

HOUSE BILL REPORT

ESSB 6329

As Passed House - Amended:

February 28, 2018

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

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

Sponsors: Senate Committee on Local Government (originally sponsored by Senators Takko, Angel and Chase).

Brief History:

Committee Activity:

Local Government: 2/20/18, 2/21/18 [DP];

Capital Budget: 2/22/18, 2/26/18 [DPA].

Floor Activity:

Passed House - Amended: 2/28/18, 91-7.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Allows port districts to construct public works by contract without calling for bids whenever the estimated cost of the work or improvement, including the cost of materials, supplies, or equipment, will not exceed \$40,000.
- Authorizes port districts to use unit price contracting.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: 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 1 member: Representative Taylor.

Staff: Cassie Jones (786-7303).

HOUSE COMMITTEE ON CAPITAL BUDGET

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 19 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Dye, Eslick, Kraft, MacEwen, Macri, Morris, Reeves, Riccelli, Ryu, Sells, Steele, Stonier, Volz and Walsh.

Staff: Steve Masse (786-7115).

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 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. 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.

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 work 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 works" 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 and to call for bids on the work or materials.

Competitive bidding requirements for purchases of public works may be waived for purchases: linked to a single source of supply; involving special market condition; in the event of an emergency; and of insurance or bonds.

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 Amended Bill:

Public Works Projects Under \$40,000.

A port district may construct public works by contract without calling for bids whenever the estimated cost of the work or improvement, including the cost of materials, supplies, or equipment, will not exceed \$40,000. A "public works project" means a complete project. A project may not be divided into units of work or classes of work to avoid calling for bids. The port district managing official must make his or her best effort to reach out to qualified contractors, including certified minority and woman-owned contractors.

Unit-Price Contracting.

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. Whenever possible, the port district must invite at least one proposal from a minority or woman contractor who otherwise qualifies.

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.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony (Local Government):

(In support) This bill will allow ports to operate more efficiently. Forty thousand dollars is not a lot of money for a project, and this bill would make it easier for ports to have these projects completed. There is language in the bill to make sure that woman- and minority-owned contractors have equal opportunity to compete for the projects.

This bill would establish a bid limit to allow port districts to forgo public bidding for public works under \$40,000. Every local government has this authority except ports and library districts. The bid limits vary depending on the type of local government. This bill will especially benefit small and rural ports by enabling the quick repair of equipment and helping to attract local and specialty contractors.

(Opposed) None.

Staff Summary of Public Testimony (Capital Budget):

(In support) This will provide financial benefits that a port can then reinvest in other infrastructure projects. All but two local districts have unit price contracting authority.

(Opposed) None.

Persons Testifying (Local Government): Senator Takko, prime sponsor; and Chris Herman, Washington Public Ports Association.

Persons Testifying (Capital Budget): Chris Herman, Washington Public Ports Association; and Sean Eagan, Port of Tacoma.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.