

Title: King County Procurement of Construction Contracts

Affected Agencies: All agencies procuring construction contracts

Authorities: King County Code, Revised Code of Washington

Keywords: procurement, capital projects, small works, work order, construction

Sponsoring Agency: Department of Executive Services, Finance and Business Operations Division

Type of Action: Supersedes

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CON 7-13-1 (AEP), May 25, 2009

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CON 7-19-1 (EP), June 22, 2017

CON 7-26-EP, January 11, 2021

Signed by:

Girmay Zabihay

Executive signature:

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5/6/2026

Date signed and effective:



King County

I. Purpose

This policy establishes uniform procurement guidance for public works as defined by the Revised Code of Washington (RCW) 39.04. The purpose of this policy is to:

- A. Establish policies for the procurement and administration of King County construction contracts, Change Orders, Individual Work Orders, and contract compliance.
- B. Ensure appropriate oversight, delegation of activities, documentation, and project controls are in place to support the completion of efficient, quality capital projects that prudently and equitably expend public funds.
- C. Establish adequate controls by delegating decision-making authority and responsibilities to specific parties.

II. Applicability and Audience

- A. This policy only applies to construction contracts and change orders entered into after the effective date of this policy. This policy does not apply to the procurement of goods and services, architecture, engineering, professional services, or alternative public work contracts.
- B. This policy applies to the Administrative Offices and Executive Departments supervised by the King County Executive. The audience may also include any King County non-Executive Branch Departments adopting this policy. See CON 7-27 King County Procurement for general procurement guidelines.

III. Definitions

“AD” is an abbreviation for Agency Director or designee.

“Agency” refers to the implementing agency (i.e., executive department, division, section, unit, or work group) responsible for administering contracts it has executed.

“Agreement” means a mutually binding legal agreement or any modification obligating a person, firm, corporation, or partnership to provide tangible personal property, goods or services, professional or technical services, or public work to the County, and that obligates the County to provide payment in return. The Agreement constitutes the entire agreement between the County and the external party for performance of the service or work. Agreement may be interchanged with “Contract.”

“Alternative Public Works (APW)” means the design-build, general contractor construction manager, and job order contracting authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

“Bid” means an offer made by the supplier to compete for a contract.

“Bidder” means a person, firm, partnership, corporation, or joint venture that formally submits a bid for services on public work to the County in response to a solicitation or bids issued by the County.

“Business Development and Contract Compliance (BDCC)” is a section in the Finance Business Operations Division. BDCC administers the county’s local and federal small business programs, priority hire and apprenticeship programs, including the master community workforce agreement for capital construction projects and the Small Contract and Supplier (SCS) certification.

“CPMWG” refers to Capital Projects Management Work Group as established by executive policy CIP 8-5-EO.

“Capital Project” refers to a project with a scope that involves one or more of the following elements, all related to a capital asset: acquisition of a site and/or existing structure, program or site master planning, design and environmental analysis; information technology investment; construction; major equipment acquisition; reconstruction; demolition; or alteration or renovation. A Capital Project shall include the following elements: capital appropriation form; a project management plan, scope, budget, and schedule. A Capital Project may be part of a larger program and may include multiple contracts of varying types.

“Certified Firm” means a business that has been certified by King County Business Development and Contract Compliance (BDCC) as a Small Contractor or Supplier (SCS), or by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) as a Combination Business Enterprise (CBE), Minority Business Enterprise (MBE), Women’s Business Enterprise (WBE), Minority Women’s Business Enterprise (MWBE), Disadvantaged Business Enterprise (DBE), or Small Business Enterprise (SBE).

“Change Order” refers to a legal document used to modify a construction Contract or Individual Work Order between the County and the Contractor. Multiple requests for change proposal and/or requests for Change Orders may be combined into a single Change Order.

“Chief Procurement Officer (CPO)” is the officer in charge of the Procurement & Payables Section within the Department of Executive Services, Finance and Business Operations Division.

“Construction Procurement & Contracting Guide” refers to the documented procedures and guidelines for defining and implementing the procurement policies related to the construction contracting process. The guide is maintained by Procurement & Payables and takes precedence over Agency and/or department procurement policy and procedures.

“Construction Work Order Contract” means a construction Agreement to be used for completing work based on hourly rates and/or unit pricing for one or more categories of work or trades. The actual work is implemented with the negotiation and execution of Individual Work Orders. This Contract type is also referred to as a unit price contract per RCW 39.04.235.

