
SUBSTITUTE SENATE BILL 6235

State of Washington

60th Legislature

2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators Haugen and Keiser)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to public works and port districts; amending RCW
2 39.30.020, 39.80.010, 39.80.020, 39.80.030, 39.80.040, 39.80.050,
3 53.08.120, 53.12.010, and 53.12.270; reenacting and amending RCW
4 39.04.155; adding a new section to chapter 53.08 RCW; and adding a new
5 chapter to Title 53 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and
8 2007 c 133 s 4 are each reenacted and amended to read as follows:

9 (1) This section provides uniform small works roster provisions to
10 award contracts for construction, building, renovation, remodeling,
11 alteration, repair, or improvement of real property that may be used by
12 state agencies and by any local government that is expressly authorized
13 to use these provisions. These provisions may be used in lieu of other
14 procedures to award contracts for such work with an estimated cost of
15 two hundred thousand dollars or less. The small works roster process
16 includes the limited public works process authorized under subsection
17 (3) of this section and any local government authorized to award
18 contracts using the small works roster process under this section may

1 award contracts using the limited public works process under subsection
2 (3) of this section.

3 (2)(a) A state agency or authorized local government may create a
4 single general small works roster, or may create a small works roster
5 for different specialties or categories of anticipated work. Where
6 applicable, small works rosters may make distinctions between
7 contractors based upon different geographic areas served by the
8 contractor. The small works roster or rosters shall consist of all
9 responsible contractors who have requested to be on the list, and where
10 required by law are properly licensed or registered to perform such
11 work in this state. A state agency or local government establishing a
12 small works roster or rosters may require eligible contractors desiring
13 to be placed on a roster or rosters to keep current records of any
14 applicable licenses, certifications, registrations, bonding, insurance,
15 or other appropriate matters on file with the state agency or local
16 government as a condition of being placed on a roster or rosters. At
17 least once a year, the state agency or local government shall publish
18 in a newspaper of general circulation within the jurisdiction a notice
19 of the existence of the roster or rosters and solicit the names of
20 contractors for such roster or rosters. In addition, responsible
21 contractors shall be added to an appropriate roster or rosters at any
22 time they submit a written request and necessary records. Master
23 contracts may be required to be signed that become effective when a
24 specific award is made using a small works roster.

25 (b) A state agency establishing a small works roster or rosters
26 shall adopt rules implementing this subsection. A local government
27 establishing a small works roster or rosters shall adopt an ordinance
28 or resolution implementing this subsection. Procedures included in
29 rules adopted by the department of general administration in
30 implementing this subsection must be included in any rules providing
31 for a small works roster or rosters that is adopted by another state
32 agency, if the authority for that state agency to engage in these
33 activities has been delegated to it by the department of general
34 administration under chapter 43.19 RCW. An interlocal contract or
35 agreement between two or more state agencies or local governments
36 establishing a small works roster or rosters to be used by the parties
37 to the agreement or contract must clearly identify the lead entity that
38 is responsible for implementing the provisions of this subsection.

1 (c) Procedures shall be established for securing telephone,
2 written, or electronic quotations from contractors on the appropriate
3 small works roster to assure that a competitive price is established
4 and to award contracts to the lowest responsible bidder as defined in
5 RCW 39.04.010. Invitations for quotations shall include an estimate of
6 the scope and nature of the work to be performed as well as materials
7 and equipment to be furnished. However, detailed plans and
8 specifications need not be included in the invitation. This subsection
9 does not eliminate other requirements for architectural or engineering
10 approvals as to quality and compliance with building codes. Quotations
11 may be invited from all appropriate contractors on the appropriate
12 small works roster. As an alternative, quotations may be invited from
13 at least five contractors on the appropriate small works roster who
14 have indicated the capability of performing the kind of work being
15 contracted, in a manner that will equitably distribute the opportunity
16 among the contractors on the appropriate roster. However, if the
17 estimated cost of the work is from one hundred thousand dollars to two
18 hundred thousand dollars, a state agency or local government(~~(, other~~
19 ~~than a port district,)~~) that chooses to solicit bids from less than all
20 the appropriate contractors on the appropriate small works roster must
21 also notify the remaining contractors on the appropriate small works
22 roster that quotations on the work are being sought. The government
23 has the sole option of determining whether this notice to the remaining
24 contractors is made by: (i) Publishing notice in a legal newspaper in
25 general circulation in the area where the work is to be done; (ii)
26 mailing a notice to these contractors; or (iii) sending a notice to
27 these contractors by facsimile or other electronic means. For purposes
28 of this subsection (2)(c), "equitably distribute" means that a state
29 agency or local government soliciting bids may not favor certain
30 contractors on the appropriate small works roster over other
31 contractors on the appropriate small works roster who perform similar
32 services.

