
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Solicitation Phase – Advertisement for Bids

Grant Requirements?

• Title 6 – Civil Rights Act – Prohibits Discrimination
• Non-Segregated Facilities Declaration
• Debarment Certification
• Lobbying
• OMWBE site – free posting
  http://www.omwbe.wa.gov/opportunities
Apprenticeship Requirements?

- Statute requires apprenticeship utilization for contracts awarded by the State, School Districts and State Four-Year Institutions of Higher Education, only.
- Individual Agencies may have separate policies

39.04.320
Major Public Works
Solicitation Phase – Advertisement for Bids

• Description of the Work
• Where plans and specs available
• Bid date and time
• Where and how to submit bid
• Where bids will be opened
• Engineer’s Estimate – use a range
• Pre-Bid Conference location, date and time (is it mandatory?)
• Bid guarantee requirement
• Supplemental Bidder Responsibility Criteria
Major Public Works
Solicitation Phase – Advertisement for Bids

Receiving Formal Competitive Bids

• Time. The Advertisement for Bids states that bids will not be received after a certain time (the Bid Deadline).

• Sealed Bids.
  – The Advertisement for Bids requires sealed bids. Additionally, the Instructions to Bidders requires bids to be submitted in a sealed envelope properly addressed and endorsed.
  – Oral, telephonic, electronic mail (e-mail), or facsimile Bids are invalid and will not be accepted.
Major Public Works
Solicitation Phase – Documents to Retain

• Engineer’s Estimate and all Supplements
• Legal Affidavit of Publications
• Complete Set of Plans and Specifications and all Addenda
• Any Q & A’s Issued
• Agency/Governing Body approval to Call for Bids
• Where and how bid docs were posted/distributed
• All reference documents
• Supplemental Bidder Responsibility Criteria
• Schedule of Applicable Prevailing Wages (LNI and Federal)
Major Public Works
Bidding Phase – Bidder Instructions

• What official clock will be used for establishing bid time
• Where it is located
• Clear instructions for bid drop location
Major Public Works
Solicitation Phase – Bidder Instructions

• Include any special instructions/information:
  – Allow time for parking
  – Street parking only (metered?)
  – Must enter through security gate; bring ID
Bid Guarantee

- RCW 35.23.352: Code cities and towns
  - Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit.
Major Public Works
Bidding Phase – Bidder Instructions

• RCW 36.32.250 Counties
  – No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.
Major Public Works
Bidding Phase – Bidder Instructions

• RCW 57.08.050 Water/Sewer Districts
  – Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond.
Return of Bid Guarantee:

- As soon as the bid prices have been compared, the (agency) will return the Bid Guarantee accompanying any Bids which, in the (agency’s) judgment, would not be considered for award. All other Bid Guaranties will be held until the Contract and bonds have been executed, after which all remaining Bid Guaranties, except which as have been forfeited, will be returned.
Major Public Works
Bidding Phase – Bidder Instructions

• Pre-Bid Conference
  – Where
  – When
  – Access/Parking
  – Mandatory?
Major Public Works
Bidding Phase – Bidder Instructions

Substitution requests (prior to Bid)

– Are they acceptable
– Written, email...
– What is required with request: manufacturer’s literature, samples
– Approval of substitutions should be by Addenda only
Major Public Works
Bidding Phase – Bidder Instructions

Retainage

• 3 Options for management of retainage:
  – Held in an account by the municipality
  – Deposited into an interest-bearing account established by the contractor and has no contractor withdrawal privileges; require letter from bank
  – Deposited into an escrow account established by the contractor with no contractor withdrawal privileges; require escrow agreement

60.28.011
Major Public Works
Bidding Phase – Bidder Instructions

Payment and Performance Bonds

RCW 39.08.010 requires municipalities to call for bonds. The bond is to be issued by a surety company licensed to do business in Washington, http://www.insurance.wa.gov/cgi-bin/PubInfoApps/CGIAuthComp.exe

• Performance Bond is to be conditioned that the contractor shall faithfully perform all the provisions of such contract.
Payment and Performance Bonds

Payment Bond is to be conditioned that the contractor will pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work.