“Contract” means a mutually binding legal agreement or any modification obligating a person, firm, corporation, or partnership to provide tangible personal property, services, professional or technical services or public work to the County, or to lease or license for the possession or use of real property by the County, and that obligates the County to provide payment in return. The Contract constitutes the entire Agreement between the County and the external party for performance of the service or work. Contract may be interchanged with “Agreement.”

“Contract Administration” refers to duties including contract oversight, estimating, scheduling, cost controls, compliance review of progress payments, Change Orders, record maintenance, and Contract Closeout.

“Contract Closeout” refers to the process the Agency initiates for closing the Contract after all work is satisfactorily completed and/or services have been provided, and all reports and payments have been made.

“Contract Modification” means a written instrument executed between the County and Contractor and can only be used to modify the Contract Time, not Contract Price or scope, of a Construction Work Order Contract.

“Contract Purchase Agreement” or “CPA” refers to the Oracle agreement number which identifies funds spent and available on any given contract.

“Contractor” means any person or persons, firm, partnership, corporation, or combination thereof, including a vendor or a supplier, who submits a bid, and enters into a Contract with the County.

“County” refers to King County throughout this policy.

“Covered Project” means a Master Community Workforce Agreement (MCWA) County Public Works Project with an estimated project construction cost of five million dollars or greater, and such other criteria established by the Executive, in accordance with King County Ordinance 18672.

“Engineer’s Estimate” shall represent current and fair market value of all costs (labor, materials, equipment, overhead, profit, time to complete the work, etc.) necessary to complete the work defined in the solicitation documents.

“Execution” means a fully binding Contract, Individual Work Order, or Change Order signed by both the Contractor and the County, or a Unilateral Change Order.

“Executive” refers to the King County Executive or designee.

“Finance and Business Operations Divisions (FBOD)” is a division of the Department of Executive Services and includes Financial Management Section (FMS), Business Development and Contract Compliance (BDCC); Procurement & Payables (P&P) and Treasury.

“FIN PCO” refers to the FBOD Project Control Officer.

“Individual Work Order” means a written agreement between the County and the Contractor to perform a defined Scope of Work, schedule, and Total Price in accordance with the terms of the Work Order Contract.

“Invitation to Bid (ITB)” is a set of documents that the County issues to potential suppliers when it wants to purchase a product or service. The ITB outlines the County’s requirements for the product or service and invites suppliers to submit a Bid to provide it.

“King County” or “County” refers to King County and can be used interchangeably.

“Master Community Workforce Agreement” (MCWA) is a comprehensive pre-hire collective bargaining agreement between the County and labor unions that sets the basic terms and conditions of employment for covered projects.

“Notice to Proceed (NTP)” refers to a written directive issued by the County authorizing the Contractor to start performance of some or all of the Work and establishing the date after which the Contractor may commence the Work.

“PCO” refers to a Project Control Officer, the County employee responsible for ensuring the Agency’s compliance with applicable policies, procedures, laws, regulations, and contract requirements.

“P&P” refers to Procurement & Payables, which is part of the Finance and Business Operations Division within the Department of Executive Services.

“Price Reasonableness Analysis” is an assessment of the evaluated price of a Responsive Bid to ascertain that it is fair and reasonable.

“Project” for the purposes of this policy means the Scope of Work issued under the specific Contract or Work Order.

“Project Manager (PM)” refers to the County employee responsible for the planning, design, implementation, and closing of assigned Capital Projects.

“Project Representative (PR)” refers to the County employee responsible for Contract Administration and representing the County during interactions with Contractors after Contract Execution.

“Public Work” means all work, construction, alteration, repair, or improvement other than ordinary maintenance as defined by WAC 296-127-010(7)(b)(ii), which is maintenance work performed by regular County employees, executed at the cost of the County or which is by a law, a lien, or charge on any property therein, as defined by RCW 39.04.010. All Public Works, including maintenance when performed by Contract shall comply with RCW 39.12.

“Responsive Bid” means the bid meets all requirements of the bid submission.

“Responsible Bid” means the bid meets the responsibility criteria as defined in the solicitation documents.

“Retainage” refers to the five percent (5%) of each progress payment the County is required to retain on all Public Works Projects pursuant to RCW 60.28, except when a retainage bond is provided or federal grant prohibits Retainage.

