



Two New Purchasing Tools for Ports

WPPA Finance Seminar 2019

Contact Information

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Port of Edmonds

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Pre-Port Experience

- B.A. in Accounting from University of Puget Sound
- Passed CPA exam
- 4 years experience as a Senior Accountant
- No government experience
- Started at the Port of Edmonds in September 1999



Port of Edmonds Purchasing



No purchasing department or purchasing person.



SAO exit items



Training and resources



Public works bidding from approximately 2002-2013.

Training and Resources

- Municipal Research and Services Center (MRSC)
- Washington Public Ports Association Facilities and Engineering Seminar (2009)
- Washington Finance Officers Association
- Washington State Chapter of the National Institute of Governmental Purchasing/Pacific Northwest Public Purchasing Association



Types of Purchasing



Goods



Professional services



Personal services



Purchased services



Public works

What is a public work?

RCW 39.04.010 (4) defines a public work as all work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060 (4) or under development agreements entered into under RCW 36.102.060 (7) or leases entered into under RCW 36.102.060 (8).

A public work is:

- Paid for by a government agency, either directly or indirectly
- Work on buildings, roads, machinery that doesn't have wheels, etc.
- Is an alteration, repair, construction, or improvement
- Is NOT ordinary maintenance
- The facility is not a public stadium authority



Public Works Bidding and Contracting Is Hard!



Prevailing wage



Intents and Affidavits



Advertising



Bid documents



Responsible bidders



Small Works Roster



Insurance documentation

Two Purchasing Issues to Resolve



1. Ports had no bid floor.
2. On-call contracts not allowed.

Port of Edmonds



Located on Puget Sound, 15 miles north of Seattle



Annual Revenues of \$9.2 million



Property Tax Revenue of \$400,000



Tax District is ½ of Edmonds and all of Woodway



5 Commissioners



25 Full-time Employees



9 Seasonal Employees

Port of Edmonds Marina

- Moorage for 660 slips
- Dry stack storage facility with 230 spaces
- 2 public sling launches
- Boatyard and Travelift
- Fuel Dock
- Guest Moorage

Port of Edmonds Rental Property

- Own and operate 8 buildings
- 4 land leases
- Major tenants:
 - Hotel
 - Athletic Club
 - Restaurants
 - Yacht Broker/Repair Facility
 - Yacht Club

Why use an on-call contract?