- Combined Performance and Payment Bond vs separate bonds
  - 100 % each
Payment and Performance Bonds

- RCW 39.08.015 states the penalty for failure to obtain bonds is that the municipality is liable to the persons mentioned in RCW 39.08.010 to the full extent and for the full amount of all such debts so contracted by such contractor.
Major Public Works
Bidding Phase – Bidder Instructions

Payment and Performance Bonds
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.
Prevailing Wage Requirements

Appropriate prevailing wages are to be required and included in the contract documents by the awarding agency and by any contractor hiring a subcontractor on the public work

- **Option A** - Include a schedule of the applicable prevailing wages in your bid and contract documents,

*OR*
Prevailing Wage Requirements – Option B

- The bid and contract specifications may provide the required prevailing wage rate information in this alternate format:
  - Provide the URL to the Dept. of L & I’s prevailing wage rates
  - Identify the exact wage publication date to use (the effective date)
  - State the county in which the public works project is located
  - Specify a copy is available for viewing in your office
  - Explain that your agency will mail a hard copy upon request
  - Retain a printed version of the rates as part of your records
Major Public Works
Bidding Phase – Bidder Instructions

Prevailing Wage Requirements

• The prevailing wages in effect on the bid due date are the rates that apply to that construction contract
  – No matter how long it lasts, unless the contract is awarded more than six months after the bids were due – except for Building Service Maintenance Contracts.
  – For those contracts where award was delayed more than 6 months, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.
Major Public Works
Bidding Phase – Bidder Instructions

Prevailing Wage Requirements

• Rates are published twice per year – First business day of February and August, and become effective 30 days after publication.
  - [http://www.lni.wa.gov/TradesLicensing/PrevWage/Wage Rates](http://www.lni.wa.gov/TradesLicensing/PrevWage/Wage Rates)
Major Public Works  
Bidding Phase – Bidder Instructions

Bid Validity

All Bids submitted shall be valid and binding on the bidder for a period of sixty days following the Bid submittal deadline and for any extension of time granted by the bidder.
Major Public Works
Bidding Phase – Bidder Instructions

Reciprocal Bid Preference 39.04.380

- Alaska, Nevada, New Mexico, Wyoming

- EXAMPLE:

  Alaska Nonresident Contractor Bid Amount $100,000

  Multiplied by the Alaska CPD* X 0.05

  Nonresident Disadvantage Total $ 5,000

* Comparable Percentage Disadvantage
Major Public Works
Bidding Phase – Bidder Instructions

Reciprocal Bid Preference 39.04.380
  – Alaska, Nevada, New Mexico, Wyoming

• EXAMPLE:

<table>
<thead>
<tr>
<th>Alaska Nonresident Contractor Bid Amount</th>
<th>$100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disadvantage Total</td>
<td>5,000</td>
</tr>
<tr>
<td>Total Nonresident Bid for Comparison</td>
<td>$105,000</td>
</tr>
</tbody>
</table>
Major Public Works
Bidding Phase – Bidder Instructions

• If the NDT is lower than all other Washington contractor bid amounts, the Alaska nonresident contractor is the successful bidder and will be awarded a contract for the bid amount of $100,000.

• If the NDT is higher than a Washington contractor bid amount, the successful Washington bidder will be awarded a contract for the bid amount.
Major Public Works
Bidding Phase – Bidder Instructions

Responsible Bidder (Mandatory)

• A contractor who meets the criteria in RCW 39.04.350:
  – Certificate of Registration per RCW 18.27
  – Current Unified Business Identifier number
  – Industrial Insurance Coverage
  – Employment Security Department number
  – State Excise Tax Registration number
Major Public Works
Bidding Phase – Bidder Instructions

Responsible Bidder (Mandatory)

– Not disqualified for license violation (39.06.010)
– Not disqualified for prevailing wage violation (39.12.065)
– Not disqualified for apprenticeship utilization violation (39.04.320)
– Not disqualified for LNI wage violation citation and assessment (49.48.082, 49.46, 49.48, 49.42)
Responsive Bidder

The (agency), in its sole discretion, reserves the right to determine Bid irregularities which render a Bid non-responsive, and to waive informalities and immaterial irregularities in the Bid. A Bid shall be considered irregular and may be rejected as non-responsive for reasons including, but not limited to:
Responsive Bidder