“Scope of Work (SOW)” refers to the work as described when the work was procured, including work not specifically identified or defined in the scope but which is incidental to and/or needs to be performed to complete the SOW. SOW also includes work added by Change Orders.

“Small Work Roster” is a solicitation method in which lists of registered contractors who can bid for an eligible project below the dollar threshold listed in RCW 39.04.152. RCW 39.04.151 further establishes the requirements for roster contracting and the utilization of the statewide roster managed by Municipal Research and Services Center (MRSC) to solicit firms. Rosters may allow direct contracting with Certified Firms. See Construction Procurement & Contracting Guide for more information.

“Solicitation” means a formal process for advertising and receiving competitive bids for the purposes of awarding a Contract.

“Total Price” means a mutually agreed upon total amount that the County pays to a Contractor upon completion of the Contract, in accordance with terms and conditions of the Contract.

“Unit Price Contract” means a competitively bid Contract in which Public Works are anticipated on a recurring basis to meet the business or operational needs of the County, under which the Contractor agrees to a fixed period, indefinite quantity delivery of work, at a defined Unit Price for each category of work. May be interchanged with Construction Work Order Contract.

“Work” or “Contract Work” is a general term that refers to all the construction and other activities required by the Contract Documents and includes all labor, materials, equipment, and supplies necessary to fulfill the Contractor’s obligations under the Contract.

IV. Policy

A. Precedence

1. This policy and its revisions shall take precedence over Agency, CPMWG, and/or department specific procurement policies, procedures, best practices, and standard work.
2. Contract terms and conditions shall take precedence over this policy. Upon discovery of a conflict between contract terms and conditions, the Agency will report the conflict in writing to the FIN PCO for determination on how to proceed.

B. Rules for Procuring Construction Contracts

1. P&P shall provide centralized procurement services for the procurement of construction contracts.
2. P&P shall establish and maintain procedures for planning, solicitation, evaluation, negotiation, execution, and post execution phases of the procurement process.
3. Procedures for the contracting processes are contained in the Construction Procurement & Contracting Guide and shall be adhered to in completing construction procurements.
4. P&P shall collaborate with CPMWG to ensure construction contracting procedures are reviewed and training is provided on a regular basis.
5. P&P shall establish and maintain all procurement and contracting boilerplates, templates, and the Construction Procurement & Contracting Guide which includes procurement procedures, processes, guidelines, templates, and best practices that Agencies shall follow.
6. P&P shall determine the appropriate procurement method to complete the work based on the information provided by the Agency.

C. Construction Procurement Methods

1. Project-Specific Construction Contracts shall use the Invitation to Bid (ITB) structure and format, which contain a firm fixed price for a complete and specific SOW as documented by drawing/plans and specifications.

- a. Projects with a total construction cost estimate equal to or greater than \$5 million shall apply the use of a MCWA.
 - b. Inclusion of Liquidated Damages in the specifications requires a compelling business justification.
2. Construction Work Order (Unit Price) Contracts shall use the Invitation to Bid (ITB) structure and format. Agencies may use a Work Order Contract for purposes of completing work based on hourly rates or unit pricing for one or more categories of work or trades. Scope of Work is required, and the SOW needs to be further defined within each Individual Work Order per the standards contained in RCW 39.04.235.
 - a. Scope of Work. Contracts shall be for specific types of Work or discipline(s) (e.g., mechanical, electrical, roofing, demolition, abatement, well decommissioning).
 - i. This Contract type is intended for small bodies of work necessary to meet program needs that may not be accomplished with traditional design-bid-build processes.
 - ii. Individual Work Order at or over \$150,000 shall be reviewed by BDCC for subcontracting and apprenticeship opportunities and progress toward the contract overall goals/requirements. See Section F.2 below for more details on individual work orders.
 3. Small Works Roster shall use the Invitation to Bid (ITB) structure and format and may be for construction, renovation, remodeling, alteration, repair or improvement of real property at thresholds established by RCW 39.04.152.
 4. Limited Public Works Roster shall use the Invitation to Bid (ITB) structure and format and may be for construction, alteration, repair, or improvement projects at the thresholds established and defined by RCW 39.04.152(5).
 5. Energy Services Performance Contracting (ESPC). Energy Services Performance Contracts are performance-based contracts for water conservation, solid waste reduction, and energy equipment and services for potential energy savings that meet the definition per RCW 39.35A.
 6. Piggybacking. King County must utilize local bidding policies and procedures to the extent possible. The practice of Piggybacking, whereby King County would rely upon the procurement practices and policies of other public agencies, national consortiums, or other types of contracts to create Contracts to fulfill Public Works Projects may be allowed after consultation with Procurement Supervisor and Prosecuting Attorney's Office.
- D. Bidder Responsibility Review, Price Reasonableness Analysis and Negotiations
1. Bidder Responsibility Review. P&P shall determine if bidder is responsible in accordance with RCW 39.04.350.
 2. Price Reasonableness Analysis.
 - b. Evaluation of Low Bid vs Engineer's Estimate. A determination that the low bid is fair and reasonable, as compared to the Engineer's Estimate and/or to other bids submitted is required.
 3. Negotiations. Negotiations are only allowed under the conditions defined in:
 - a. See RCW 39.35A for Energy Savings Performance Contracting.