Limited Port Resources

4 maintenance staff

.25 FTE purchasing person

Some work requires specialized tools and equipment



Response Time

Rates already established

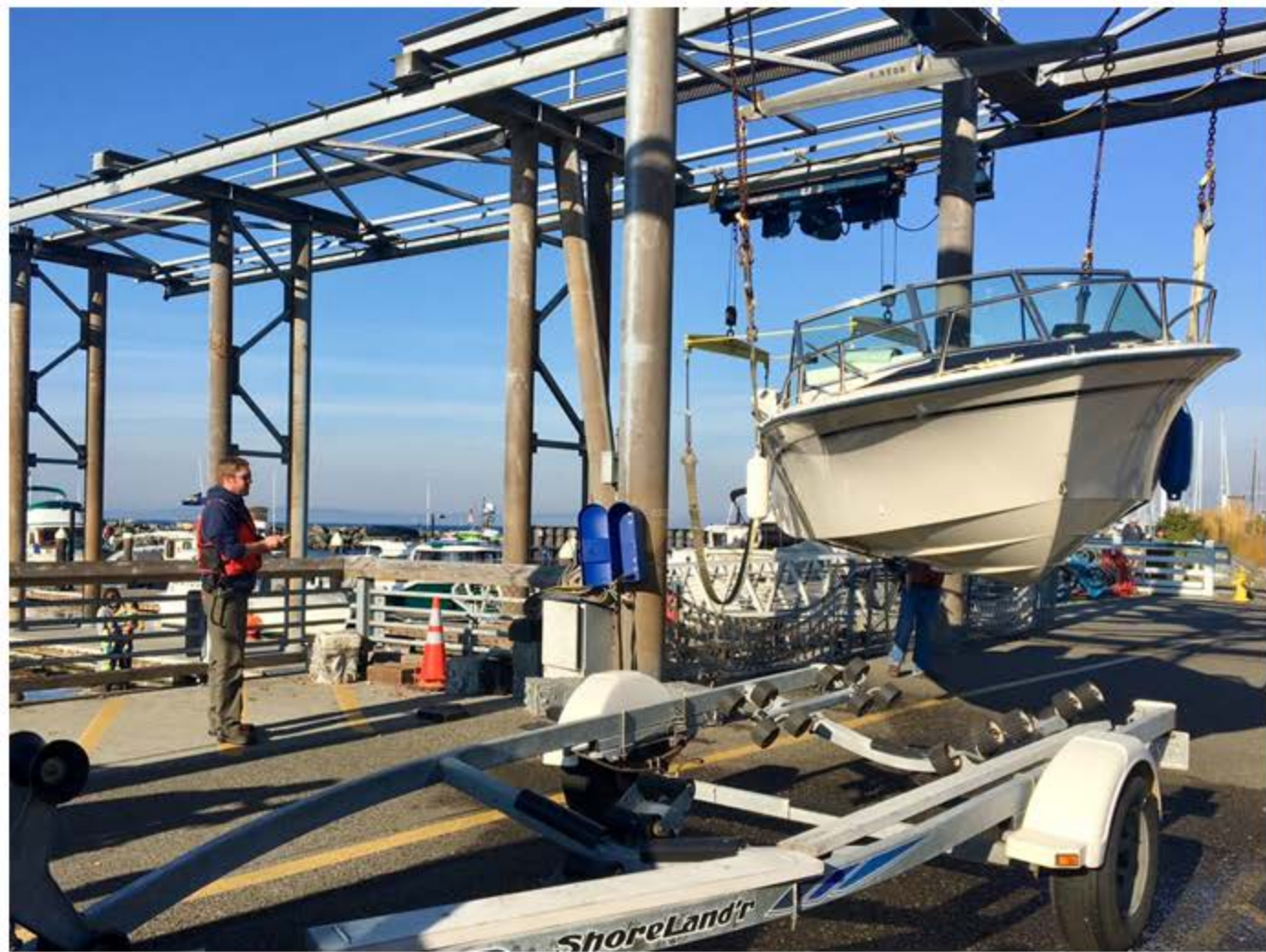
Contracts signed

Insurance documentation received

Use of On-Call Contracts

- On-Call Contracts:
 - Public sling launcher
 - Dry Storage launcher
 - HVAC
 - Plumbing
 - Electrical

Public Sling Launcher



Dry Storage Hydraulic Launchers





State Auditor's Opinion Released in 2012

Over the past year or so, our Office has met with the Department of Labor and Industries and Municipal Research [and] Services Center on the topic of On-Call contracts. Much time, research and discussion have gone into these meetings. Most On-Call contracts are not being done under the authority of job order contracting. Therefore, we have concluded: On-Call contracts are not specifically authorized in state law. These contracts can result in noncompliance with the public works contracting and prevailing wage statutes. Since the On-Call contracts are not authorized by state law, we recommend local governments establish policies, procedures and internal controls to ensure their contracting processes are in compliance with public works contracting statutes (RCW Chapter 39.04, 39.06, 39.08 and 60.28) as well as prevailing wage statutes (RCW Chapter 39.12).

Port of Edmonds' Response

- Asked for additional information from SAO
- Reviewed contracts and bid documents
- Believed we were in compliance



designed by freepik

And then, the State Auditors arrived!



Management Letter

In the prior audit, we communicated concerns to Port management related to internal controls and noncompliance with state bid laws. We continue to find that the Port still does not have adequate internal controls over procurement of public works projects to ensure it complies with all aspects of state bid law requirements. We reviewed 12 repair projects procured in the 2015 and 2016 fiscal years, totaling \$88,433. Our audit identified the following instances of noncompliance:

- Six of the 12 repair projects (totaling \$44,006) were non-routine repairs and required competitive bidding, which did not occur.
- One repair of a hydraulic lift performed by a contracted vendor; however, such repair was outside of the scope of the contract.