• Bid Form furnished or authorized is not used or is altered;
• Bid Form or any required supplemental documents are incomplete, contain any additions, deletions, conditions, or otherwise fail to conform to the requirements;
• Bidder adds any provisions reserving the right to reject or accept the award, or enter into the contract;
Responsive Bidder

- Bid or Bid Guaranty is not properly executed, or shows an incorrect amount;
- Bid fails to include a price for every bid item;
- Any of the bid prices are excessively unbalanced either above or below the amount of a reasonable bid price for the item of Work to be performed, to the potential detriment of the (agency).
Major Public Works
Bidding Phase – Bidder Instructions

Supplemental Responsible Bidder Criteria (optional)

- 39.04.350 (3)
- See CPARB July 2016 Report:
Major Public Works
Bidding Phase – Bidder Instructions

Supplemental Responsible Bidder Criteria (optional)

• May establish criteria that is project specific
• May establish general criteria applicable for all projects
Major Public Works
Bidding Phase – Bidder Instructions

Single Bid Received

- If the City receives a single responsive, responsible Bid, the City shall have the right, in its sole discretion, to conduct a price or cost analysis on such Bid. The bidder shall promptly provide all cost or pricing data, documentation and explanation requested by the City to assist in such analysis. By conducting such analysis, the City shall not be obligated to accept the single Bid; the City reserves the right to reject such Bid or any portion thereof.
Major Public Works
Bidding Phase – Bidder Instructions

No Bid Received

• For Contracts estimated to cost less than $300,000, where the Port receives no bids, the Port shall have the right, in its sole discretion, to award a contract to a responsible Contractor chosen from the Small Works Roster. The Contract amount shall be at a negotiated price that does not exceed 10% of the published Engineer’s estimate, and in no case shall the contract award exceed $300,000.
Identical Bids Received

WSDOT: Bidders draw slips of paper from a box. One marked “Winner” the other(s) marked “Unsuccessful”. Bidders draw in alphabetical order by name of firm.
Major Public Works
Bidding Phase – Bidder Instructions

Evaluation Method
• Well defined Basis of Award/Low Bidder Evaluation Method
• Total of Base Bid, Plus Additive?
• Other Tables?
Major Public Works
Bidding Phase – Bidder Instructions

Evaluation Method

“The apparent low bidder, for purpose of award, shall be the responsive and responsible bidder offering the low aggregate amount for the base bid plus selected additive or deductive bid alternates and meeting all other bid submittal requirements”.

Owner could manipulate totals to select a specific Contractor.
Major Public Works
Bidding Phase – Bidder Instructions

Evaluation Method

“Award of Contract will be made by the Commission based upon any combination of the base bid and alternates which, in the Commission’s sole discretion, is in the Commission’s best interest considering price, schedule and other factors.”
Major Public Works
Bidding Phase – Bidder Instructions

Evaluation Method

• The Owner will evaluate bids in the following manner to determine the lowest bid that falls within the project budget:
  • A. Sch A – Base Bid Only
  • B. Sch A & Sch B Item B-1
  • C. Sch A & Sch B Item B-1, and Sch B Item B-2
Major Public Works
Bidding Phase – Bidder Instructions

Condition or Qualified Bids

FORM OF BID

• Bids shall be submitted on the forms provided by Section 00 41 13.

• All blanks on the bid forms shall be filled in by ink or typed.
Major Public Works
Bidding Phase – Bidder Instructions

Condition or Qualified Bids

FORM OF BID

• Alterations, erasures, or interlineations within the blanks, if any, shall be in ink and initialed by the signer of the Bid.

• The bidder shall make no deletions, additional conditions or stipulations on the bid form or qualify its Bid in any manner.
Major Public Works
Bidding Phase – Bidder Instructions

Withdrawal or Modification of Bid

• A bidder may withdraw or modify its Bid before the Bid submittal deadline by submitting written notice signed by the bidder. After Bid opening no bidder may withdraw or modify its Bid unless Contract award is delayed beyond the time specified.
Verification of Bid Prices

• Prices set forth in the Bid will be reviewed for mathematical accuracy. The County reserves the right to correct mathematical errors or complete mathematical calculations that are obvious on the face of the Bid. In the event of a discrepancy between a unit price and the extended amount for a bid item, the unit price will control. The prices, corrected for mathematical errors, shall be used as the amount of the bid items for evaluation and award purposes.
Alternative Bids

