
HOUSE BILL 2928

State of Washington 60th Legislature 2008 Regular Session

By Representatives Schual-Berke, Hudgins, Hasegawa, Chase, Nelson, Hunter, Miloscia, Upthegrove, and Santos

Read first time 01/18/08. Referred to Committee on Local Government.

1 AN ACT Relating to public contracting by port districts; amending
2 RCW 53.08.120 and 39.04.010; reenacting and amending RCW 39.04.155;
3 adding a new section to chapter 53.08 RCW; adding a new chapter to
4 Title 53 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 53.08.120 and 2000 c 138 s 210 are each amended to
7 read as follows:

8 (~~All material required by a port district may be procured in the~~
9 ~~open market or by contract and all work ordered may be done by contract~~
10 ~~or day labor. All such contracts for work~~) (1) All contracts related
11 to work meeting the definition of "public work" in RCW 39.04.010(4),
12 the estimated cost of which exceeds ((two hundred)) seventy thousand
13 dollars, shall be bid using a competitive sealed bid process. The
14 contract must be let at public bidding upon notice published in a
15 newspaper of general circulation in the district at least thirteen days
16 before the last date upon which bids will be received, calling for
17 sealed bids upon the work, plans and specifications for which shall
18 then be on file in the office of the commission for public inspection.
19 The same notice may call for bids on such work or material based upon

1 plans and specifications submitted by the bidder. The competitive
2 bidding requirements for purchases or public works may be waived
3 pursuant to RCW 39.04.280 if an exemption contained within that section
4 applies to the purchase or public work.

5 ~~((However))~~ (2) For all contracts related to work meeting a
6 definition of "public work" in RCW 39.04.010(4) that are estimated at
7 less than two hundred thousand dollars, a port district may let
8 contracts using the small works roster process under RCW 39.04.155 in
9 lieu of calling for sealed bids. Whenever possible, the managing
10 official shall invite at least one proposal from a minority contractor
11 who shall otherwise qualify under this section.

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

18 NEW SECTION. Sec. 2. A new section is added to chapter 53.08 RCW
19 to read as follows:

20 By January 1, 2010, each port shall maintain a database on a public
21 web site of all contracts, including public works and personal
22 services. At a minimum, the database shall identify the contractor,
23 the purpose of the contract, effective dates and periods of
24 performance, the cost of the contract and funding source, any
25 modifications to the contract, and whether the contract was
26 competitively procured or awarded on a sole source basis.

27 NEW SECTION. Sec. 3. The definitions in this section apply
28 throughout this chapter unless the context clearly requires otherwise.

29 (1) "Commission" means the elected oversight body of an individual
30 port.

31 (2) "Competitive solicitation" means a documented formal process
32 providing an equal and open opportunity to qualified parties and
33 culminating in a selection based on criteria which may include such
34 factors as the consultant's fees or costs, ability, capacity,
35 experience, reputation, responsiveness to time limitations,

1 responsiveness to solicitation requirements, quality of previous
2 performance, and compliance with statutes and rules relating to
3 contracts or services.

4 (3) "Consultant" means an independent individual or firm
5 contracting with a port to perform a service or render an opinion or
6 recommendation according to the consultant's methods and without being
7 subject to the control of the port except as to the result of the work.
8 The port monitors progress under the contract and authorizes payment.

9 (4) "Emergency" means a set of unforeseen circumstances beyond the
10 control of the port that either:

11 (a) Present a real, immediate threat to the proper performance of
12 essential functions; or

13 (b) May result in material loss or damage to property, bodily
14 injury, or loss of life if immediate action is not taken.

15 (5) "Evidence of competition" means documentation demonstrating
16 that the port has solicited responses from multiple firms in selecting
17 a consultant.

18 (6) "Personal service" means professional or technical expertise
19 provided by a consultant to accomplish a specific study, project, task,
20 or other work statement. "Personal service" does not include purchased
21 services as defined under subsection (8) of this section.

22 (7) "Personal service contract" means an agreement, or any
23 amendment thereto, with a consultant for the rendering of personal
24 services to the port.

