
Local Government Committee

HB 3274

Brief Description: Addressing public contracting by public port districts.

Sponsors: Representatives Simpson, Hudgins, Upthegrove, Hunter, Santos and Kenney.

Brief Summary of Bill

- Clarifies the applicability of public works competitive contracting provisions to public port districts.
- Requires that a port district commission establish by resolution the conditions under which competitive bid requirements may be waived.
- Creates a personal services competitive contracting chapter for public port districts to cover consultant services and other personal services that must be procured by port districts.
- Provides accountability requirements for public port district contracting.

Hearing Date: 2/1/08

Staff: Tracey Taylor (786-7196).

Background:

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:

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- 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.

2007 Performance Audit by 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 Auditors 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;
- revising the small works roster contract procedures to remove port district exemption.

Summary of Bill:

Public Contracting (In General)

All public works projects by a port district, the estimated cost of which exceeds \$200,000, must be bid using a competitive sealed bid process under the public work statutes in Chapter 39.04 RCW; however, a port district may use the small works roster for projects with an estimated cost of less than \$200,000.

Beginning January 1, 2010, all port districts must maintain a database on a public website of all contracts.

Each port commission (Commission) must establish by resolution the policies by which the competitive bid requirements may be waived.

Competitive Contracting for Personal Service Contracts

A new chapter is created in the Port districts title similar to Chapter 39.29 RCW which governs state agency personal service contracting. This new chapter requires competitive contracting for personal service contracts, including consultants. Exceptions to the competitive solicitation requirement exist if it is: an emergency contract; a sole source contract; a contract of less than \$20,000, however, the port must show competition for contracts between \$5,000 and \$20,000; and other contracts exempted by the Commission.

Substantial changes in the scope of work of a personal service contract and amendments to a personal service contract must generally be awarded as new contracts and are subject to Commission approval.

Certain types of contracts are exempted from competitive solicitation under the new chapter. These exceptions include contracts for a fee less than \$5,000, intergovernmental agreements, and architects and engineers contracts.

Personal services may only be procured by contract if: the project is temporary; it is critical to the port district responsibilities or operations, or mandated/authorized by the Commission; sufficient staffing does not exist within the port; and other qualified public resources are not available.

In the case of an emergency contract, the contract must be filed with the Commission within three working days following the commencement of work or execution of the contract, whichever is first.

Sole source contracts must be filed with the Commission and made available for public inspection at least 10 days prior to proposed starting date of the contract. However, approval of the Commission is required for sole source contracts of \$20,000 or more. Commission approval is also required for sole source contracts for consultants who receive a total amount of contracts exceeding \$20,000 within a single fiscal year.

Commissioners or employees must not authorize any personal service contracts without complying with the chapter. Failure to comply with the chapter subjects Commissioners and port district employees to \$300 fine. A consultant who knowingly violates the chapter is subject to a civil penalty of \$300 or 25 percent of the contract, whichever is greater.

All personal service contracts must be filed with the Commission and certain contracts reviewed and approved by the Commission.

Accountability Provisions

Each port district is required to maintain a publicly available list of all personal service contracts for each fiscal year. Annually, the Washington Public Ports Association (WPPA) must report to the Governor and Legislature on sole source contracts.

Each port district is required to provide information on personal service contracts to the State Auditor.

The WPPA is required to adopt uniform guidelines for the effective and efficient management of personal service contracts by all ports. The guidelines must be used by port districts entering into or renewing contracts after January 1, 2010. In addition, the WPPA is required to provide training for port district personnel responsible for contract execution and management. After

January 1, 2010, no port district employee may manage or execute a personal service contract without completing the training.

The State Auditor and Attorney General must report on annual basis the results of contract audits, investigative findings, enforcement actions and status of agency resolution to the Governor and Legislature.

Appropriation: None.

Fiscal Note: Requested on 1/28/2008.

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