

SSB 6235 - S AMD 133

By Senators Fairley, Haugen, and Fraser

ADOPTED 02/19/2008

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

17 (2)(a) A state agency or authorized local government may create a  
18 single general small works roster, or may create a small works roster  
19 for different specialties or categories of anticipated work. Where  
20 applicable, small works rosters may make distinctions between  
21 contractors based upon different geographic areas served by the  
22 contractor. The small works roster or rosters shall consist of all  
23 responsible contractors who have requested to be on the list, and where  
24 required by law are properly licensed or registered to perform such  
25 work in this state. A state agency or local government establishing a  
26 small works roster or rosters may require eligible contractors desiring  
27 to be placed on a roster or rosters to keep current records of any  
28 applicable licenses, certifications, registrations, bonding, insurance,  
29 or other appropriate matters on file with the state agency or local  
30 government as a condition of being placed on a roster or rosters. At

1 least once a year, the state agency or local government shall publish  
2 in a newspaper of general circulation within the jurisdiction a notice  
3 of the existence of the roster or rosters and solicit the names of  
4 contractors for such roster or rosters. In addition, responsible  
5 contractors shall be added to an appropriate roster or rosters at any  
6 time they submit a written request and necessary records. Master  
7 contracts may be required to be signed that become effective when a  
8 specific award is made using a small works roster.

9 (b) A state agency establishing a small works roster or rosters  
10 shall adopt rules implementing this subsection. A local government  
11 establishing a small works roster or rosters shall adopt an ordinance  
12 or resolution implementing this subsection. Procedures included in  
13 rules adopted by the department of general administration in  
14 implementing this subsection must be included in any rules providing  
15 for a small works roster or rosters that is adopted by another state  
16 agency, if the authority for that state agency to engage in these  
17 activities has been delegated to it by the department of general  
18 administration under chapter 43.19 RCW. An interlocal contract or  
19 agreement between two or more state agencies or local governments  
20 establishing a small works roster or rosters to be used by the parties  
21 to the agreement or contract must clearly identify the lead entity that  
22 is responsible for implementing the provisions of this subsection.

23 (c) Procedures shall be established for securing telephone,  
24 written, or electronic quotations from contractors on the appropriate  
25 small works roster to assure that a competitive price is established  
26 and to award contracts to the lowest responsible bidder as defined in  
27 RCW 39.04.010. Invitations for quotations shall include an estimate of  
28 the scope and nature of the work to be performed as well as materials  
29 and equipment to be furnished. However, detailed plans and  
30 specifications need not be included in the invitation. This subsection  
31 does not eliminate other requirements for architectural or engineering  
32 approvals as to quality and compliance with building codes. Quotations  
33 may be invited from all appropriate contractors on the appropriate  
34 small works roster. As an alternative, quotations may be invited from  
35 at least five contractors on the appropriate small works roster who  
36 have indicated the capability of performing the kind of work being  
37 contracted, in a manner that will equitably distribute the opportunity  
38 among the contractors on the appropriate roster. However, if the

1 estimated cost of the work is from one hundred thousand dollars to two  
2 hundred thousand dollars, a state agency or local government (~~(, other~~  
3 ~~than a port district,~~) that chooses to solicit bids from less than all  
4 the appropriate contractors on the appropriate small works roster must  
5 also notify the remaining contractors on the appropriate small works  
6 roster that quotations on the work are being sought. The government  
7 has the sole option of determining whether this notice to the remaining  
8 contractors is made by: (i) Publishing notice in a legal newspaper in  
9 general circulation in the area where the work is to be done; (ii)  
10 mailing a notice to these contractors; or (iii) sending a notice to  
11 these contractors by facsimile or other electronic means. For purposes  
12 of this subsection (2)(c), "equitably distribute" means that a state  
13 agency or local government soliciting bids may not favor certain  
14 contractors on the appropriate small works roster over other  
15 contractors on the appropriate small works roster who perform similar  
16 services.

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

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

22 (3) In lieu of awarding contracts under subsection (2) of this  
23 section, a state agency or authorized local government may award a  
24 contract for work, construction, alteration, repair, or improvement  
25 projects estimated to cost less than thirty-five thousand dollars using  
26 the limited public works process provided under this subsection.  
27 Public works projects awarded under this subsection are exempt from the  
28 other requirements of the small works roster process provided under  
29 subsection (2) of this section and are exempt from the requirement that  
30 contracts be awarded after advertisement as provided under RCW  
31 39.04.010.