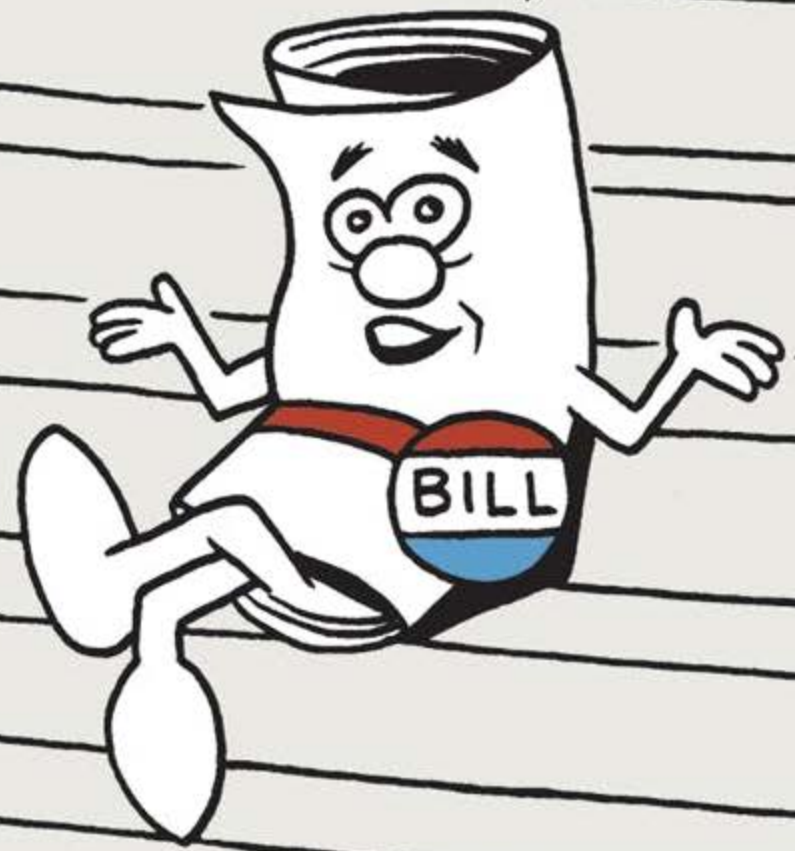
Noncompliance with the state bid law requirements increases the risk the Port may not be obtaining the lowest and most responsive price for the projects. We continue to recommend the Port ensure compliance with state law (RCW 53.08.120) over procurement of public works projects.

So How Do We Keep Our Facilities Running?

- The 7 exceptions were all on-call contract items.
- We need the ability to use on-call contracts.
- Reviewed with WPPA Finance Committee.
- Reviewed with other ports.
- SAO was not applying the Attorney General's memo consistently.
- Reviewed options with SAO:
 - Job order contracting (RCW 39.10.420)?
 - Call small works roster contractors and get bids over the phone?
 - Declare an emergency?

HEY, MR. TAX BILL.
HOW DO YOU BECOME
A LAW, ANYWAY?

OH, IT'S QUITE
SIMPLE, REALLY.



YOU HAVE TO CHANGE THE LAW!

No experience

False starts

- One person from one port can't do it alone
- Larger ports have internal resources or can use job order contracting
- All ports didn't hear the same message from the SAO



Where Did
We Start?

Port of Edmonds
initiated the process.

WPPA Finance
Committee

Letters of support

Government Agency Public Works Bid Thresholds

<u>Agency</u>	<u>Limit</u>	<u>RCW</u>
School District	\$ 100,000	
Public Hospital District	\$ 75,000	70.44.140 (1)
Water-Sewer District	\$ 50,000	
Second Class City or Town	\$ 40,000	35.23.352 (1)
Counties	\$ 40,000	36.32.235 (10)
Public Utility District	\$ 25,000	
Fire Protection District	\$ 20,000	52.14.110 (3)

Proposed Public Works Bid Floor of \$40,000

RCW 53.08.135: Port districts shall determine if any construction project over forty thousand dollars can be accomplished less expensively by contracting out. If contracting out is less expensive, the port district may contract out such project.



Thank You

- Port of Anacortes
- Port of Benton
- Port of Camas-Washougal
- Port of Clarkston
- Port of Coupeville
- Port of Edmonds
- Port of Friday Harbor
- Port of Grandview
- Port of Hoodspport
- Port of Kennewick
- Port of Olympia
- Port of Othello
- Port of Pasco
- Port of Port Angeles
- Port of Royal Slope
- Port of Walla Walla
- Port of Whitman County

Concerns

- Doesn't this only affect PUDs?
- Bid limit of \$40,000 wouldn't be useful to larger ports
- Would limit the use of internal resources
- Support instead unit-priced contracting bill proposed by PUDs
- Potential for fraud/favoritism?
- Contractors may not be aware of prevailing wage requirements
- WPPA tried to get bid minimum of \$2,500 passed and it failed



Picking Up Steam

- WPPA Finance Committee passed letters of support to WPPA with a recommendation to proceed with new laws.
- Increased awareness of bid problems by ports and WPPA staff
- PUDs unit-priced contract laws passed
- WPPA Executive Director Eric Johnson testified that ports were interested and may come back with a similar bill
- WPPA Legislative Committee
- WPPA staff drafted unit-priced contract bill