b. See RCW 36.58.090 for Solid Waste handling systems, plants, sites, or facilities.

E. Construction Management

1. All construction contracts estimated at \$15,000,000 or more shall retain a construction management firm. The construction management firm shall be independent from the firm that performs the design or engineering services during construction.
2. Exception
 - a. If the Agency can demonstrate that the construction can be effectively managed by County staff and remain consistent with best industry practices, the AD may request and exception to have the construction management services be performed by County staff. The FBOD Project Control Officer must approve the exception request.

F. Notification of Upcoming Contracts

1. Agencies shall meet with P&P monthly to discuss planned Contracts for public works and capital construction for the next 12-18 months.

G. Contract Administration

1. Contract Change Orders
 - a. All Change Orders must be submitted to P&P.
 - b. Only work related to the original SOW advertised in the ITB may be added via Change Order.
 - c. Work Order Contracts require the Execution of a Contract Modification to exercise the option to extend for the time specified, per the Contract documents. In accordance with RCW 39.04.235, Work Order Contracts are for a one year term and can only be extended for one additional year.
 - d. The Agency is responsible for tracking utilization within DCMS throughout the Contract to ensure Contractors are meeting the contract requirements. BDCC monitors this requirement.
2. Individual Work Orders (WO)
 - a. Work Order Pro Equity Policy (Small Business Utilization): Individual Work Orders valued at or over \$150,000 shall follow the procedures outlined in KCC 12.16.150-180 and 2.97 and shall be reviewed by BDCC prior to Execution.
 - b. Individual Work Orders cannot exceed \$500,000 without prior written approval from the Agency Division Director or designee.
 - c. Consideration of Alternative Means: For an individual work order estimated near or that carry the risk of exceeding \$350,000, the Agency shall consider other methods of procurement, including the Small Works Roster.
 - d. Term Limit: Only an executed Change Order or a written directive from the Project Representative or designee can change the Work Order Time for an Individual Work Order.

H. Emergency Proclamation.

1. If the King County Executive proclaims an emergency in accordance with Chapter 12.52 (Emergency Powers), the requirements of Chapter 2.93 (Procurement) are waived in order to procure services as expeditiously as possible to address the emergency conditions. The signed Declaration of Emergency shall be provided to P&P and retained in the agency project file before execution of the contract. Emergency contracts only waive the procurement process; compliance with all other policies after contract execution is required. This emergency proclamation only waives what is allowed as stated in KCC 2.93.080 and RCW 39.04.280.

I. Contract and CPA Closeout

1. Construction Contract Closeout

- a. Agency is responsible for Construction Contract Closeout and, if applicable, jointly responsible along with the Department of Executive Service's Accounts Payable staff for the timely release of Retainage when all Contract obligations have been met. Release of Retainage shall follow the procedures outlined in RCW 60.28, King County financial policies, and the Construction Procurement & Contracting Guide.
- b. Each Agency shall include construction Contract Closeout procedures in its Agency PM, CM Manual, or tool designated by the Agency for capturing such procedures.
- c. Each Agency is responsible for establishing procedures to ensure coordination with BDCC to determine the Contractor's compliance with all established Certified Firms and/or workforce objectives and reporting requirements.