32 For limited public works projects, a state agency or authorized  
33 local government shall solicit electronic or written quotations from a  
34 minimum of three contractors from the appropriate small works roster  
35 and shall award the contract to the lowest responsible bidder as  
36 defined under RCW 39.04.010. After an award is made, the quotations  
37 shall be open to public inspection and available by electronic request.  
38 A state agency or authorized local government shall attempt to

1 distribute opportunities for limited public works projects equitably  
2 among contractors willing to perform in the geographic area of the  
3 work. A state agency or authorized local government shall maintain a  
4 list of the contractors contacted and the contracts awarded during the  
5 previous twenty-four months under the limited public works process,  
6 including the name of the contractor, the contractor's registration  
7 number, the amount of the contract, a brief description of the type of  
8 work performed, and the date the contract was awarded. For limited  
9 public works projects, a state agency or authorized local government  
10 may waive the payment and performance bond requirements of chapter  
11 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby  
12 assuming the liability for the contractor's nonpayment of laborers,  
13 mechanics, subcontractors, material suppliers, suppliers, and taxes  
14 imposed under Title 82 RCW that may be due from the contractor for the  
15 limited public works project, however the state agency or authorized  
16 local government shall have the right of recovery against the  
17 contractor for any payments made on the contractor's behalf.

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

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

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

32 (6) As used in this section, "state agency" means the department of  
33 general administration, the state parks and recreation commission, the  
34 department of natural resources, the department of fish and wildlife,  
35 the department of transportation, any institution of higher education  
36 as defined under RCW 28B.10.016, and any other state agency delegated  
37 authority by the department of general administration to engage in

1 construction, building, renovation, remodeling, alteration,  
2 improvement, or repair activities.

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

5 In addition to any other remedies or penalties contained in any  
6 law, municipal charter, ordinance, resolution, or other enactment, any  
7 municipal officer by or through whom or under whose supervision, in  
8 whole or in part, any contract is made in willful and intentional  
9 violation of any law, municipal charter, ordinance, resolution, or  
10 other enactment requiring competitive bidding or procurement procedures  
11 for public work consultant services, upon such contract shall be held  
12 liable to a civil penalty of not less than three hundred dollars and  
13 may be held liable, jointly and severally with any other such municipal  
14 officer, for all consequential damages to the municipal corporation.  
15 If, as a result of a criminal action, the violation is found to have  
16 been intentional, the municipal officer shall immediately forfeit his  
17 office. For purposes of this section, "municipal officer" (~~shall~~)  
18 means an "officer" or "municipal officer" as those terms are defined in  
19 RCW 42.23.020(2).

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

22 The legislature hereby establishes a state policy, to the extent  
23 provided in this chapter, that governmental agencies publicly announce  
24 requirements for architectural (~~and~~), engineering, and other  
25 construction-related services, and negotiate contracts for  
26 architectural (~~and~~), engineering, and other construction-related  
27 services on the basis of demonstrated competence and qualification for  
28 the type of professional services required and at fair and reasonable  
29 prices.

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

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

34 (1) "State agency" means any department, agency, commission,

1 bureau, office, or any other entity or authority of the state  
2 government.

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

7 (3) "Special district" means a local unit of government, other than  
8 a city, town, or county, authorized by law to perform a single function  
9 or a limited number of functions, and including but not limited to,  
10 water-sewer districts, irrigation districts, fire districts, school  
11 districts, community college districts, hospital districts,  
12 transportation districts, and metropolitan municipal corporations  
13 organized under chapter 35.58 RCW.

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

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

21 (6) "Other construction-related services" means consultant services  
22 provided by any person, other than as an employee of the agency, in  
23 connection with and furtherance of any public work for project  
24 management, construction supervision, or construction management.  
25 Other construction-related services do not include architectural and  
26 engineering services, legal services, accounting or auditing services,  
27 claims consultant services, or other similar services that may be  
28 required in connection with any public work.

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

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

33 (9) "Person" means any individual, organization, group,  
34 association, partnership, firm, joint venture, corporation, or any  
35 combination thereof.

36 ((+7)) (10) "Consultant" means any person providing  
37 (~~professional~~) architectural, engineering, or other construction-

1 related consultant services who is not an employee of the agency for  
2 which the services are provided.

3 ~~((+8))~~ (11) "Application" means a completed statement of  
4 qualifications together with a request to be considered for the award  
5 of one or more contracts for professional services.

