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## Local Government Committee

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### ESSB 6235

**Brief Description:** Addressing public works procurement.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Haugen and Keiser).

#### Brief Summary of Engrossed Substitute Bill

- Removes the notification exemption for port districts utilizing the small works roster for a public works project with an estimated cost of more than \$100,000, but less than \$200,000.
- Requires that a port district establish, by resolution, the conditions under which competitive bid requirements for public works projects may be waived.
- Clarifies that the willful and intentional violation of procurement procedures for public work consultant services will result in a civil penalty of not less than \$300 and may lead to liability, jointly and severally, for all consequential damages to a municipal corporation.
- Expands the statutory contracting procedures for architectural and engineering services to include other construction-related services.
- Requires port districts procuring public consultant planning services related to a facility outside the port district's jurisdictional boundaries to make available to the public in the affected area information regarding the development and activities on the site.

**Hearing Date:** 2/28/08

**Staff:** Tracey Taylor (786-7196).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In 1911 the Legislature authorized the Port District Act allowing citizens to create port districts. Today, there are 75 port districts in Washington.

### **General Powers and Authority of Port Districts**

Port districts are authorized for the purpose of acquisition, construction, maintenance, operation, development, and regulation of harbor improvements, rail or motor vehicle transfer and terminal facilities, water and air transfer and terminal facilities, or any combination of these facilities.

Among the general powers granted to ports are the following:

- to acquire land, property, leases, and easements;
- to condemn property and exercise the power of eminent domain;
- to develop lands for industrial and commercial purposes;
- to impose taxes, rates, and charges;
- to sell or otherwise convey rights to property; and
- to construct and maintain specified types of park and recreation facilities.

### **Governance of Port Districts**

Port districts are governed by a board of commissioners consisting of either three or five members in accordance with specified statutory criteria. Port commissioners are nominated either by commissioner district or, under certain circumstances, at-large. In all districts, port commissioners are elected at-large. Subject to voter approval, a port district with five commissioners may be authorized to have two commissioners who are both nominated and elected at-large.

### **Public Contracting Processes**

Public entities, including port districts, must use the public works contracting provisions for all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or municipality, or which is by law a lien or charge on any property therein. A contract is awarded based on a formal decision by the state or municipality notifying the responsible bidder with the lowest responsive bid of the state or municipality's acceptance of the bid and intent to enter into a contract with the bidder. However, a public entity may use the small works roster for construction, building, renovation, remodeling, alteration, repair, or improvement of real property with an estimated cost of \$200,000 or less. Under this process, quotations are solicited from at least five small works roster contractors, unless the estimated cost is between \$100,000 and \$200,000, in which case all qualified contractors on the roster must be notified.

State agencies, local agencies, and special districts can use the procurement process under Chapter 39.80 RCW for professional services rendered by any person, other than an employee of the agency, contracting to perform activities within the professional practice in Chapters 18.08 (Architects), 18.43 (Engineers & Land Surveyors) or 18.96 (Landscape Architects) RCW. The agency negotiates a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency must take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

State agencies use competitive solicitation for personal service contracts including many consultant services related to construction. Personal services include professional or technical

expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. It does not include architect and engineer services procured under Chapter 39.80 RCW. Competitive Solicitation is a documented formal process providing an equal and open opportunity to qualified parties and culminating in selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

### **2007 Performance Audit by the State Auditor's Office**

Pursuant to Initiative 900, the State Auditor's Office, with the private firms of Cotton & Company and CDR Consultants, audited the Port of Seattle. The audit scope included all construction projects and related consulting agreements from January 2004 through March 2007.

The audit identified significant and widespread issues related to contracting and contract management by the Port of Seattle and made 51 recommendations to address these conditions. Among the 51 recommendations are several statutory changes the auditor's recommend to the Legislature. Found in Appendix C of the Washington State Auditor's Performance Audit Report: Port of Seattle Construction Management of December 20, 2007 (Report No. 100008), these recommendation include:

- clarifying that competition requirements apply to consulting and other services;
- clarifying that penalties for violations of competitive contract laws apply to the procurement of consulting and other services;
- addressing whether state and local governments have wide latitude regarding sole source contracts for goods and services; and
- revising the small works roster contract procedures to remove port district exemption.

### **Summary of Bill:**

The current statutory competitive bid threshold of \$200,000 for port districts is clarified to apply to public works contracts.

Port districts utilizing the small works roster for a public works contract, the estimated cost of which is more than \$100,000 but less than \$200,000, must notify the remaining contractors on the appropriate small works roster that quotations are being sought.

The current statutory contracting procedures for architectural and engineering services is expanded to include construction related services. As a result, a state agency, local agency or special district can publicly announce and negotiate contracts for other construction-related services on the basis of demonstrated competence and qualification for the type of professional services required and at a fair and reasonable price. A cross-reference applying the amended chapter for the procurement of architectural, engineering, and construction related services to port district is added to the ports title.

"Other construction-related services" is defined as consultant services provided by any person, other than an employee of the agency, in connection with and furtherance of any public work for project management, construction supervision, or construction management. This does not include architectural and engineering services, legal services, accounting or auditing services, claims consultant services, or other similar services that may be required in connection to any public work.

"Public work consultant services" is defined as architectural, engineering, and other construction-related services provided by a consultant.

The definition of "consultant" is amended to eliminate a reference to "professional services" and to include only persons providing architectural, engineering or other construction related consultant services, who are not employees of the agency for which the services are being provided.

If a port district is procuring the planning services from a public work consultant relating to a facility outside the port district's jurisdictional boundaries, after the district has purchased property for the facility, the port district with the responsibility for the future property development use must make available to the public in the affected area certain information. The information that must be available includes: the type and scale of proposed uses on the site; the type and scale of business and industrial activities the development is likely to later attract to the site and the nearby area; the general character and scope of impacts on air quality, noise, water resources and recreation; and the expected impacts on local and state transportation infrastructure. This information must be made available throughout the planning and the design phases and may be accomplished by the use of web pages, office inspection and copying, property tours and public meetings.

A port commission must establish by resolution the policies to comply with the competitive bid requirements for public works projects and set forth the conditions by which the competitive bid requirements may be waived.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.