33 (d) A contract awarded from a small works roster under this section
34 need not be advertised.

35 (e) Immediately after an award is made, the bid quotations obtained
36 shall be recorded, open to public inspection, and available by
37 telephone inquiry.

1 (3) In lieu of awarding contracts under subsection (2) of this
2 section, a state agency or authorized local government may award a
3 contract for work, construction, alteration, repair, or improvement
4 projects estimated to cost less than thirty-five thousand dollars using
5 the limited public works process provided under this subsection.
6 Public works projects awarded under this subsection are exempt from the
7 other requirements of the small works roster process provided under
8 subsection (2) of this section and are exempt from the requirement that
9 contracts be awarded after advertisement as provided under RCW
10 39.04.010.

11 For limited public works projects, a state agency or authorized
12 local government shall solicit electronic or written quotations from a
13 minimum of three contractors from the appropriate small works roster
14 and shall award the contract to the lowest responsible bidder as
15 defined under RCW 39.04.010. After an award is made, the quotations
16 shall be open to public inspection and available by electronic request.
17 A state agency or authorized local government shall attempt to
18 distribute opportunities for limited public works projects equitably
19 among contractors willing to perform in the geographic area of the
20 work. A state agency or authorized local government shall maintain a
21 list of the contractors contacted and the contracts awarded during the
22 previous twenty-four months under the limited public works process,
23 including the name of the contractor, the contractor's registration
24 number, the amount of the contract, a brief description of the type of
25 work performed, and the date the contract was awarded. For limited
26 public works projects, a state agency or authorized local government
27 may waive the payment and performance bond requirements of chapter
28 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby
29 assuming the liability for the contractor's nonpayment of laborers,
30 mechanics, subcontractors, material suppliers, suppliers, and taxes
31 imposed under Title 82 RCW that may be due from the contractor for the
32 limited public works project, however the state agency or authorized
33 local government shall have the right of recovery against the
34 contractor for any payments made on the contractor's behalf.

35 (4) The breaking of any project into units or accomplishing any
36 projects by phases is prohibited if it is done for the purpose of
37 avoiding the maximum dollar amount of a contract that may be let using
38 the small works roster process or limited public works process.

1 (5)(a) A state agency or authorized local government may use the
2 limited public works process of subsection (3) of this section to
3 solicit and award small works roster contracts to small businesses that
4 are registered contractors with gross revenues under one million
5 dollars annually as reported on their federal tax return.

6 (b) A state agency or authorized local government may adopt
7 additional procedures to encourage small businesses that are registered
8 contractors with gross revenues under two hundred fifty thousand
9 dollars annually as reported on their federal tax returns to submit
10 quotations or bids on small works roster contracts.

11 (6) As used in this section, "state agency" means the department of
12 general administration, the state parks and recreation commission, the
13 department of natural resources, the department of fish and wildlife,
14 the department of transportation, any institution of higher education
15 as defined under RCW 28B.10.016, and any other state agency delegated
16 authority by the department of general administration to engage in
17 construction, building, renovation, remodeling, alteration,
18 improvement, or repair activities.