WPPA Takes the Lead

- WPPA has the knowledge and relationships to get bills passed
- Strategies:
 - Right environment in Olympia
 - Contractors were focused on other things
 - Trying to keep it small to fly under the radar
 - Bill sponsors
 - Union representatives buy in
 - Just giving ports the same abilities as other government agencies
 - Vetted it with other agencies
 - Both House and Senate

Bill Sponsors

Representative Strom Peterson,
House Local Government
Committee



Senator Dean Takko, Senate Local
Government Committee



We did it!

- House passed February 28, 2018
- Senate passed March 6, 2018
- Governor approved March 21, 2018
- Effective June 7, 2018



Two New Purchasing Laws Effective 2018



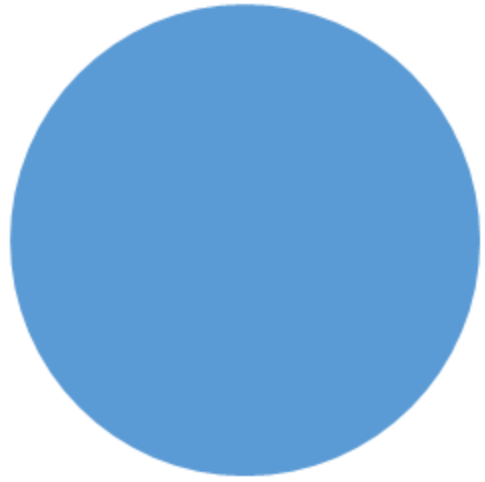
Bid floor of \$40,000



Unit priced contracts

How to Get a Bill Passed, Lessons Learned

- Several ways to ask WPPA to take on an issue:
 1. Commissioner or Executive Director may present a problem statement to the Legislative Committee.
 2. MRSC Group
 3. Build coalition – talk to other ports to see if they have the same issues.
 4. WPPA Finance Committee
- Get WPPA involved early. They know the environment in Olympia.



MRSC – Statutory Requirements



Presenters



Judy Isaac

Procurement and Public
Works Policy Consultant

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Linda Gallagher

Legal Consultant

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RCW 53.08.120 (EHB 6329 – 2018)

(c) Any port district may construct any public work, as defined in RCW 39.04.010, by contract without calling for bids whenever the estimated cost of the work or improvement, including cost of materials, supplies, and equipment, will not exceed the sum of forty thousand dollars. A "public works project" means a complete project.

.....



Bid Thresholds for Public Works Projects

Government type	Bid threshold		Small works roster threshold	Notes	Applicable RCW
	1 craft*	> 1 craft			
Port district	\$0 (\$40,000 effective June 7, 2018)		\$300,000		53.08.120

The lower threshold is the amount below which the local government may use any internally acceptable method of awarding small public works contracts. (This method should be defined in policy.)

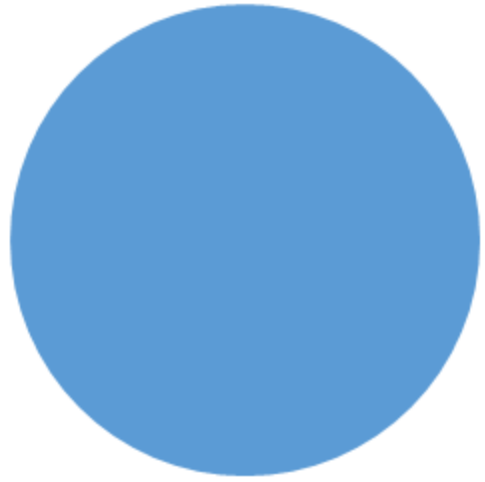
For projects whose estimated cost is over the statutory threshold and not using the small works roster, the project must be formally bid.

RCW 53.08.120 was also changed to expressly allow Ports to enter into unit priced contracts.