• Before the bid submittal deadline any bidder may submit an Alternative Bid based on plans and specifications provided by the bidder which it considers to be in the interest of the (agency).
Major Public Works
Bidding Phase – Bidder Instructions

Alternative Bids

• Alternative Bid means a statement and price submitted by a bidder *which accompanies a conforming Bid* and proposes a different design, procedure, method, product or material than that specified, to be provided by the bidder who assumes all responsibility therefore, and is intended to accomplish the same end result as that required by the Contract Documents.
Rights of the (agency)

• The (agency) reserves the right to accept the Bid of the lowest responsive, responsible bidder, an “Alternative Bid” based upon plans and specifications prepared by the Bidder, to reject any or all Bids, republish the Advertisement for Bids, revise or cancel the work to be performed, or to do the work otherwise, if in the judgment of the (agency), the best interests of the (agency) is served thereby.
Major Public Works
Bidding Phase – Bidder Instructions

Failure to Execute Contract

Bidder fails to execute Contract and furnish bonds and insurance certificates within ten days from delivery of the notice to award; Or declares in writing its intent not to execute the Contract;

- Its Bid Guaranty *shall be forfeited* and the (agency) may issue notice of award to the second lowest responsible Bidder.
Cancellation of Award

- The (agency) reserves the right to cancel the award of any Contract at any time before the execution of said Contract by all parties without liability to the (agency).
Major Public Works
Bidding Phase – Bid Forms

Trench Safety System :
• Must be a separate bid item if excavation is anticipated to exceed 4 feet
• Cannot be considered incidental to any other item.

39.04.180
Major Public Works
Bidding Phase – Bid Forms

Sales Tax As Separate Bid Item

• Sales taxes apply to every sale of tangible personal property (and some services) to all persons, including local governments.

• For bid limit purposes, sales tax should be included when determining the cost of a public work.

WAC 458-20-170, 171
Major Public Works
Bidding Phase – Bid Forms

Project Closeout Bid Item
• Set lump sum amount OR Allowance item
• Payment for providing all closeout submittals, O&M’s, warranties, as-built drawings, test results, reports, certifications.
• Could include Affidavit of Wages Paid
Major Public Works
Bidding Phase – Bid Forms

Tips for Receiving Conforming Bids

Limit number of forms – include Statements/Certifications within Bid Form above signature line, such as:

• Federal Debarment Certification
• Federal EEO/DBE Statements
• Responsible Bidder Certification (RCW 4A.72.085)
• Non-Collusion Affidavit
Tips for Receiving Conforming Bids

• Addenda Acknowledgement
• Bid Guarantee statement
• Verification of Responsibility Criteria for Each Subcontractor (39.06.020)
• Fewer bid items means less room for error
• One place for signature/stamp
Major Public Works
Bidding Phase – Bid Forms

Naming of Subcontractors – HVAC, Plumbing, Electrical

• For Contracts estimated at $1 million or more
• With bid or within 1 hour? 39.30.060
• Include blank lines for list
• Can they leave line blank if no related work required?
Major Public Works
Bidding Phase – Bid Forms

Naming of Subcontractors – HVAC, Plumbing, Electrical

- **RCW 39.30.060**
  - “Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder’s bid non-responsive and, therefore, void.”
Major Public Works
Bidding Phase – Bid Forms

Additive and Alternate Bid Items

• Additive – new bid item added in separate table
• Alternate – replaces other bid item
Major Public Works
Bidding Phase – Apparent Low Bid Evaluation

- Is apparent low bid within Engineer’s estimate
- Was bid received before deadline
- Properly completed and signed bid form (no conditions)
- Proposed subcontractors listed
- Acknowledgement of Addenda
- All Certifications signed (if not included on bid form above signature line)
Major Public Works
Bidding Phase – Apparent Low Bid Evaluation

• Bid Guarantee received
• Verification of bid prices; check for mathematical errors
• Calculate reciprocity percentage
• Additives/Alternates considered
• Excessively unbalanced bid price(s)
Major Public Works
Bidding Phase – Apparent Low Bid Evaluation

- Washington law requires rejection of non-responsive bids.
- A bid that varies materially from the Invitation for Bids or provides the bidder an advantage is non-responsive.
- Unbalancing of bids constitutes a material irregularity.
- Material irregularities are non-waivable and bids should be Rejected as non-responsive.
- Awarding to an unbalanced bidder will not result in lowest prices to the awarding agency.
Major Public Works
Bidding Phase – Apparent Low Bid Evaluation

• Owners recognize unbalanced bids are grounds for a rejection of such a bid.