25 (8) "Purchased services" means services provided by a vendor to
26 accomplish routine, continuing, and necessary functions. "Purchased
27 services" includes, but is not limited to, services for equipment
28 maintenance and repair; operation of a physical plant; security;
29 computer hardware and software maintenance; data entry; key punch
30 services; and computer time-sharing, contract programming, and
31 analysis.

32 (9) "Sole source" means a consultant providing professional or
33 technical expertise of such a unique nature that the consultant is
34 clearly and justifiably the only practicable source to provide the
35 service. The justification shall be based on either the uniqueness of
36 the service or sole availability at the location required.

1 NEW SECTION. **Sec. 4.** Personal services may be procured only to
2 resolve a particular port problem or issue or to expedite a specific
3 project that is temporary in nature. A port may procure personal
4 services only if it documents that:

5 (1) The service is critical to port responsibilities or operations,
6 or is mandated or authorized by the commission;

7 (2) Sufficient staffing or expertise is not available within the
8 port to perform the service; and

9 (3) Other qualified public resources are not available to perform
10 the service.

11 NEW SECTION. **Sec. 5.** All personal service contracts shall be
12 entered into pursuant to competitive solicitation, except for:

13 (1) Emergency contracts;

14 (2) Sole source contracts;

15 (3) Contract amendments;

16 (4) Contracts between a consultant and a port of less than twenty
17 thousand dollars. However, contracts of five thousand dollars or
18 greater but less than twenty thousand dollars shall have documented
19 evidence of competition. Ports shall not structure contracts to evade
20 these requirements; and

21 (5) Other specific contracts or classes or groups of contracts
22 exempted from the competitive solicitation process by the commission
23 when it has been determined that a competitive solicitation process is
24 not appropriate or cost-effective.

25 NEW SECTION. **Sec. 6.** Emergency contracts shall be filed with the
26 commission and made available for public inspection within three
27 working days following the commencement of work or execution of the
28 contract, whichever occurs first. Documented justification for
29 emergency contracts shall be provided to the commission when the
30 contract is filed.

31 NEW SECTION. **Sec. 7.** (1) Sole source contracts shall be filed
32 with the commission and made available for public inspection at least
33 ten working days prior to the proposed starting date of the contract.
34 Documented justification for sole source contracts shall be provided to
35 the commission when the contract is filed. For sole source contracts

1 of twenty thousand dollars or more, documented justification shall
2 include evidence that the port attempted to identify potential
3 consultants by advertising through statewide or regional newspapers.

4 (2) The commission shall approve sole source contracts of twenty
5 thousand dollars or more before any such contract becomes binding and
6 before any services may be performed under the contract. These
7 requirements shall also apply to sole source contracts of less than
8 twenty thousand dollars if the total amount of such contracts between
9 an agency and the same consultant is twenty thousand dollars or more
10 within a fiscal year. Ports shall ensure that the costs, fees, or
11 rates negotiated in filed sole source contracts of twenty thousand
12 dollars or more are reasonable.

13 NEW SECTION. **Sec. 8.** A port commissioner or employee shall not
14 expend any funds for personal service contracts subject to this chapter
15 unless the port has complied with the competitive procurement and other
16 requirements of this chapter. The port commissioner or employee
17 executing the personal service contracts is responsible for compliance
18 with the requirements of this chapter. Failure to comply with the
19 requirements of this chapter subjects the port commissioner or employee
20 to a civil penalty in the amount of three thousand dollars for a port
21 in a county with at least one million residents or three hundred
22 dollars for a port in a county with less than one million residents.
23 A consultant who knowingly violates this chapter in seeking or
24 performing work under a personal services contract is subject to a
25 civil penalty of three hundred dollars or twenty-five percent of the
26 amount of the contract, whichever is greater. The state auditor is
27 responsible for auditing violations of this chapter. The attorney
28 general is responsible for prosecuting violations of this chapter.

29 NEW SECTION. **Sec. 9.** (1) Substantial changes in either the scope
30 of work specified in the contract or in the scope of work specified in
31 the formal solicitation document must generally be awarded as new
32 contracts. Substantial changes executed by contract amendments must be
33 submitted to the commission, and are subject to approval by the
34 commission.