(3)(a) A port district may procure public works with a unit priced contract under this section or RCW 39.04.010(2) for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

- Must be competitively bid
 - Anticipated on a recurring basis
 - Based on hourly rates or unit pricing
 - Business or operational needs
 - Fixed period – indefinite quantity
 - Bid using estimated quantities
 - Define how work orders will be released
 - Include minority/woman contractor when possible
 - Award to lowest responsible bidder
- Initial term cannot exceed 3 years
 - Renewable for 1 additional year
- Prevailing wage, updated annually

UNIT PRICE CONTRACTS



Port of Edmonds
Application of New
Laws

Application of Bid Threshold of \$40,000

- Remind staff that all other public works laws apply.
- If we think we may be close to \$40,000, we bid it out. We don't want to have to rebid.
- Primarily used for repairs between \$3,000 and \$10,000:
 - Broken waterline
 - Add waterline to docks
 - Heating unit replacement



Benefits

- Facilities Maintenance Manager, purchasing staff, and contractors all love it:
 - Process time from start to finish is greatly reduced.
 - Contractors quick to respond and return documentation.
 - Less time for bidding.
 - Less waiting.



Unit Priced Contracts Application



Use hourly rate plus cost markup.



“Unit” is the sling launcher or hydraulic launcher.



Issuing assignments has to be quick and easy.

MRSC
Resources

Membership through
Enduris or WPPA

MRSC Rosters

Agenda

New Purchasing and Public Works Legislation
for Public Ports

MRSC Services:

- Who Are We?
- “Ask MRSC” Inquiry Service
- MRSC News and Training
- MRSC Website & Research Tools



Upcoming legislative changes:

Contractor training required or 3 years public works experience and 3+ years valid WA business license

Effective July 1, 2019

Small works roster limit raised to \$350k; Ltd public works limit raised to \$50k. May waive retainage in roster awards.

RCW 39.04.155

Effective July 28, 2019

HB 5958 – Piggyback verifications relaxed

HB 1295 – JOC available to all agencies; work orders increased to \$550k; DB project limit removed; DB eligibility from \$10M to \$2M; evaluation and award criteria changes; others

Effective July 28, 2019

MRSC Services - Overview



Our Mission.

Support local government success through research, consultation, training, and collaboration.



MRSC - Overview



Municipal Research and Services Center (MRSC):

- Established: 1934, 85 years of service to local governments
- Educates and informs on legal, policy, and finance issues
- Provides independent, nonpartisan research & guidance
- Does not lobby
- Does not take sides on policy issues or disputes
- Does not provide legal representation or serve as legal counsel

MRSC - Overview



Pursuant to [RCW 43.110.030](#), municipal research and services consists of:

(a) [Studying and researching city, town, and county government and issues relating to city, town, and county government;](#)

(b) [Acquiring, preparing, and distributing publications related to city, town, and county government and issues relating to city, town, and county government;](#)

...

MRSC - Overview



RCW 43.110.030 (Continued)

...

(c) Providing educational conferences relating to city, town, and county government and issues relating to city, town, and county government;

(d) Furnishing legal, technical, consultative, and field services to cities, towns, and counties concerning planning, public health, utility services, fire protection, law enforcement, public works, and other issues relating to city, town, and county government;

