



Public Works Overview

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 City of Anacortes) or which is by law a lien or charge on any property therein. “Ordinary maintenance” is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws. All work shall comply with the provisions of RCW 39.12.020.

Examples of Public Works Contracts:

- All construction projects, large or small.
- All building or building system repairs, maintenance, or inspections involving the use of tools.
- 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):

- 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;
- Have received training on the requirements related to public works and prevailing wage under chapter 39.04 RCW and chapter 39.12 RCW, or received exemption from this requirement by completing three or more public works projects and have had a valid business license in Washington for three or more years.
- Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3) and,
- Not have any apprenticeship violations, if applicable.

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 City of Anacortes 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 Bond and Payment Bond, each for 100% of the contract amount (including taxes).
- Have a current City of Anacortes business license or obtain one before beginning work.
- 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 <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>. The prevailing wages established at the time of the bid opening, or execution of the contract, 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 City 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 City can release the final payment.

Projects Under \$2,500

For projects under \$2,500, the City authorizes the Contractor to use a combined Intent to Pay and Affidavit of Wages paid form which is returned to the City upon completion; there is no cost to file using the combined form. This form is available by contacting the Contract Specialist at 360-299-1971 or contracts@cityofanacortes.org.

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 Skagit 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: <https://sam.gov/content/wage-determinations> and will be included in the contract documents. This website also contains compliance information (federal laws, posters, etc.).

Basic Federal Prevailing Wage 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 City.
- 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 City will verify this with the Department of Labor and Industries. If the Contractor is not current with their industrial insurance premiums, the City 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.

CONTRACT INSURANCE REQUIREMENTS

Below are the City's standard insurance requirements for a public works contract. These requirements are subject to change and may be adjusted depending on the project complexity, risk, and cost.

A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance

The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. City Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provision

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage

The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor **within 10 days of contract execution and before scheduling of the work**. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

I. Subcontractors' Insurance

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

K. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

PERFORMANCE AND PAYMENT BONDS – RCW 39.08.010

The City is required, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office.

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 bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioner's website) and which 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 six months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 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 45 day mark. If claims have been filed against the bond, the bond will not be released until the claims have been resolved.

Exceptions – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, **whichever is later**. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

RETAINAGE – RCW 60.28.011

The City 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 (5%) of the contract amount is subject to retainage. RCW 60.28.011 allows for four options for placement of retained funds until they are released to the Contractor. The first option will be utilized unless the Contractor advises the Contract Specialist in writing *at the time the Contractor executes the contract* that it elects to use a different option and either submits a retainage bond or returns a Retainage Account Escrow Agreement signed by its designated financial institution. The Contractor's options for placement of retained funds are as follows:

- Elect to have the retained amount held in a fund by the City.
- Elect to have the City deposit the retained amount in an interest bearing account, not subject to withdrawal until after final acceptance of the work.
- Elect to have the City place the retained amount in escrow which shall be converted into bonds and securities chosen by the Contractor and approved by the public body.

Instead of having retainage withheld from the contract payments, a contractor may opt to submit a retainage bond in the amount of 5% of the contract amount. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State.

Release of Retainage

Retainage will be released **45 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 for the final correct contract amount are approved and on file for the Contractor and any subcontractors.
- Worker's Compensation Premiums for the Contractor and any subcontractors are current.

Note:

- If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, **whichever is later**.

CONTRACT PAYMENTS

The City cannot release any payment to the Contractor until the Intent has been approved by Labor and Industries. Invoices will not be processed until receipt of a properly completed invoice, and invoiced items are received and accepted. The Contractor must invoice at least MONTHLY for quantities delivered during the invoice period. **Net 30 days** shall apply. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to <mailto:accountspayable@cityofanacortes.org>

Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

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.