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Title: King County Procurement for Construction Contracts

Affected Agencies: All agencies procuring construction contracts

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

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Executive signature: Dow Constant

Date signed and effective: 1/11/21



King County

Please also review Policy CON-7-27 "King County Procurement," finalized in 2020, for other information that may have been contained within these former policies. Furthermore, additional detail may have been extracted from former policies and moved to department-specific policies, procedures, and standard work. Please consult the applicable policy owner if you have questions about the location of former content and directives in new or revised materials.

I. Purpose

The purpose of this policy is to:

- A. Establish policies for the procurement and administration of King County construction contracts, change orders, and individual work orders.
- 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 expend public funds.
- C. Establish adequate controls by delegating decision-making authority and responsibilities to specific parties.

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 certain categories of purchases from King County standard procurement requirements, including the procurement of goods and services and architecture, engineering, and professional services 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.

II. Definitions

"Agreement" may be interchanged with "contract".

"Addendum/Addenda" is a written alteration or clarification of the plans or specifications provided to bidders by the County prior to bid time, which becomes part of the Contract Documents when the Contract is executed.

“Bid” means an offer to provide goods and/or services in response to a solicitation for bids issued by the County.

“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 for bids issued by the County.

“Business Development and Contract Compliance (BDCC)” is a section in the Finance Business Operations Division.

“CPMWG” or Capital Projects Management Work Group as established by executive policy CIP 8-3.

“Capital Project” refers to a project with a scope that includes one or more of the following elements; acquisition of a site and/or existing structure, site master planning, design and environmental analysis, design, construction, major equipment acquisition, reconstruction, demolition or major alteration of a capital asset. A Capital Project shall include a project management plan, scope, budget, and schedule. A Capital Project may be part of a larger program. One project may include multiple contracts.

“Change Order” refers to a legal document used to modify a construction contract. Multiple requests for change proposal and/or requests for change orders may be contained in a single change order.

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

“Construction Procurement Guide” refers to the established procedures and guidelines for construction procurements and is maintained by Procurement and Payables.

“Construction Work Order Contract” means a master Public Works construction agreement to be used by the Implementing Agency (IA) for multiple, small, discreet work elements within the monetary boundaries described in policy. The actual work is implemented with the execution of individual work orders.

“Contract” 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 pay. The contract constitutes the entire agreement between King 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, processing progress payments, change orders and contract closeout.

“Contract Modification” means a written instrument executed between the County and Contractor modifying Contract Time. No modifications to the Contract Price or to the scope of the Contract are allowed unless specifically provided for under the Contract.

“Contract Closeout” refers to the process of closing the contract after all work is completed and/or services have been provided.

“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 King County.

“CSI” is a type of construction specifications that are standardized by the Construction Specifications Institute.

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

“County” refers to King County throughout this policy.

“Covered Project” means a County public works project with project construction costs estimated to equal five million dollars or greater, and such other criteria established by the Executive, upon enactment of 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.

“Escrow Bid Documentation” means any and all writings, drafts, working papers, take off sheets, phone logs, computer printouts, charts, electronic data, spreadsheets, drawings, scope of work narratives or outlines, photographs, and any other documentation or data compilations which contain or reflect any and all information, data, and calculations compiled to, referred to, related to, and/or used to estimate and/or prepare the bid.

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

“Executive” means the King County Executive or designee.

“FBOD” means the Finance and Business Operations Division of the Department of Executive Services.

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

“IA” refers to the Implementing Agency (i.e. Executive department, division or agency) responsible for administering the contract.

“IAD” abbreviation for Implementing Agency Director or designee.

“Individual Work Order” means a written agreement between King County and the contractor to perform a clearly defined scope of work, schedule, and price in accordance with the terms of the work order contract.

“KC” refers to King County.

“Lump Sum” refers to a contract type in which the price includes all costs to complete the Work, including profit and overhead. The Contract provides for a price that is not subject to any adjustment on the basis of performing the contract Work.

