

HOUSE BILL REPORT

HB 2691

As Reported by House Committee On: Local Government

Title: An act relating to clarifying the authority and procedures for unit priced contracting by public port districts.

Brief Description: Clarifying the authority and procedures for unit priced contracting by public port districts.

Sponsors: Representatives Appleton, Griffey and Peterson.

Brief History:

Committee Activity:

Local Government: 1/17/18, 1/24/18 [DPS].

Brief Summary of Substitute Bill

- Allows a port district to procure public works with a unit-priced contract and establishes bidding and other procedures for such contracts.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Appleton, Chair; McBride, Vice Chair; Griffey, Ranking Minority Member; Gregerson and Peterson.

Minority Report: Do not pass. Signed by 2 members: Representatives Pike, Assistant Ranking Minority Member; Taylor.

Staff: Cassie Jones (786-7303).

Background:

Public Works.

"Public works" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by

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law a lien or charge on any property in the jurisdiction. All public works, including maintenance when performed by contract, must comply with prevailing wage statutes.

Prevailing Wages on Public Works.

The hourly wages to be paid to workers on all public works and under all public building service maintenance contracts of the state, county, municipality, or political subdivision must not be less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed. The prevailing rate of wage is the rate of hourly wage, usual benefits, and overtime paid in the locality to the majority of workers in the same trade or occupation. Contractors and subcontractors on public works projects must submit to the awarding agency an "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid. An awarding agency may not release payment of sums due on account of a public works contract until an affidavit is submitted.

Small Works Roster Process.

For public works projects estimated to cost \$300,000 or less, state agencies and local governments may use the small works roster (SWR) process to award contracts. Any responsible contractor may request to be on a SWR, which may be a single general list or may include lists for various specialties or categories of work. Under the SWR process, no advertising of such contract opportunities is required. Instead, a state agency or local government will solicit bids from all contractors who have requested to be on the appropriate SWR or from at least five of the listed contractors.

Port Districts and Procurement of Public Works.

Port districts are special purpose districts established for purposes related to: harbor improvements; rail, motor vehicle, water, air, or any combination of such transfer and terminal facilities; and other commercial transportation, transfer, handling, storage and terminal facilities, and industrial improvements.

A port district may procure materials and work that does not meet the definition of "public work" in the open market or by contract and all work ordered may be done by contract or day labor. A port district must procure public works, the estimated cost of which is greater than \$300,000, through a competitive bidding process. The competitive bidding process requires notice of the contract to be published calling for bids on the work or materials. Public works that are estimated to cost less than \$300,000 may be procured using the SWR process in lieu of advertising for bids. Weight must be given to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts must be distributed equally among contractors, including minority contractors, on the SWR.

Summary of Substitute Bill:

A port district may procure public works with a unit-priced contract to complete anticipated types of work based on hourly rates or unit-pricing for one or more categories of work or trades.

"Unit-priced contract" is defined as a competitively bid contract in which public works are anticipated on a recurring basis to meet the business or operational needs of a port district, under which the contractor agrees to a fixed period, indefinite quantity delivery of work, at a defined unit price, for each category of work. An initial contract term may not exceed three years, and port districts may extend or renew a contract for one additional year.

Invitations for unit-price bids must include the following information:

- estimated quantities of the anticipated types of work or trades; and
- how the district will issue or release work assignments, work orders, or task authorizations for projects based on the hourly rates or unit prices bid by the contractor.

Contracts must be awarded to the lowest responsible bidder. Unit-price contractors must pay prevailing wages for all public works that are otherwise subject to prevailing wage requirements under existing statutes. Prevailing wages for all work performed pursuant to each work order must be the prevailing wage rates in effect at the beginning date for each contract year. Unit-priced contracts must have prevailing wage rates updated annually. An "intent" to pay prevailing wage and an "affidavit" that prevailing wages have been paid must be submitted annually for all work completed within the previous 12-month period of the unit-priced contract.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- clarifies the requirement that unit-price contractors pay prevailing wages by providing that the required rate for such contracts is the prevailing wage rates in effect at the beginning date for each contract year.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill provides a clarification to existing law. Unit-price contracting is a process that local governments have used for many years. In 2014 the State Auditor began communicating that there was no express authority for these types of contracts. The ports would like this authority. Large commercial seaports use unit-price contracts to maintain wharf fenders, which may break at unpredictable times. Other ports utilize unit pricing to maintain specialized equipment for boat launches. Unit-price contracts provide ports the flexibility needed to address such situations and better manage taxpayer assets.

(Opposed) None.

Persons Testifying: Representative Appleton, prime sponsor; Chris Herman, Washington Public Ports Association; Sean Eagan, Port of Tacoma; and Bob McChesney, Port of Edmonds.

Persons Signed In To Testify But Not Testifying: None.