J. Compliance for Construction Contracts

1. All Projects and corresponding documentation, including Construction Contracts, are subject to internal review and annual reporting to the King County Council by the FIN PCO or designee.
2. Types of PCO
 - a. The Agency PCO is appointed by a Department Director within each Agency responsible for capital project compliance.
 - b. The FIN PCO is the designated King County Project Control Officer per King County Code 4A.100.100.
3. PCO Responsibilities
 - a. The PCO reviews projects and corresponding documentation for compliance with policies, procedures (e.g., manuals including tools), and standard work; assists project teams in developing the most effective and practical approach to comply with policies; and answers questions regarding the application of the policies, as needed. The PCO shall be responsible for monitoring contracts for compliance with the contract terms and applicable policies.
4. Role of Agency PCO
 - a. Compliance: The Agency PCO develops a process for compliance for Project Representatives to follow; reviews Project Specific, Work Order Contracts and Emergency Work Order Contracts on an annual basis for compliance with the

contract terms, policies, and manuals; reviews the approach and the planned control processes with Project Representatives; develop trainings; and reports to management on adherence with the above. When necessary, the Agency PCO shall escalate the review to the FIN PCO as needed.

- b. Separation of Project Representative (PR) and PCO Functions. To ensure independent review of Project compliance with the Executive Policies, the Agency PCO must be segregated from the PR function and report to at least one level above the Project Representative.
 - c. Documentation. The Agency PCO shall conduct and document compliance reviews or file reviews to ensure Contract terms, Project Management and/or Construction Management Manuals, and policies are adhered to.
5. Role of FIN PCO
- a. Agency Review and Training
 - i. The FIN PCO shall be responsible for reviewing and updating the Construction Procurement & Contracting Guide as it pertains to compliance information for use by all Agencies.
 - ii. The FIN PCO shall recommend and conduct additional training for Agency staff (namely Project Representatives, Project Managers, Contract Specialists, and Agency PCO).
 - iii. The FIN PCO shall provide training to all Agency PCOs to ensure consistency in the PCO function. Agency PCO, together with FIN PCO, will be responsible for training project management personnel to ensure consistency in policy interpretation.
 - b. Annual Compliance Review. The FIN PCO shall review Agency Projects, Contracts, and processes for compliance with the policies on an annual basis. This review shall form the basis of the Annual Report to Council (KCC 4A.100.100).
 - c. Review Performance of Agency PCOs. The FIN PCO will periodically review the performance of Agency PCOs to ensure that the PCO function is being consistently applied. If the Agency PCO is not adequately performing the PCO function, the FIN PCO:
 - i. Will notify the AD
 - ii. May review past projects on which the Agency PCO was assigned; and
 - iii. May recommend further training for Agency PCO.
6. Construction PCO Review
- a. Construction Contract, Change Order Review by PCO. The assigned PCO shall review qualifying Contracts and Change Orders based upon the defined thresholds in the Construction Procurement & Contracting Guide.
 - b. Work Order Contract Reporting. Agencies shall provide the FIN PCO with a semi-annual report that lists each active Work Order Contract and Individual Work Order history.

V. Implementation Plan

- A. This policy becomes effective for Executive Branch agencies on the date that it is signed by the Executive. The Department of Executive Services is responsible for implementation of this policy.
- B. The Department of Executive Services, Finance and Business Operations Division is responsible for communicating this policy to the management structure of all Administrative Offices and Executive Departments supervised by the King County Executive, as well as any King County non-Executive Branch Departments adopting this policy.
- C. Agency Directors are responsible for ensuring that their staff follow this procurement administrative policy.

VI. Maintenance

- A. This policy will be maintained by the Department of Executive Services, Finance and Business Operations Division or its successor agency.
- B. This policy will automatically expire five (5) years after its effective date. A new, revised, or renewed policy will be initiated prior to the expiration date by the Department of Executive Services, Finance and Business Operations Department or its successor agency.

VII. Consequences for Noncompliance

- A. Agencies not in compliance with this policy shall submit a letter of justification and remediation plan signed by the Department Director or designee to the Chief Procurement Officer for review and action.
- B. The Chief Procurement Officer will meet with Department Director or designee on a quarterly basis to review all noncompliance letters and to ensure that resources are available to ensure compliance in the future.
- C. Consequences for noncompliance with federal funding regulations: If an auditing authority finds a grantee Agency to be in violation of federal procurement policies, the federal granting authority may no longer grant funds to that Agency, or the Agency may have to pay back all disallowed costs or both.

Appendices: N/A