• WSDOT Specification provides that a bid may be declared irregular and rejected if unbalanced when:

• Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable bid), to the potential detriment of the Contracting Agency.
Major Public Works
Bidding Phase – Apparent Low Bid Evaluation

Real Life Example:
Owner estimated quantity of contaminated soils removal at 300% lower than actual quantity.
Low bidder recognized this prior to bid.
Unit price was triple other bidders.
Contractor refused to re-negotiate unit price.
What are the Owner’s options?
Major Public Works
Bidding Phase – Qualification of Apparent Low Bidder

• SECURE ACCESS - https://secureaccess.wa.gov
• http://www.lni.wa.gov/TradesLicensing/Contractors/default.asp
• http://apps.dor.wa.gov/BRD/
• https://secure.lni.wa.gov/debarandstrike/ContractorDebarList.aspx
• https://www.sam.gov/portal/SAM/#1
Major Public Works
Bidding Phase – Qualification of Apparent Low Bidder

• Supplementary Bidder Responsibility criteria met
• State Contractor registration valid as of bid date
• Unified Business Identifier # valid
• Industrial Insurance Coverage
• Employment Security Department Number
• DOR State Excise Tax Registration Number
Major Public Works
Bidding Phase – Qualification of Apparent Low Bidder

• Labor & Industries Debarred List
• Federal SAM (System for Award Management) Debarred List
• Mandatory Pre-Bid Meeting Attendance
Major Public Works
Bidding Phase – Bidder Letters

• Unsuccessful bidder letters
• Return of Bid Guarantees
Major Public Works
Bidding Phase – Bid Protest Received

39.04.105

• Protesting Bidder must submit notice in writing no later than 2 full business days following bid opening (Sat., Sun. Holidays not counted).

• Agency cannot *execute* contract with anyone other than the protesting bidder without providing at least 2 full business days written notice of intent to execute contract.
Major Public Works
Bidding Phase – Bidder Claiming Error

39.04.107

- Low Bidder claiming error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.
- Does bidder forfeit bid guarantee?
Major Public Works
Bidding Phase – Documents to Retain

• Every complete bid – including all certifications, bid guarantees, supplemental bidder criteria, all documents required with bid.
• All mathematical error corrections.
• Bid Results compiled – Certify as to who opened bids and who certified results.
• Mandatory pre-bid meeting sign-in sheet
Major Public Works
Bidding Phase – Documents to Retain

Download and print (or pdf) verification:

- Contractor business license
- UBI #
- ESD
- DOR
- LNI
- Debarred Lists
Major Public Works
Bidding Phase – Documents to Retain

• Unsuccessful bidder letters with copy of Bid Guarantee returned
• Bid Protest documents
• Bidder claiming error documents
Major Public Works Award Phase

• Notice of Award
• 10 days later – Signed Contract and Bonds
• Check Bond and Insurance validity - https://fortress.wa.gov/oic/consumertoolkit/Search.aspx
Major Public Works Construction Phase

• Notice to Proceed
• Retainage – Bond or letter from Contractor for Escrow Account
• “Right to Claim a Lien” or “Materialman’s Notice”
• Certified Payrolls
• Schedules – Updates?
• Request for Information (RFI’s)
Major Public Works
Construction Phase

• Engineering Submittals
• Change Order Requests
• Change Orders with all backup documentation – pricing, negotiations
  – 39.04.360 – CO must be issued within 30 days after satisfactory completion of any additional work. Interest must accrue at 1% per month.
Major Public Works Construction Phase

- Force Account Sheets and all backup documentation
- Monthly pay estimates and all backup for unit priced items
Major Public Works Construction Phase

• LNI Approved Intent to Pay Prevailing Wages from Prime and all Subcontractors
• Do you need all Intents before making first payment?
Major Public Works
Close-Out Phase

• Notice of Substantial Completion
  4.16.310 definition – The state of completion reached when an improvement upon real property may be used or occupied for its intended use.