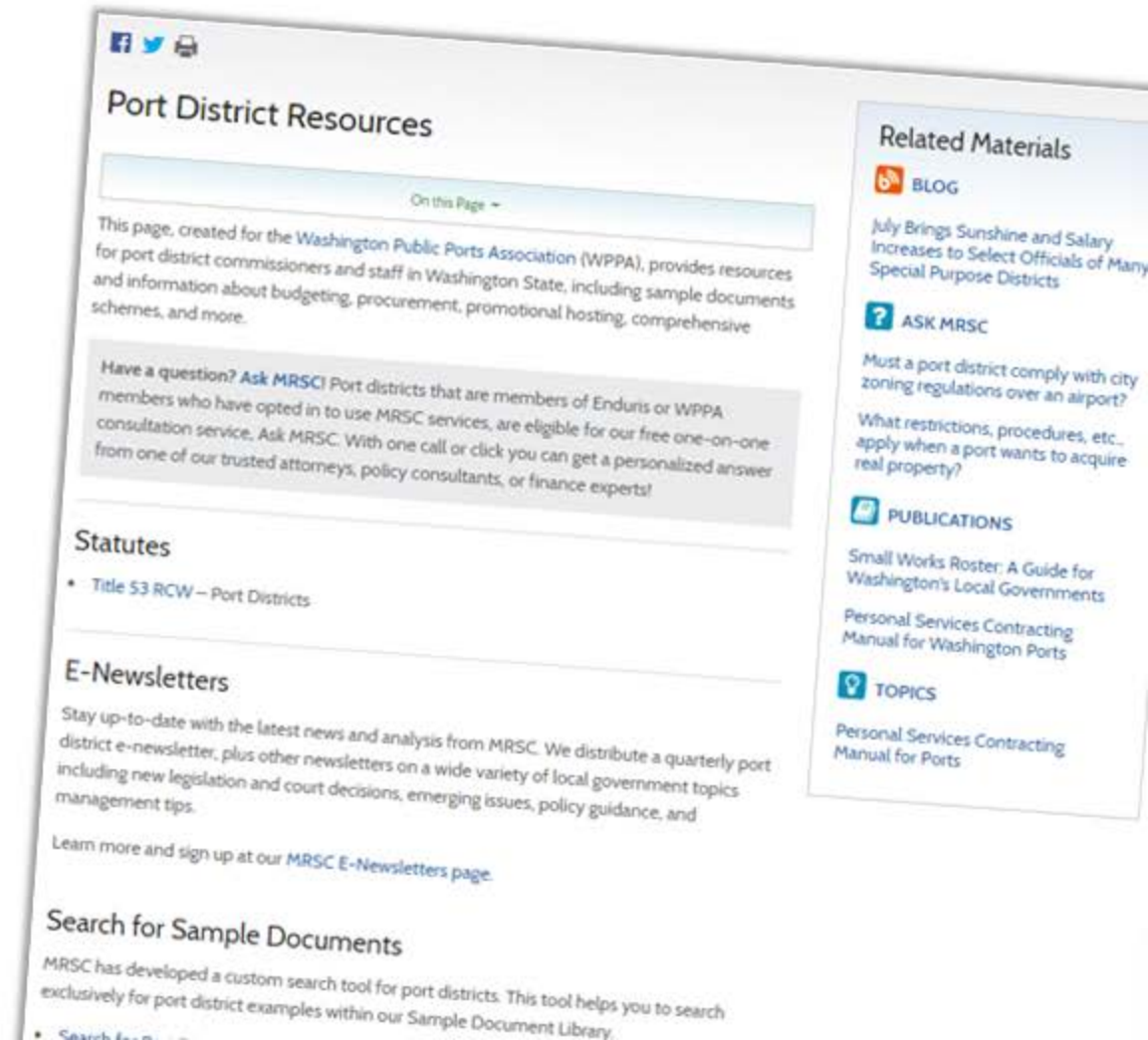
Port District Resources Page



We provide information on a variety of topics of interest to port district staff and commissioners.

- Commissioners and transaction of business
- Promotional Hosting
- Competitive bidding
- Budgeting
- Public Records
- And more!

Learn more at mrsc.org/ports



ASK MRSC



Click the **Ask MRSC** button or call us directly at:

(206) 625-1300 or
(800) 933-6772

Inquiry service provided at no cost to eligible agencies including all cities and counties and most special purpose districts.

The screenshot shows the MRSC website header with the logo and navigation links: Contact Us, Partners, Rosters. A search bar is present, along with a dropdown menu for 'All Sections'. The 'Ask MRSC' button is highlighted with a red circle. Below the header is a navigation bar with links: RESEARCH TOOLS, EXPLORE TOPICS, STAY INFORMED, TRAINING, PUBLICATIONS, ABOUT MRSC. The main content area features a large image of police officers at a homeless shelter with the article 'Does Your Code Provide Homelessness Solutions?'. To the right is a 'MRSC Insight Blog' section with a featured article 'Action Outside a Public Meeting. What Could Possibly Go Wrong?' and a 'VIEW MORE BLOG POSTS' link. Below the main content are three smaller sections: 'In Focus' with an article 'What Employers Want From Cities', 'Upcoming Training' with an image of a man at a computer, and 'Ask MRSC Archives' with an article 'May a city impose business license requirements on businesses that don't have a physical location within the city limits but that do business within the city?'.

MRSC Consultant Staff



Legal Consultants (Attorneys)



Flannery Collins



Sarah Doar



Jill Dvorkin



Linda Gallagher



Moses Garcia



Oskar Rey



Paul Sullivan

Policy/Finance Consultants



Steve Butler, Planning



Mike Bailey, Finance



Laura Crandall, Public
Policy & Finance



Judy Isaac, Public
Works & Procurement



Byron Katsuyama, Public
Policy/Management



Toni Nelson, Finance

Behind the Scenes: Admin, Communications, IT

Legal Disclaimer



DISCLAIMER: MRSC is a statewide resource that provides general legal and policy guidance to support local government entities pursuant to RCW 43.110.030. This communication should not be construed as legal advice or as creating an attorney-client relationship. This communication is not confidential or privileged.