19 **Sec. 2.** RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to
20 read as follows:

21 In addition to any other remedies or penalties contained in any
22 law, municipal charter, ordinance, resolution, or other enactment, any
23 municipal officer by or through whom or under whose supervision, in
24 whole or in part, any contract is made in willful and intentional
25 violation of any law, municipal charter, ordinance, resolution, or
26 other enactment requiring competitive bidding or procurement procedures
27 for public work consultant services, upon such contract shall be held
28 liable to a civil penalty of not less than three hundred dollars and
29 may be held liable, jointly and severally with any other such municipal
30 officer, for all consequential damages to the municipal corporation.
31 If, as a result of a criminal action, the violation is found to have
32 been intentional, the municipal officer shall immediately forfeit his
33 office. For purposes of this section, "municipal officer" (~~shall~~)
34 means an "officer" or "municipal officer" as those terms are defined in
35 RCW 42.23.020(2).

1 **Sec. 3.** RCW 39.80.010 and 1981 c 61 s 1 are each amended to read
2 as follows:

3 The legislature hereby establishes a state policy, to the extent
4 provided in this chapter, that governmental agencies publicly announce
5 requirements for architectural ~~((and))~~, engineering, and other
6 construction-related services, and negotiate contracts for
7 architectural ~~((and))~~, engineering, and other construction-related
8 services on the basis of demonstrated competence and qualification for
9 the type of professional services required and at fair and reasonable
10 prices.

11 **Sec. 4.** RCW 39.80.020 and 1999 c 153 s 55 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section shall apply throughout this chapter.

15 (1) "State agency" means any department, agency, commission,
16 bureau, office, or any other entity or authority of the state
17 government.

18 (2) "Local agency" means any city and any town, county, special
19 district, municipal corporation, agency, port district or authority, or
20 political subdivision of any type, or any other entity or authority of
21 local government in corporate form or otherwise.

22 (3) "Special district" means a local unit of government, other than
23 a city, town, or county, authorized by law to perform a single function
24 or a limited number of functions, and including but not limited to,
25 water-sewer districts, irrigation districts, fire districts, school
26 districts, community college districts, hospital districts,
27 transportation districts, and metropolitan municipal corporations
28 organized under chapter 35.58 RCW.

29 (4) "Agency" means both state and local agencies and special
30 districts as defined in subsections (1), (2), and (3) of this section.

31 (5) "Architectural and engineering services" ~~((or "professional~~
32 ~~services"))~~ means professional services rendered by any person, other
33 than as an employee of the agency, contracting to perform activities
34 within the scope of the general definition of professional practice in
35 chapters 18.08, 18.43, or 18.96 RCW.

36 (6) "Other construction-related services" means consultant services
37 provided by any person, other than as an employee of the agency, in

1 connection with and furtherance of any public work for project
2 management, construction supervision, or construction management.
3 Other construction-related services do not include architectural and
4 engineering services, legal services, accounting or auditing services,
5 claims consultant services, or other similar services that may be
6 required in connection with any public work.

7 (7) "Public work" has the meaning set forth in RCW 39.04.010.

8 (8) "Public work consultant services" means architectural,
9 engineering, and other construction-related services provided by a
10 consultant.

11 (9) "Person" means any individual, organization, group,
12 association, partnership, firm, joint venture, corporation, or any
13 combination thereof.

14 ~~((7))~~ (10) "Consultant" means any person providing
15 ~~((professional))~~ architectural, engineering, or other construction-
16 related consultant services who is not an employee of the agency for
17 which the services are provided.

18 ~~((8))~~ (11) "Application" means a completed statement of
19 qualifications together with a request to be considered for the award
20 of one or more contracts for professional services.

21 **Sec. 5.** RCW 39.80.030 and 1981 c 61 s 3 are each amended to read
22 as follows:

23 Each agency shall publish in advance that agency's requirement for
24 ~~((professional))~~ public work consultant services. The announcement
25 shall state concisely the general scope and nature of the project or
26 work for which the services are required and the address of a
27 representative of the agency who can provide further details. An
28 agency may comply with this section by: (1) Publishing an announcement
29 on each occasion when ~~((professional))~~ public work consultant services
30 provided by a consultant are required by the agency; or (2) announcing
31 generally to the public its projected requirements for any category or
32 type of ~~((professional))~~ public work consultant services.