35 (2) An amendment or amendments to personal service contracts, if

1 the value of the amendment or amendments, whether singly or
2 cumulatively, exceeds fifty percent of the value of the original
3 contract must be provided to the commission.

4 (3) The commission shall approve amendments provided to it under
5 this section before the amendments become binding and before services
6 may be performed under the amendments.

7 (4) The amendments must be filed with the commission and made
8 available for public inspection at least ten working days prior to the
9 proposed starting date of services under the amendments.

10 (5) The commission shall approve amendments provided to it under
11 this section only if they meet the criteria for approval of the
12 amendments established by the commission.

13 NEW SECTION. **Sec. 10.** This chapter does not apply to:

14 (1) Contracts specifying a fee of less than five thousand dollars
15 if the total of the contracts from that port with the contractor within
16 a fiscal year does not exceed five thousand dollars;

17 (2) Contracts awarded to companies that furnish a service where the
18 tariff is established by the utilities and transportation commission or
19 other public entity;

20 (3) Intergovernmental agreements awarded to any governmental
21 entity, whether federal, state, or local and any department, division,
22 or subdivision thereof;

23 (4) Contracts awarded for services to be performed for a standard
24 fee, when the standard fee is established by the contracting agency or
25 any other governmental entity and a like contract is available to all
26 qualified applicants;

27 (5) Contracts for services that are necessary to the conduct of
28 collaborative research if prior approval is granted by the funding
29 source;

30 (6) Contracts for architectural and engineering services as defined
31 in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;
32 and

33 (7) Contracts for the employment of expert witnesses for the
34 purposes of litigation.

35 NEW SECTION. **Sec. 11.** (1) Personal service contracts subject to
36 competitive solicitation shall be (a) filed with the commission and

1 made available for public inspection; and (b) reviewed and approved by
2 the commission when those contracts provide services relating to
3 management consulting, organizational development, marketing,
4 communications, employee training, or employee recruiting.

5 (2) Personal service contracts subject to competitive solicitation
6 that provide services relating to management consulting, organizational
7 development, marketing, communications, employee training, or employee
8 recruiting shall be made available for public inspection at least ten
9 working days before the proposed starting date of the contract. All
10 other contracts shall be effective no earlier than the date they are
11 filed with the commission.

12 NEW SECTION. **Sec. 12.** (1) The port shall maintain a publicly
13 available list of all personal service contracts it entered into during
14 each fiscal year. The list shall identify the contractor, the purpose
15 of the contract, effective dates and periods of performance, the cost
16 of the contract and funding source, any modifications to the contract,
17 and whether the contract was competitively procured or awarded on a
18 sole source basis. The commission shall also ensure that state
19 accounting definitions and procedures are consistent with this chapter
20 and permit the reporting of personal services expenditures by type of
21 service. Designations of type of services shall include, but not be
22 limited to, management and organizational services, legal and expert
23 witness services, financial services, computer and information
24 services, social or technical research, marketing, communications, and
25 employee training or recruiting services.

26 (2) The Washington public ports association shall report annually
27 to the governor and the appropriate committees of the senate and house
28 of representatives on sole source contracts filed under this chapter.
29 The report shall describe: (a) The number and aggregate value of
30 contracts for each category established in this section; (b) the number
31 and aggregate value of contracts of five thousand dollars or greater
32 but less than twenty thousand dollars; (c) the number and aggregate
33 value of contracts of twenty thousand dollars or greater; (d) the
34 justification provided by ports for the use of sole source contracts;
35 and (e) any trends in the use of sole source contracts.

1 NEW SECTION. **Sec. 13.** As requested by the state auditor, the
2 ports shall provide information on contracts filed under this chapter
3 for use in preparation of summary reports on personal services
4 contracts.