Ask MRSC



Examples of questions we receive:

- How are the five business days calculated in responding to public record requests?
- Is it legal for a public agency to pay a “signing bonus” to a new employee?
- What is the procedure for a weather-related meeting cancellation?

MRSC Training



Monthly webinars

In-person regional trainings

Archived webinars & E-learning

The screenshot shows the MRSC website interface. At the top left is the MRSC logo with the tagline "Local Government Success". To the right are links for "Contact Us", "Partners", and "Rosters", and a "Have a Research Question?" link. Below these is a search bar with "Search..." text, a dropdown menu set to "All Sections", and a "GO" button. A green "Ask MRSC" button is also present. A dark blue navigation bar contains the following menu items: "RESEARCH TOOLS", "EXPLORE TOPICS", "STAY INFORMED", "TRAINING" (highlighted with a red circle), "PUBLICATIONS", and "ABOUT MRSC".

The main content area features a large image of police officers in high-visibility jackets talking to a group of people at a homeless shelter. Below the image is the article title "Does Your Code Provide Homelessness Solutions?" and a short introductory paragraph: "There are a lot of policy options for alleviating homelessness but existing codes can sometimes present unintended barriers. Here are a few common issues that can arise."

To the right of the main image is a blue sidebar for the "MRSC Insight Blog" with a RSS icon. It includes a photo of three people in an office setting, the article title "Action Outside a Public Meeting, What Could Possibly Go Wrong?", and a "VIEW MORE BLOG POSTS" link.

At the bottom, there are three light blue boxes: "In Focus" with a person icon and the text "What Employers Want From Cities Is talent the most important factor?"; "Upcoming Training" with a photo of a training room; and "Ask MRSC Archives" with a speech bubble icon and the text "May a city impose business license requirements on businesses that".

MRSC Website Overview



Our website contains:

- Databases – City/County Profiles, Local Ballot Measures
- ~420 “topic pages” with legal/policy guidance
- Over 3,600 sample documents
- 2-3 new blog posts per week
- Webinars & trainings
- Publications
- News about emerging issues
- More!

Website Search



Good place to start if you're looking for info but don't know where to find it

Simple search terms (*prevailing wages*) are better than complex terms

Alternative: Use Google + MRSC

MRSC Local Government Success

Contact Us Partners Rosters

prevailing wages All Sections GO

Have a Research Question Ask MRSC

RESEARCH TOOLS EXPLORE TOPICS STAY INFORMED TRAINING PUBLICATIONS ABOUT MRSC

MRSC Insight Blog

Action Outside a Public Meeting. What Could Possibly Go Wrong?

VIEW MORE BLOG POSTS

In Focus

What Employers Want From Cities

Upcoming Training

Ask MRSC Archives

May a city impose business license



Research Tools



RESEARCH TOOLS

EXPLORE TOPICS

STAY INFORMED

TRAINING

PUBLICATIONS

ABOUT MRS

Ask MRSC

Have a question? Just Ask MRSC! With one call or click you can connect with a trusted MRSC staff attorney or professional policy consultant to get answers fast.

Ask MRSC

Our Tools

[Ask MRSC Archives](#)

[Custom Searches](#)

[Washington City and Town Profiles](#)

[Washington County Profiles](#)

[Local Ballot Measure Database](#)

[Sample Document Library](#)

Legal Research

[Find Your Contracting Requirements](#)

[Utility Liens and Shut-offs](#)

[Washington City Codes](#)

[Washington County Codes](#)

[RCW, WAC, and Court Decisions](#)

Custom Website Searches

Under "Research Tools"

Search multiple city or county websites at the same time!

MRSC Custom County Website Search Results

critical areas



About 890,000,000 results (0.44 seconds)

Sort by: Relevance

[Critical Areas Regulations Update | Snohomish County, WA - Official ...](https://snohomishcountywa.gov/.../Critical-Areas-Regulations-Update)
<https://snohomishcountywa.gov/.../Critical-Areas-Regulations-Update>

Snohomish County recently updated its **Critical Areas** Regulations (CAR). The update is mandated by the state Growth Management Act (GMA). GMA requires ...

[Critical areas - King County](https://www.kingcounty.gov/depts/permitting.../CriticalAreas.aspx)

<https://www.kingcounty.gov/depts/permitting.../CriticalAreas.aspx>

May 30, 2018 ... **Critical Areas** information available on the King County Department of Permitting and Environmental Review (Permitting) Web site.

