

What is Public Work? – RCW 39-04.010

“Public Work” means all work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or any municipality (the Port of Everett) or which is by law a lien or charge on any property therein. The term work is very inclusive, especially in conjunction with ‘construction, alteration, repair or improvement’. All work shall comply with the provisions of RCW 39.12.020.

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small work roster need not be advertised.

Examples of Public Works Contracts:

- All construction projects, large or small
- All building or building system repairs (building maintenance and system maintenance is not considered public works but is subject to prevailing wage requirements).
- All infrastructure installation, repairs or removals.

What is required of a Contractor bidding on a Public Works Project?

A Contractor or subcontractor working on a public works project must, at a minimum, meet the following mandatory requirements (RCW 39.04.350(1)):

- At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW (Contractor License);
- Have a current state unified business identifier (UBI) number;
- If applicable, have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW and a state excise tax registration number as required in Title 82 RCW;
- Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3) and,
- If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, to not have been found out of compliance by the Washington State apprenticeship and training council for working apprentices out of ratio, without appropriate supervision or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation. [The Port of Everett is not subject to the requirements in RCW 39.04.320, therefore, this requirement is not applicable to the Port of Everett].

What is required of a Contractor once they are awarded a Public Works Contract?

- Pay Prevailing Wages in accordance with RCW 39.12 – including filing Intents to Pay Prevailing Wages and Affidavits of Wages Paid.
- Provide the Port of Everett proof of insurance and additional insured endorsements as required in the contract documents.
- Ensure that the Contractor and any subcontractors are current on Industrial Insurance Premiums with Labor and Industries (payment may be withheld until resolution of incomplete or unpaid premium reports).
- Provide a Performance and Payment Bond for 100% of the contract amount (including taxes).

- Ensure that the Contractor and any subcontractors are current with Department of Revenue taxes.
- Ensure that the Contractor and any subcontractors are current with Department of Employment Security taxes ,

Prevailing Wage Requirement - RCW 39.12

Contractors and subcontractors on public works projects, regardless of the size, are required to pay their employees the prevailing wage for the county in which the work is being done. Wages are determined by the Industrial Statistician at the Department of Labor and Industries and can be located on the department's website at <http://www.lni.wa.gov/prevailingwages/>. The prevailing wages established at the time of the bid opening shall be in effect for the duration of the project.

Prior to Commencing Work on the Project – The Contractor shall be required to submit to the Department of Labor and Industries an Intent to Pay Prevailing Wages. Each subcontractor on the project will also be required to file an Intent. Intents to Pay Prevailing Wages can be filed on the Department of Labor and Industries website at www.lni.wa.gov; there is a fee to file this Intent. The Port cannot release any payment to the Contractor until the Intent has been approved by Labor and Industries.

After Completion of the Project – The Contractor shall submit to the Department of Labor and Industries an Affidavit of Wages paid. This Affidavit can also be filed on the Department of Labor and Industries website at www.lni.wa.gov. An Affidavit of Wages paid by the Contractor and any subcontractors must be approved by the Department of Labor and Industries before the Port can release the final payment.

Projects Under \$2,500

For projects under \$2,500, the Port authorizes the Contractor to use a combined Intent to Pay and Affidavit of Wages paid form which is returned to the Port upon completion; there is no cost to file using the combined form. This form is available by contacting the Procurement and Contracts Administrator at 425.388.0606.

Posting Requirements - For all projects in excess of \$10,000, an approved copy of the Intent to Pay Prevailing Wages form for each contractor on the project must be posted at the job site prior to the commencement of work. In the event that the form is in the process of being approved by the Department of Labor and Industries, the complete listing of the prevailing wage rates for Snohomish County may be posted until the approved form is received. Failure to meet the posting requirements is a violation of Chapter 39.12 RCW.

Federal Prevailing Wages (a.k.a. Davis Bacon Act) - Projects that are funded using federal dollars are subject to both state and federal prevailing wages. The Contractor and all subcontractors are required to pay the higher of the two prevailing wages. The Department of Labor (DOL) sets the federal prevailing wages which can be found on their website at: <http://www.dol.gov/compliance/laws/comp-dbra.htm> and will be included in the contract documents. This website also contains compliance information (federal laws, posters, etc).