5 NEW SECTION. **Sec. 14.** (1) The Washington public ports association
6 shall adopt uniform guidelines for the effective and efficient
7 management of personal service contracts by all ports. The guidelines
8 must, at a minimum, include:

9 (a) Accounting methods, systems, measures, and principles to be
10 used by agencies and contractors;

11 (b) Precontract procedures for selecting potential contractors
12 based on their qualifications and ability to perform;

13 (c) Incorporation of performance measures and measurable benchmarks
14 in contracts, and the use of performance audits;

15 (d) Uniform contract terms to ensure contract performance and
16 compliance with state and federal standards;

17 (e) Proper payment and reimbursement methods to ensure that the
18 state receives full value for taxpayer moneys, including cost
19 settlements and cost allowance;

20 (f) Postcontract procedures, including methods for recovering
21 improperly spent or overspent moneys for disallowance and adjustment;

22 (g) Adequate contract remedies and sanctions to ensure compliance;

23 (h) Monitoring, fund tracking, risk assessment, and auditing
24 procedures and requirements;

25 (i) Financial reporting, record retention, and record access
26 procedures and requirements;

27 (j) Procedures and criteria for terminating contracts for cause or
28 otherwise; and

29 (k) Any other subject related to effective and efficient contract
30 management.

31 (2) The Washington public ports association shall submit the
32 guidelines required by subsection (1) of this section to the governor
33 and the appropriate standing committees of the legislature no later
34 than December 1, 2008.

35 (3) The Washington public ports association shall publish a
36 guidebook for use by ports containing the guidelines required by
37 subsection (1) of this section.

1 NEW SECTION. **Sec. 15.** (1) A port entering into or renewing
2 personal service contracts shall follow the guidelines required by
3 section 14 of this act.

4 (2) A port that has entered into or renewed personal service
5 contracts during a calendar year shall, on or before January 1st of the
6 following calendar year, provide the commission with a report detailing
7 the procedures the port employed in entering into, renewing, and
8 managing the contracts.

9 (3) This section applies to ports entering into or renewing
10 contracts after January 1, 2010.

11 NEW SECTION. **Sec. 16.** (1) The Washington public ports association
12 shall provide a training course for port personnel responsible for
13 executing and managing personal service contracts. The course must
14 contain training on effective and efficient contract management under
15 the guidelines established under section 14 of this act. Ports shall
16 require port employees responsible for executing or managing personal
17 service contracts to complete the training course to the satisfaction
18 of the commission. Beginning January 1, 2010, no port employee may
19 execute or manage personal service contracts unless the employee has
20 completed the training course. Any request for exception to this
21 requirement shall be submitted to the commission in writing and shall
22 be approved by the commission prior to the employee executing or
23 managing the contract.

24 (2)(a) The office of the state auditor shall conduct risk-based
25 audits of the contracting practices associated with individual personal
26 service from multiple port districts to ensure compliance with the
27 guidelines established in sections 10 and 11 of this act. The office
28 of the state auditor shall conduct the number of audits deemed
29 appropriate by the state auditor based on funding provided.

30 (b) The office of the state auditor shall forward the results of
31 the audits conducted under this section to the governor, the
32 appropriate standing committees of the legislature, and the joint
33 legislative audit and review committee.

34 NEW SECTION. **Sec. 17.** The state auditor and the attorney general
35 shall annually by November 30th of each year provide a collaborative

1 report of contract audit and investigative findings, enforcement
2 actions, and the status of agency resolution to the governor and the
3 policy and fiscal committees of the legislature.

4 **Sec. 18.** RCW 39.04.010 and 2007 c 133 s 1 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Award" means the formal decision by the state or municipality
9 notifying a responsible bidder with the lowest responsive bid of the
10 (~~state~~) state's or municipality's acceptance of the bid and intent to
11 enter into a contract with the bidder.

12 (2) "Contract" means a contract in writing for the execution of
13 public work for a fixed or determinable amount duly awarded after
14 advertisement and competitive bid, or a contract awarded under the
15 small works roster process in RCW 39.04.155.

16 (3) "Municipality" means every city, county, town, port district,
17 district, or other public agency authorized by law to require the
18 execution of public work, except drainage districts, diking districts,
19 diking and drainage improvement districts, drainage improvement
20 districts, diking improvement districts, consolidated diking and
21 drainage improvement districts, consolidated drainage improvement
22 districts, consolidated diking improvement districts, irrigation
23 districts, or other districts authorized by law for the reclamation or
24 development of waste or undeveloped lands.