33 **Sec. 6.** RCW 39.80.040 and 1981 c 61 s 4 are each amended to read
34 as follows:

35 In the procurement of ~~((architectural and engineering))~~ public work
36 consultant services, the agency shall encourage firms engaged in the

1 lawful practice of their profession to submit annually a statement of
2 qualifications and performance data. The agency shall evaluate current
3 statements of qualifications and performance data on file with the
4 agency, together with those that may be submitted by other firms
5 regarding the proposed project, and shall conduct discussions with one
6 or more firms regarding anticipated concepts and the relative utility
7 of alternative methods of approach for furnishing the required services
8 and then shall select therefrom, based upon criteria established by the
9 agency, the firm deemed to be the most highly qualified to provide the
10 services required for the proposed project. Such agency procedures and
11 guidelines shall include a plan to insure that minority and women-owned
12 firms are afforded the maximum practicable opportunity to compete for
13 and obtain public contracts for services. The level of participation
14 by minority and women-owned firms shall be consistent with their
15 general availability within the professional communities involved.

16 **Sec. 7.** RCW 39.80.050 and 1981 c 61 s 5 are each amended to read
17 as follows:

18 (1) The agency shall negotiate a contract with the most qualified
19 firm for (~~architectural and engineering~~) public work consultant
20 services at a price which the agency determines is fair and reasonable
21 to the agency. In making its determination, the agency shall take into
22 account the estimated value of the services to be rendered as well as
23 the scope, complexity, and professional nature thereof.

24 (2) If the agency is unable to negotiate a satisfactory contract
25 with the firm selected at a price the agency determines to be fair and
26 reasonable, negotiations with that firm shall be formally terminated
27 and the agency shall select other firms in accordance with RCW
28 39.80.040 and continue in accordance with this section until an
29 agreement is reached or the process is terminated.

30 **Sec. 8.** RCW 53.08.120 and 2000 c 138 s 210 are each amended to
31 read as follows:

32 All material required by a port district may be procured in the
33 open market or by contract and all public work, as defined in RCW
34 39.04.010, ordered may be done by contract or day labor. All such
35 contracts for public work, the estimated cost of which exceeds two
36 hundred thousand dollars, shall be let at public bidding upon notice

1 published in a newspaper of general circulation in the district at
2 least thirteen days before the last date upon which bids will be
3 received, calling for sealed bids upon the work, plans and
4 specifications for which shall then be on file in the office of the
5 commission for public inspection. The same notice may call for bids on
6 such work or material based upon plans and specifications submitted by
7 the bidder. The competitive bidding requirements for purchases or
8 public works may be waived pursuant to RCW 39.04.280 if an exemption
9 contained within that section applies to the purchase or public work.

10 However, a port district may let contracts using the small works
11 roster process under RCW 39.04.155 in lieu of calling for sealed bids.
12 Whenever possible, the managing official shall invite at least one
13 proposal from a minority contractor who shall otherwise qualify under
14 this section.

15 When awarding such a contract for public work, when utilizing
16 proposals from the small works roster, the managing official shall give
17 weight to the contractor submitting the lowest and best proposal, and
18 whenever it would not violate the public interest, such contracts shall
19 be distributed equally among contractors, including minority
20 contractors, on the small works roster.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 53.08 RCW
22 to read as follows:

23 A port district shall specifically comply with chapter 39.80 RCW in
24 the procurement of all architectural, engineering, and other
25 construction-related services, as those terms are defined in RCW
26 39.80.020.