• Actions or claims arising from construction must occur within 6 years from Substantial Completion.
Major Public Works
Close-Out Phase

- Final Pay Estimate
- Final Change Order – reconciliation
- O & M Manuals
- Warrantees
- As-Builts
- Certified Payrolls
Major Public Works Close-Out Phase

- Final Schedule
- Notice of Final Completion to Contractor
- LNI Approved Affidavit of Wages Paid from prime and all subcontractors
- Notice of Completion to LNI, DOR, ESD (use Secure Access)
Major Public Works
Close-Out Phase

Retainage:
60.28.011 (7). If, after a substantial portion of the work has been completed, an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, if may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion.
Retainage:

60.28.011 (7). In the event that the work is terminated before final completion, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid.
Major Public Works
Close-Out Phase

Retainage:
60.28.011 (6)

• Contractor may submit a bond for all or any portion of the retainage at any time.
• Subcontractor can do the same.
• Public body must release bonded portion of retained funds within 30 days of accepting the bond.
Major Public Works
Close-Out Phase

Retainage:
60.28.011 (3)

• Contractor, at any time, may request retainage be reduced to 100% of the value of the work remaining on the project.
  – (3)(a) After completion of all work other than landscaping
  – Public body must release and pay in full the amount retained (other than continuing retention of 5% of the moneys earned for landscaping)
  – Release subject to approved Affidavits
  – Lien releases?
Major Public Works
Close-Out Phase

Liens Against Retainage or Bonds

• 60.28.011 (2) Claims against retention must be given within 45 days of completion of the contract work.

• 39.08.010 Claims against bonds must be given within 30 days after completion of the contract with an acceptance of the work by the governing body.

• What to do if liens exceed retainage total.
Major Public Works
Close-Out Phase

Releases Must be Received from:
- Labor & Industries
- Employment Security Department
- Department of Revenue

Must release retention within 60 days after completion of all contract work if all above releases are received and no active liens.
Day Labor Documentation Requirements

• If public work is performed by Agency’s day labor, and the estimate exceeds $25,000; at least 15 days before beginning work, the estimate and description of work must be published at least once in legal newspaper. 39.04.020

• Preserve a full, true and accurate account and record of costs executing such work in accordance with BARS provisions. 39.04.070
Small Public Works

- Engineer’s Estimate, including WSST, is less than $300,000.
- Anticipate Change Orders?
- Agency shall adopt ordinance or resolution implementing 39.04.155.
- Detailed plans and specs not required.
- Must include estimate, scope and nature of work.
Small Public Works

- If Estimate less than $150,000, solicit from at least 5 Contractors from Roster
- If Estimate over $150,000, solicit from all on Roster, or:
  - Publish notice in newspaper, or
  - Mail notice to all Contractors on the Roster, or
  - Send notice via electronic means.
- Equitably distribute opportunity
Small Public Works

- Resolution or Ordinance adopting 39.04.155, allowing use of SWR Process.
- List of all Contractors the solicitation was sent to.
- Affidavit of Publication of annual solicitation, and/or contract specific solicitations.
- Where, when and how bid documents available to Contractors.
Small Public Works

• Make available a list of all SWR contracts awarded at least once every year. 39.04.200

• Include:
  – Name of Contractor
  – Amount of the Contract
  – Brief Description of Work
  – Date Awarded
  – Location where bid quotations are available for public inspection.
Limited Public Works

Limited Public Works Process:

• Engineer’s Estimate less than $35,000.
• Solicit from at least 3 Contractors on the Roster.
• Equitably distribute opportunity.
• May waive bonds and retainage requirements.
• Notice of Final Completion not required.
Limited Public Works

• For 24 months following award of LPW, maintain a list of all contractors contacted and the contracts awarded.