“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 the Project Control Officer, a King County employee responsible for ensuring the Implementing Agency’s compliance with the 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.

“P&P Contract Compliance Guide” refers to a document created and maintained by the Finance Project Control Officer that provides guidance and best business practices to ensure contracts are managed in compliance with King County policies and contract terms and conditions.

“Price Reasonableness Analysis” is an assessment of the evaluated price of a responsive bid to ascertain that it is not unreasonably high or unreasonably low, but fair to King County.

“Project” for the purposes of this policy, project means the scope of work issued under the specific contract.

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

“Project Representative (PR)” refers to the King County employee responsible for contract administration and representing King County during interactions with contractors.

“Public Work” means all work, construction, alteration, repair, or improvement, other than ordinary maintenance, 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.

“Qualified” means properly licensed, registered, or certified where required by law to perform the specific category of work identified.

“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” refers to the general type of work as described when the services were procured, including work not specifically identified or defined in the scope but which is incidental to and/or needs to be performed in order to complete the scope of work. Scope of Work also includes work added by fully authorized and executed change orders.

“Substantial Completion” refers to the point when the County has full unrestricted use and benefit for the intended purpose, all systems and parts are functional, all utilities are connected and operating normally, occupancy permits and easements have been provided.

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

“Waiver” means a process whereby the IA may procure without formal solicitation procedures because of the uniqueness of circumstances related to that procurement action.

“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, supplies, and all activities necessary to fulfill all of the Contractor’s obligations under the Contract.

“WSDOT” refers to the Washington State Department of Transportation.

III. Policy

A. Precedence

1. This policy and its revisions shall take precedence over department-specific procurement policies, procedures, best practices, and standard work.
2. Contract terms and conditions shall take precedence over this policy. If a conflict exists between the policy and a contract’s agreed-upon terms, then the contract shall take precedence. Upon discovery of such a conflict, the IA will report the conflict in writing to the FIN PCO.

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, and execution of the procurement process and price reasonableness evaluation of construction contracts. Procedures for contracting process are contained in the Construction Procurement Guide and shall be the authority guide in completing Construction procurements. P&P shall collaborate with CPMWG to ensure contracting procedures are reviewed, updated and training is provided on a regular basis.
3. P&P shall establish and maintain all procurement and contracting boilerplates and the Construction Procurement Guide, which may include procurement procedures, processes, guidelines, templates, and best practices that IAs shall follow.

C. Construction Procurement Methods

P&P shall determine the appropriate procurement method to complete the work based on the information provided by the IA.

1. **Project-Specific Construction Contracts, use Invitation to Bid (ITB),** which are firm fixed price with a complete and specific scope of work as documented by drawing/plans and specifications.
 - a. **Community Workforce Agreement (CWA) Covered Projects**
Projects with a total construction cost estimate equal to or greater than \$5 million shall apply the use of a CWA.
 - b. **Liquidated Damages**
Justification for the Liquidated Damages established in the specifications is required. See **Construction Procurement Guide** for detailed process and necessary documentation.
2. **Work Order (On-Call or Unit Price) Contracts, use Invitation to Bid (ITB).** IA's may use a Work Order or On-Call contract only when a specific type of work is needed, and the scope needs to be further defined within each Individual Work Order. RCW 39.04.235 establishes the standards around this type of procurement.
 - a. **Scope of Work**
Contracts shall be for specific types of work or discipline (e.g., mechanical, electrical, roofing, demolition, abatement, well decommissioning).
 - i. This contract type is for small unplanned bodies of work necessary to meet program needs that may not be accomplished with traditional design bid build processes.
 - ii. Each Individual Work Order shall be reviewed by BDCC for subcontracting and apprenticeship opportunities. See **Section F.2.** for more details on individual work orders.
3. **Small Works Roster, use Invitation to Bid (ITB).**
Small Works Roster Contracts may only be utilized for planned work estimated to be no more than the threshold established by RCW 39.04.155.
 - a. **Scope of Work**

P&P has established and will maintain small works rosters for various construction disciplines (NAICS codes). A small works roster contract is defined by RCW 39.04.155.