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

8 Each agency shall publish in advance that agency's requirement for  
9 ~~((professional))~~ public work consultant services. The announcement  
10 shall state concisely the general scope and nature of the project or  
11 work for which the services are required and the address of a  
12 representative of the agency who can provide further details. An  
13 agency may comply with this section by: (1) Publishing an announcement  
14 on each occasion when ~~((professional))~~ public work consultant services  
15 provided by a consultant are required by the agency; or (2) announcing  
16 generally to the public its projected requirements for any category or  
17 type of ~~((professional))~~ public work consultant services.

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

20 (1) In the procurement of ~~((architectural and engineering))~~ public  
21 work consultant services, the agency shall encourage firms engaged in  
22 the lawful practice of their profession to submit annually a statement  
23 of qualifications and performance data. The agency shall evaluate  
24 current statements of qualifications and performance data on file with  
25 the agency, together with those that may be submitted by other firms  
26 regarding the proposed project, and shall conduct discussions with one  
27 or more firms regarding anticipated concepts and the relative utility  
28 of alternative methods of approach for furnishing the required services  
29 and then shall select therefrom, based upon criteria established by the  
30 agency, the firm deemed to be the most highly qualified to provide the  
31 services required for the proposed project. Such agency procedures and  
32 guidelines shall include a plan to insure that minority and women-owned  
33 firms are afforded the maximum practicable opportunity to compete for  
34 and obtain public contracts for services. The level of participation  
35 by minority and women-owned firms shall be consistent with their  
36 general availability within the professional communities involved.

1       (2) In the procurement of public work consultant planning services  
2 relating to a facility outside of the district's jurisdictional  
3 boundaries, after the district purchases property for the facility, the  
4 port district or districts with responsibility for the future property  
5 development and use must make available to the public in the affected  
6 area information about:

7       (a) The type and scale of proposed uses on the site;

8       (b) The type and scale of business and industrial activities the  
9 development is likely to later attract to the site and to the nearby  
10 area;

11       (c) The general character and scope of impacts on air quality,  
12 noise, water resources, and recreation; and

13       (d) The expected impacts on local and state transportation  
14 infrastructure, including state highways, local roads, rail, shipping,  
15 and air service. Such information must be made available throughout  
16 both the planning and design phases by means of web pages, office  
17 inspection and copying, one or more property tours, and public meetings  
18 which allow interested citizens to comment to port officials on several  
19 occasions over time as the development plans evolve.

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

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

28       (2) If the agency is unable to negotiate a satisfactory contract  
29 with the firm selected at a price the agency determines to be fair and  
30 reasonable, negotiations with that firm shall be formally terminated  
31 and the agency shall select other firms in accordance with RCW  
32 39.80.040 and continue in accordance with this section until an  
33 agreement is reached or the process is terminated.

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

36       All material required by a port district may be procured in the



1 open market or by contract and all public work, as defined in RCW  
2 39.04.010, ordered may be done by contract or day labor. All such  
3 contracts for public work, the estimated cost of which exceeds two  
4 hundred thousand dollars, shall be let at public bidding upon notice  
5 published in a newspaper of general circulation in the district at  
6 least thirteen days before the last date upon which bids will be  
7 received, calling for sealed bids upon the work, plans and  
8 specifications for which shall then be on file in the office of the  
9 commission for public inspection. The same notice may call for bids on  
10 such work or material based upon plans and specifications submitted by  
11 the bidder. The competitive bidding requirements for purchases or  
12 public works may be waived pursuant to RCW 39.04.280 if an exemption  
13 contained within that section applies to the purchase or public work.

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

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

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

27 A port district shall specifically comply with chapter 39.80 RCW in  
28 the procurement of all architectural, engineering, and other  
29 construction-related services, as those terms are defined in RCW  
30 39.80.020.

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

33 (1) The commission may delegate to the managing official of a port  
34 district such administrative powers and duties of the commission as it  
35 may deem proper for the efficient and proper management of port  
36 district operations. Any such delegation shall be authorized by

1 appropriate resolution of the commission, which resolution must also  
2 establish guidelines and procedures for the managing official to  
3 follow.

4 (2) The commission shall establish, by resolution, policies to  
5 comply with RCW 39.04.280 that set forth the conditions by which  
6 competitive bidding requirements for public works contracts may be  
7 waived."

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8 On page 1, line 1 of the title, after "districts;" strike the  
9 remainder of the title and insert "amending RCW 39.30.020, 39.80.010,  
10 39.80.020, 39.80.030, 39.80.040, 39.80.050, 53.08.120, and 53.12.270;  
11 reenacting and amending RCW 39.04.155; and adding a new section to  
12 chapter 53.08 RCW."

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