Basic Provisions/Requirements

- Contractors and subcontractors must pay laborers and mechanics employed directly upon the site of work **weekly** and at least the local prevailing wages (including fringe benefits) listed in the Davis Bacon Wage determined in the contract or the State prevailing wage, whichever is higher.
- In lieu of filing an Intent to Pay Prevailing Wages and Affidavit of Wages paid, the Contractor and each subcontractor must complete a certified payroll report weekly and submit it to the Port. An example of a certified payroll report which satisfies all the federal requirement can be found at: <http://www.dol.gov/whd/forms/wh347.pdf>.

- Contractors need to submit “No Work Reports” for the weeks there is no contract work being performed.
- Contractors are required to post the applicable Davis-Bacon wage determination with the Davis Bacon Poster (WH-1321) on the jobsite in a prominent and accessible place where the posting can be easily seen by the workers.

Industrial Insurance Premiums (Worker’s Compensation)

Prior to commencing work on the project, a Contractor must be current with their industrial insurance premiums. The Port will verify this with the Department of Labor and Industries. If the Contractor is not current with their industrial insurance premiums, the Port will either halt the contract process or withhold monies due to the Contractor until the premiums are paid in full. Further information on Industrial Insurance can be found at: www.lni.wa.gov.

Performance and Payment Bonds – RCW 39.08.010

The Port is required, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The Port requires separate Performance and Payment bonds for 100% of the contract amount.

Performance Bonds- The purpose of a performance bond is to guarantee that the Contractor shall “faithfully perform all provisions of the contract.”

Payment Bonds- The purpose of a payment bond is to guarantee that the Contractor shall “pay all laborers, mechanics and sub contractors.”

Provisions of a Bond

The Contractor should verify that their bonds meet the following provisions:

- Ensure the bond is for the full amount of the project, including tax.
- Ensure that the Port of Everett is named as the obligee.
- Ensure that the Project Name and Project Number are correct.
- Ensure that the bond has been signed by both the surety (the Attorney in Fact and the Contractor).
- Ensure that the surety is authorized to do business in the State of Washington (listed on the Insurance Commissioners website).
- Ensure that the surety meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds

Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or 45 days after final acceptance, whichever is later.

Payment Bonds – Payment Bonds will be released either 30 days after final acceptance of the project or upon receipt of releases from the Department of Revenue, Department of Employment Security and the Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 30 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

Exceptions – On projects \$35,000 and under, the Contractor can, in lieu of providing a performance and payment bond, elect to have the Port withhold 50% of monies earned on the project for a period of 45 days after final acceptance (see retainage options below).

Retainage – 60.28.010

The Port is required to withhold retainage (a portion of the monies owed to the Contractor) to ensure that all public works requirements have been met. The amount of retainage is affected by the amount of the project and the option chosen by the Contractor.

Generally five percent of the contract amount (including taxes) is subject to retainage. RCW 60.28.010 allows for three options for placement of retained funds until they are released to the Contractor. The Contractor's options for placement of retained funds are as follows:

- Elect to have the retained amount held in a fund by the Port.
- Elect to have the Port deposit the retained amount in an interest bearing account, not subject to withdrawal until after final acceptance of the work.
- Elect to have the Port place the retained amount in escrow which shall be converted into bonds and securities chosen by the Contractor and approved by the public body.
- Submit a retainage bond in the amount of 5% of the contract amount. The surety must be currently authorized by the State Insurance Commissioner to do business in Washington State.

Projects \$0-\$35,000

For projects under \$35,000, the contractor can choose one of the following options:

- If the contractor has provided a Performance Bond and Payment Bond, the Port will withhold 5% retainage as outlined above.
- If the contractor has chosen to have the Port withhold 50% of the monies earned on the project in lieu of providing a performance and payment bond, the Port will withhold a total of 50% of the monies earned for 60 days after final acceptance.

Release of Retainage

Retainage will be released 60 days after final acceptance, provided that the following has occurred:

- All liens placed against the project have been released. For projects over \$35,000, releases from the Department of Labor and Industries, Department of Employment Security and the Department of Revenue will also be required.
- Affidavits of Wages paid are on file for the Contractor and any subcontractors.
- Worker's Compensation Premiums for the Contractor and any subcontractors are current.

Note: The information provided above is for general information only and is not to be considered official guidance on public works laws and processes. Please refer to the RCWs referenced and official websites provided for guidance.