[Critical Areas Ordinance Update](https://www.kitsapgov.com/dcd/Pages/Critical_Areas_Update.aspx)

https://www.kitsapgov.com/dcd/Pages/Critical_Areas_Update.aspx

Kitsap County adopted amendments to the **Critical Areas** Ordinance on July 3, 2017. They are scheduled to take effect on October 2, 2017. These regulations ...

[Critical Areas Ordinance | Spokane County, WA](https://www.spokanecounty.org/726/Critical-Areas-Ordinance)

<https://www.spokanecounty.org/726/Critical-Areas-Ordinance>



Read important information on the Spokane County **Critical Areas** Ordinance.

[Critical Areas](http://www.co.grays-harbor.wa.us/departments/.../critical_areas.php)

www.co.grays-harbor.wa.us/departments/.../critical_areas.php

The County Board of Commissioners have enacted **critical area** protection regulations for areas in unincorporated Grays Harbor County areas outside of ...

Explore Topics



Recent projects:

- [Expanded Financial Policy Guidance](#)
- [Business licenses and fees](#)
- [Unit-priced \(on-call\) PW contracting](#)
- [EMS levies](#)
- [Consumer Price Index](#)

Unit-Priced (On-Call) Public Works Contracts

On this Page ▾

This page provides an overview of unit-priced public works contracts (also known as “on-call” contracts) authorized for certain local governments in Washington State, including definitions and statutory requirements.

It is part of MRSC’s series on [Public Works Contracts](#) and [Purchasing and Contracting](#).

Note: The information on this page applies only to public works contracts, and not to service contracts such as architecture and engineering or personal service contracts.

What is a Unit-Priced Contract?

A unit-priced public works contract, sometimes called an “on-call” public works contract, is when a local government contracts for an unknown number of small public works projects over a fixed period of time (“indefinite quantity, indefinite frequency”).

State statute defines a unit-priced contract as:

“[A] competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of the [agency type], under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price for each category of work.” *[See agency-specific statutes below.]*

While traditional public works contracts are awarded for specific projects/scopes with a

Related Materials

BLOG

[Waiving Competitive Bidding Requirements in the Event of an Emergency](#)

[Off-Site Fabrication Reporting Requirements Sunset](#)

IN FOCUS

[Contract Management: A Risk-Based Approach for Local Governments](#)

[How Better Procurement Can Drive Better Outcomes for Cities](#)

ASK MRSC

[May a city or county enter into a contract for a public works project with a contractor who is not licensed with the state?](#)

[May a city or county ask for the hourly rate for engineering firms in their announcement for a job?](#)

PUBLICATIONS

[Personal Services Contracting Manual for Washington Ports](#)

[Contracting for Services – Guidelines](#)

MRSC Rosters



Our Rosters service connects hundreds of local government agencies to thousands of businesses for small public works, consulting services and purchases.

Learn more and sign up at mrscrosters.org

A graphic of a brochure for MRSC Rosters. The top left features the MRSC Rosters logo. To its right, the text reads 'ROSTER CONTRACTING MADE EASIER'. Below this is a photograph of a construction site with a large red crane. A white banner across the photo contains the text '517 PUBLIC AGENCY MEMBERS AND GROWING'. The bottom left of the brochure has a green background with the heading 'MAINTENANCE' and the text 'We save your agency time by providing upkeep of your Small Public Works, Consultant, and Vendor Rosters.' The bottom right has a white background with the heading 'SAVE YOUR AGENCY TIME AND MONEY' and the text 'MRSC Rosters is a Small Public Works, Consultant, and Vendor Roster maintenance service provided by MRSC. We verify businesses meet the minimum requirements to work with...'

MRSC ROSTERS

ROSTER CONTRACTING MADE EASIER

517 PUBLIC AGENCY MEMBERS AND GROWING

MAINTENANCE
We save your agency time by providing upkeep of your Small Public Works, Consultant, and Vendor Rosters.

LEGAL NOTICES
We publish the required legal notice on your behalf, so you don't have to. This saves you time and money.

SAVE YOUR AGENCY TIME AND MONEY
MRSC Rosters is a Small Public Works, Consultant, and Vendor Roster maintenance service provided by MRSC. We verify businesses meet the minimum requirements to work with...

PRA & Records Management Tech Guide



In partnership with the SAO

- Technology Procurement Process
- Software Provider Profiles
- Electronic Records Policy Tool Kit
- And more!