4. **Limited Public Works Roster, use Invitation to Bid (ITB).**
Limited Public Works Roster Contracts may only be utilized for planned work estimated to no more than the threshold established and defined by RCW 39.04.155.
 - a. **Scope of Work**
P&P is responsible for establishing and maintaining a Limited Public Works Roster in accordance with RCW 36.32.235 and 39.04.155 for various construction disciplines. The limited public works roster shall be comprised of minimally Qualified contractors.
5. **Energy Services Performance Contracting (ESPC)**
 - a. **Scope of Work**
Energy Services Performance Contracting in accordance with RCW 39.35A are competitively selected performance-based contracts for water conservation, solid waste reduction, and energy equipment and services for potential energy savings that meet the definition per the RCW. See **Construction Procurement Guide** for detailed information.
6. **Alternative Public Works**
Alternative public works contracts are authorized in RCW 39.10 and shall follow the applicable procurement process. Alternative Public Works include Design-Build (DB), General Contractor/Contract Management (GC/CM), and Job Order Contract (JOC).
 - a. **Scope of Work**
King County must take each project to the State Review Board to get permission to use these alternative procurement methods.
7. **Piggybacking**
Contracts for Public Works Projects shall not piggyback on other public agency, national consortiums, or other types of contracts. King County shall utilize local bidding policies and procedures to the extent possible.

D. Price Reasonableness Analysis and Negotiations

1. **Price Reasonableness Analysis**
 - a. **Evaluation of Low Bid vs Engineer's Estimate**
A determination of fairness and reasonableness, as compared to the Engineer's Estimate and to other bids or proposals submitted is required. See **Construction Procurement Guide** for detailed process
2. **Negotiations**
Negotiations are not allowed on any other procurement type, except the following:
 - a. See RCW.39.10 for Alternative Public Works.
 - b. See RCW 39.35A for ESPC.
 - c. See RCW 36.58.090 for Solid Waste handling systems, plants, sites, or facilities.

E. Notification of Upcoming Contracts

By the 15th of the month following the end of the quarter, IAs will supply the Strategic Partnerships and Analytics (SPA) team with planned contracts.

F. Contract Administration

1. Contract Change Orders

- a. All Change Orders must be submitted to P&P through the service request system to be inputted into Oracle and accurately reflected on the contract purchase agreement.
- b. **Scope of Work (SOW):** Only work directly related to the scope advertised in the ITB may be added via Change Order; work not anticipated in the ITB is not allowed. Waivers adding Scope of Work are not allowed.
- c. **Contract Modification:** Work Order Contracts require a Contract Modification to exercise the option to extend for the time specified, per the contract documents. Per RCW 39.04.235, Work Order Contracts can only be extended for one additional year.

2. Individual Work Orders (WOs)

- a. Individual work orders valued at or over \$150,000 shall follow the procedures outlined in KCC 12.16.150-180 and 2.97. See **Construction Procurement Guide** for details.
- b. Work Order Apprenticeship and Small Business Utilization shall be reviewed by BDCC.
- c. **Consideration of Alternative Means**
For individual work orders at or over \$300,000, including Change Orders, the IA shall consider alternative means of procurement, including the King County Small Works Roster.
- d. **Term Limit**
Only an executed Work Order Change Order can extend the Work Order Period of Performance.

G. Emergency Waivers

In the event the King County Executive declares an emergency, Emergency Waivers may be used to procure construction services. This waiver only waives what is allowed as stated in KCC 2.93.080 and RCW 39.04.280.

H. Contract and CPA Closeout

1. Construction Contract Closeout

- a. IA is responsible for construction contract closeout and, if applicable (e.g., JOC), jointly responsible along with the Department of Executive Service's Finance and Business Operations Division 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 Procurement Manual for Capital Projects.