• Include
  – Name of Contractor
  – Contractor’s Registration Number
  – Amount of the Contract
  – Brief Description of the Work
  – Date Contract was Awarded
Small and Limited Public Works

Bids open to public inspection and available by electronic request after award.
Major Public Works
Bidding Phase – Bidder Instructions

• Electronic Bid ok?
  – See 19.360 – “Electronic Signature” defined as electronic sound, symbols, or process attached to or logically associated with a contract or other record...
  – Local government statutes and policies must be amended to allow use of this Statute.
• Each Port with more than $10 million annual gross revenue, must maintain a database on a public web site of all contracts, including public works and personal services.
For Ports Only
53.08.440

• The Database Must include:
  – The Contractor,
  – Purpose of the Contract
  – Effective Dates and Periods of Performance
  – Cost of Contract
  – Funding Source
  – All Contract Modifications
  – Competitively Procured or Sole Source
“Emergency” means unforeseen circumstances beyond the control of the municipality that either: (a) present a real, immediate threat to the proper performance of essential functions, or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.
Emergency Public Works

- If the estimate exceeds $25,000; within 7 days after commencement of the work, the estimate and description of work must be published at least once in legal newspaper. 39.04.020

- Preserve a full, true and accurate account and record of costs executing such work in accordance with BARS provisions. 39.04.070
Emergency Contracting

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

Delegated Authority Example

• If needed for the immediate execution of a contract for work, the Executive Director, pursuant to the procedures of RCW 39.04.020, (as may be amended or succeeded), is authorized to declare and make appropriate findings that an emergency situation exists, waive the competitive bidding requirements, and execute all contracts necessary to address the emergency situation.
Emergency Contracting

Delegated Authority Example

• The Executive Director shall notify the Commission within 48 hours of the finding of emergency.

• The Executive Director or his or her designee shall submit to the Port Commission the proposed ratification of the finding of emergency and any contracts awarded and/or executed pursuant to that finding at the next regularly scheduled Commission meeting.
Emergency Contracting

• Select Contractor – preferably from Roster
• Not to Exceed Contract, based on Force Account
• Prevailing Wages Apply
• Intents and Affidavits required
• Insurance required
• Bonds required
• Qualify Contractor – license, etc.
• Retention?
2018 Proposed Legislation

SB 5576/HB1849

• For agencies that now require apprenticeship utilization, requires specifying monetary incentives for meeting the goals, monetary penalties for not meeting the goals, and an expected cost value in the bid associated with meeting the goals.

• Reporting required.
2018 Proposed Legislation

SB 5168

• Prohibits using mandatory project labor agreements in all public works competitive bid processes and as a condition of any grant, tax abatement, or tax credit.
SB 6082

- Requires bidders on public works contracts and state goods and services contracts to certify that they will not influence employees seeking to exercise their collective bargaining rights.
2018 Proposed Legislation

SB 5492/HB1673

• Adds training on public works and prevailing wage requirements to responsible bidder criteria.

• Exempts bidders who have completed three or more public works projects and have had a Washington business license for at least three years.
2018 Proposed Legislation

SB 5379 – Reintroduced in 2018

• Requires use of cross-laminated timber on all new public buildings 12 floors or less.
2018 Proposed Legislation

SB 6143
• Allows use of unit priced contracts (work orders) by First Class Cities.

SB 6072/HB 2691
• Allows use of unit priced contracts (work orders) by Ports.
2018 Proposed Legislation

SB 6329/HB 2690 – For Ports Only
• Allows issuing public works contracts, without calling for bids, if estimate is less than $40,000.
2018 Proposed Legislation

HB 2407

• New in 2018 – Steel or concrete from out of state must be reported for *public projects*.

• Public Project = Funds from State capital budget, state transportation budget that is over 5,000 SF, financed through a financing contract, or a road or bridge project over $1 mil.
2018 Proposed Legislation

HB 1083 – Reintroduced in 2018

• No Intent or Affidavit required if contract $750 or less
2018 Proposed Legislation

HB 1675

• Creates a $500 civil penalty to Contractor who fails to post an Intent.
• Counts as strike toward debarment.
2018 Proposed Legislation

HB 1674 – Reintroduced in 2018

• Requires LNI to establish prevailing wages using collective bargaining agreements.
2018 Proposed Legislation

SB 5167

• For Regional Transit Authorities – prohibits the use of mandatory project labor agreements.
2018 Proposed Legislation

HB 1897 – Reintroduced in 2018

- OMWBE annually identify state agencies and educational institutions with low levels of participation.
- Establishes an investigative unit within OMWBE.
- Modifies SWR to $500,000. Can waive retainage requirements.
- Modifies LPW to $150,000. Must equitably distribute opportunities.
Questions?