25 (4) "Public work" means all work, construction, alteration, repair,
26 or improvement other than ordinary maintenance, executed at the cost of
27 the state or of any municipality, or which is by law a lien or charge
28 on any property therein. All public works, including maintenance when
29 performed by contract shall comply with chapter 39.12 RCW. "Public
30 work" does not include work, construction, alteration, repair, or
31 improvement performed under contracts entered into under RCW
32 36.102.060(4) or under development agreements entered into under RCW
33 36.102.060(7) or leases entered into under RCW 36.102.060(8).

34 (5) "Responsible bidder" means a contractor who meets the criteria
35 in RCW 39.04.350.

36 (6) "State" means the state of Washington and all departments,
37 supervisors, commissioners, and agencies of the state.

1 **Sec. 19.** RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and
2 2007 c 133 s 4 are each reenacted and amended to read as follows:

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

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

37 (b) A state agency establishing a small works roster or rosters
38 shall adopt rules implementing this subsection. A local government

1 establishing a small works roster or rosters shall adopt an ordinance
2 or resolution implementing this subsection. Procedures included in
3 rules adopted by the department of general administration in
4 implementing this subsection must be included in any rules providing
5 for a small works roster or rosters that is adopted by another state
6 agency, if the authority for that state agency to engage in these
7 activities has been delegated to it by the department of general
8 administration under chapter 43.19 RCW. An interlocal contract or
9 agreement between two or more state agencies or local governments
10 establishing a small works roster or rosters to be used by the parties
11 to the agreement or contract must clearly identify the lead entity that
12 is responsible for implementing the provisions of this subsection.

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

1 these contractors by facsimile or other electronic means. For purposes
2 of this subsection (2)(c), "equitably distribute" means that a state
3 agency or local government soliciting bids may not favor certain
4 contractors on the appropriate small works roster over other
5 contractors on the appropriate small works roster who perform similar
6 services.

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

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

12 (3) In lieu of awarding contracts under subsection (2) of this
13 section, a state agency or authorized local government may award a
14 contract for work, construction, alteration, repair, or improvement
15 projects estimated to cost less than thirty-five thousand dollars using
16 the limited public works process provided under this subsection.
17 Public works projects awarded under this subsection are exempt from the
18 other requirements of the small works roster process provided under
19 subsection (2) of this section and are exempt from the requirement that
20 contracts be awarded after advertisement as provided under RCW
21 39.04.010.

22 For limited public works projects, a state agency or authorized
23 local government shall solicit electronic or written quotations from a
24 minimum of three contractors from the appropriate small works roster
25 and shall award the contract to the lowest responsible bidder as
26 defined under RCW 39.04.010. After an award is made, the quotations
27 shall be open to public inspection and available by electronic request.
28 A state agency or authorized local government shall attempt to
29 distribute opportunities for limited public works projects equitably
30 among contractors willing to perform in the geographic area of the
31 work. A state agency or authorized local government shall maintain a
32 list of the contractors contacted and the contracts awarded during the
33 previous twenty-four months under the limited public works process,
34 including the name of the contractor, the contractor's registration
35 number, the amount of the contract, a brief description of the type of
36 work performed, and the date the contract was awarded. For limited
37 public works projects, a state agency or authorized local government
38 may waive the payment and performance bond requirements of chapter

1 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby
2 assuming the liability for the contractor's nonpayment of laborers,
3 mechanics, subcontractors, materialpersons, suppliers, and taxes
4 imposed under Title 82 RCW that may be due from the contractor for the
5 limited public works project, however the state agency or authorized
6 local government shall have the right of recovery against the
7 contractor for any payments made on the contractor's behalf.

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

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

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

22 (6) As used in this section, "state agency" means the department of
23 general administration, the state parks and recreation commission, the
24 department of natural resources, the department of fish and wildlife,
25 the department of transportation, any institution of higher education
26 as defined under RCW 28B.10.016, and any other state agency delegated
27 authority by the department of general administration to engage in
28 construction, building, renovation, remodeling, alteration,
29 improvement, or repair activities.

30 NEW SECTION. **Sec. 20.** Sections 3 through 17 of this act
31 constitute a new chapter in Title 53 RCW.

--- END ---