- b. Each IA shall include construction contract closeout procedures in its **IA PM or CM Manual**.

I. Compliance

1. Projects Subject to Review

All projects and corresponding documentation, are subject to the internal review by the FIN PCO or designee and annual reporting to the Council.

2. Types of PCOs

- a. IA PCO is appointed by a Department Director within each agency responsible for capital project contracting, and
- b. FIN PCO is appointed by the FBOD Director.

3. PCO General Roles and Responsibilities

The role of a PCO is to review projects and corresponding documentation for compliance with policies, procedures (e.g., manuals), and standard work; to assist project teams in developing the most effective and practical approach to comply with policies; and to answer questions regarding the application of the policies, as needed. Both IA and FIN PCOs shall be responsible for monitoring contracts for compliance with the contract terms and applicable policies. See the **P&P Contract Compliance Guide** for additional details.

4. Role of IA PCO

a. Compliance Support

The role of the IA PCO is to assist the Project Representative, develop a process for compliance, review contracts for compliance with the contract, policies, and manuals, and report to management on adherence with the above. When necessary, the IA PCO shall escalate the review to the FIN PCO as needed.

b. Separation of PM and PCO Functions

To ensure independent review of project compliance with the Executive Policies, the IA PCO must be segregated from the Project Manager function and report to at least one level above the Project Representative.

c. Deliverables

IA PCO shall conduct compliance reviews or file reviews to ensure contract terms, PM or CM Manual and policies are adhered to.

2. Role of FIN PCO

a. IA Review and Training

- i. The FIN PCO shall be responsible for the development and maintenance of the **P&P Contract Compliance Guide** for use by all IAs.
- ii. The FIN PCO shall recommend and conduct additional training for IA staff (namely Project Representatives, PMs, Contract Specialists, and IA PCOs).
- iii. The FIN PCO will conduct compliance training on an annual basis or if the policies are revised.

b. Annual Compliance Review

The FIN PCO shall review IA 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.

c. **Adherence to Duties**

The FIN PCO shall periodically review the IA's capacity to perform the duties of an IA PCO. The FIN PCO may notify the IAD (or designee) if concerns arise.

5. **Construction PCO Review**

a. **Construction Contracts, Change Orders, and Work Order Review by PCO**

The appropriately assigned PCO shall review qualifying contracts, change orders, and work orders based upon the defined thresholds.

b. **Assignment of Construction Contracts for PCO Review**

All Construction contracts qualify for review. The contract's total price dictates which PCO is responsible for the reviews:

- i. Less than or equal to \$1 Million = PCO not assigned Project Representative responsible for the review;
- ii. Between \$1 Million and \$10 Million= IA PCO assigned and responsible for review of change orders
- iii. Greater than \$10 Million= FIN PCO will be assigned and responsible for review of change orders

6. **Work Order Quarterly Report-**

- a. IAs shall provide the FIN PCO with a quarterly report that lists each work order contract and individual WO history. Consult the **P&P Contract Compliance Guide** for additional guidance.

IV. 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 Finance and Business Operations Division* is responsible for implementation of this policy.
- B. The Department of Executive Services is responsible for communicating this policy to the management structure within their respective agencies and other appropriate parties.
- C. Implementing Agency Directors (IADs) are responsible for ensuring that their staff follow this procurement administrative policy.

V. 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 prior to the expiration date.

VI. Consequences for Noncompliance

- A. Agencies in noncompliance 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. **Consequences for noncompliance with federal funding regulations:**
If an auditing authority finds a grantee IA to be in violation of federal procurement policies, the federal granting authority may no longer grant funds to that IA or the IA may have to pay back all disallowed costs or both.

Appendices:

- A. [Link to Construction Procurement Guide](#)
- B. [Link to P&P Contract Compliance Guide](#)