27 **Sec. 10.** RCW 53.12.010 and 2002 c 51 s 1 are each amended to read
28 as follows:

29 (1) The powers of the port district shall be exercised through a
30 port commission consisting of three or, when permitted by this title,
31 five members. Every port district (~~that is not coextensive with a~~
32 ~~county having a population of five hundred thousand or more~~) shall be
33 divided into the same number of commissioner districts as there are
34 commissioner positions, each having approximately equal population,
35 unless provided otherwise under subsection (2) of this section. Where
36 a port district with three commissioner positions is coextensive with

1 the boundaries of a county that has a population of less than five
2 hundred thousand and the county has three county legislative authority
3 districts, the port commissioner districts shall be the county
4 legislative authority districts. In other instances where a port
5 district is divided into commissioner districts, the port commission
6 shall divide the port district into commissioner districts unless the
7 commissioner districts have been described pursuant to RCW 53.04.031.
8 The commissioner districts shall be altered as provided in chapter
9 53.16 RCW.

10 Commissioner districts shall be used as follows: (a) Only a
11 registered voter who resides in a commissioner district may be a
12 candidate for, or hold office as, a commissioner of the commissioner
13 district; and (b) only the voters of a commissioner district may vote
14 at a primary to nominate candidates for a commissioner of the
15 commissioner district. Voters of the entire port district may vote at
16 a general election to elect a person as a commissioner of the
17 commissioner district.

18 (2)(a) In port districts with five commissioners, two of the
19 commissioner districts may include the entire port district if approved
20 by the voters of the district either at the time of formation or at a
21 subsequent port district election at which the issue is proposed
22 pursuant to a resolution adopted by the board of commissioners and
23 delivered to the county auditor.

24 (b) In a port district with five commissioners, where two of the
25 commissioner districts include the entire port district, the port
26 district may be divided into five commissioner districts if proposed
27 pursuant to a resolution adopted by the board of commissioners or
28 pursuant to a petition by the voters and approved by the voters of the
29 district at the next general or special election occurring sixty or
30 more days after the adoption of the resolution. A petition proposing
31 such an increase must be submitted to the county auditor of the county
32 in which the port district is located and signed by voters of the port
33 district at least equal in number to ten percent of the number of
34 voters in the port district who voted at the last general election.

35 Upon approval by the voters, the commissioner district boundaries
36 shall be redrawn into five districts within one hundred twenty days and
37 submitted to the county auditor pursuant to RCW 53.16.015. The new
38 commissioner districts shall be numbered one through five and the three

1 incumbent commissioners representing the three former districts shall
2 represent commissioner districts one through three. The two at large
3 incumbent commissioners shall represent commissioner districts four and
4 five. If, as a result of redrawing the district boundaries more than
5 one of the incumbent commissioners resides in one of the new
6 commissioner districts, the commissioners who reside in the same
7 commissioner district shall determine by lot which of the numbered
8 commissioner districts they shall represent for the remainder of their
9 respective terms.

10 **Sec. 11.** RCW 53.12.270 and 1975 1st ex.s. c 12 s 1 are each
11 amended to read as follows:

12 (1) The commission may delegate to the managing official of a port
13 district such administrative powers and duties of the commission as it
14 may deem proper for the efficient and proper management of port
15 district operations. Any such delegation shall be authorized by
16 appropriate resolution of the commission, which resolution must also
17 establish guidelines and procedures for the managing official to
18 follow.

19 (2) The commission shall establish, by resolution, policies to
20 comply with RCW 39.04.280 that set forth the conditions by which
21 competitive bidding requirements for public works contracts may be
22 waived.

23 NEW SECTION. **Sec. 12.** When a public port district purchases
24 property outside of the district's jurisdictional boundaries, as part
25 of the planning process for developing the property, the port must
26 study and disclose through the public hearing process in the impacted
27 community the impact of the proposed development plans. Elements
28 included in the predevelopment planning study and disclosure must
29 include the impact on air quality, noise, and groundwater resources in
30 the affected community. The predevelopment planning study and
31 disclosure process must also analyze the impact on both local and state
32 transportation infrastructure that would result from development of the
33 off-site property.

1 NEW SECTION. **Sec. 13.** Section 12 of this act constitutes a new
2 chapter in Title 53 RCW.

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