

---

ENGROSSED SUBSTITUTE SENATE BILL 6235

---

State of Washington

60th Legislature

2008 Regular Session

**By** Senate Government Operations & Elections (originally sponsored by Senators Haugen and Keiser)

READ FIRST TIME 02/08/08.

1 AN ACT Relating to public works and port districts; amending RCW  
2 39.30.020, 39.80.010, 39.80.020, 39.80.030, 39.80.040, 39.80.050,  
3 53.08.120, and 53.12.270; reenacting and amending RCW 39.04.155; and  
4 adding a new section to chapter 53.08 RCW.

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

6 **Sec. 1.** RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and  
7 2007 c 133 s 4 are each reenacted and amended to read as follows:

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

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

23           (b) A state agency establishing a small works roster or rosters  
24 shall adopt rules implementing this subsection. A local government  
25 establishing a small works roster or rosters shall adopt an ordinance  
26 or resolution implementing this subsection. Procedures included in  
27 rules adopted by the department of general administration in  
28 implementing this subsection must be included in any rules providing  
29 for a small works roster or rosters that is adopted by another state  
30 agency, if the authority for that state agency to engage in these  
31 activities has been delegated to it by the department of general  
32 administration under chapter 43.19 RCW. An interlocal contract or  
33 agreement between two or more state agencies or local governments  
34 establishing a small works roster or rosters to be used by the parties  
35 to the agreement or contract must clearly identify the lead entity that  
36 is responsible for implementing the provisions of this subsection.

37           (c) Procedures shall be established for securing telephone,  
38 written, or electronic quotations from contractors on the appropriate

1 small works roster to assure that a competitive price is established  
2 and to award contracts to the lowest responsible bidder as defined in  
3 RCW 39.04.010. Invitations for quotations shall include an estimate of  
4 the scope and nature of the work to be performed as well as materials  
5 and equipment to be furnished. However, detailed plans and  
6 specifications need not be included in the invitation. This subsection  
7 does not eliminate other requirements for architectural or engineering  
8 approvals as to quality and compliance with building codes. Quotations  
9 may be invited from all appropriate contractors on the appropriate  
10 small works roster. As an alternative, quotations may be invited from  
11 at least five contractors on the appropriate small works roster who  
12 have indicated the capability of performing the kind of work being  
13 contracted, in a manner that will equitably distribute the opportunity  
14 among the contractors on the appropriate roster. However, if the  
15 estimated cost of the work is from one hundred thousand dollars to two  
16 hundred thousand dollars, a state agency or local government(~~(, other~~  
17 ~~than a port district,)~~) that chooses to solicit bids from less than all  
18 the appropriate contractors on the appropriate small works roster must  
19 also notify the remaining contractors on the appropriate small works  
20 roster that quotations on the work are being sought. The government  
21 has the sole option of determining whether this notice to the remaining  
22 contractors is made by: (i) Publishing notice in a legal newspaper in  
23 general circulation in the area where the work is to be done; (ii)  
24 mailing a notice to these contractors; or (iii) sending a notice to  
25 these contractors by facsimile or other electronic means. For purposes  
26 of this subsection (2)(c), "equitably distribute" means that a state  
27 agency or local government soliciting bids may not favor certain  
28 contractors on the appropriate small works roster over other  
29 contractors on the appropriate small works roster who perform similar  
30 services.

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

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

36 (3) In lieu of awarding contracts under subsection (2) of this  
37 section, a state agency or authorized local government may award a  
38 contract for work, construction, alteration, repair, or improvement

1 projects estimated to cost less than thirty-five thousand dollars using  
2 the limited public works process provided under this subsection.  
3 Public works projects awarded under this subsection are exempt from the  
4 other requirements of the small works roster process provided under  
5 subsection (2) of this section and are exempt from the requirement that  
6 contracts be awarded after advertisement as provided under RCW  
7 39.04.010.

8 For limited public works projects, a state agency or authorized  
9 local government shall solicit electronic or written quotations from a  
10 minimum of three contractors from the appropriate small works roster  
11 and shall award the contract to the lowest responsible bidder as  
12 defined under RCW 39.04.010. After an award is made, the quotations  
13 shall be open to public inspection and available by electronic request.  
14 A state agency or authorized local government shall attempt to  
15 distribute opportunities for limited public works projects equitably  
16 among contractors willing to perform in the geographic area of the  
17 work. A state agency or authorized local government shall maintain a  
18 list of the contractors contacted and the contracts awarded during the  
19 previous twenty-four months under the limited public works process,  
20 including the name of the contractor, the contractor's registration  
21 number, the amount of the contract, a brief description of the type of  
22 work performed, and the date the contract was awarded. For limited  
23 public works projects, a state agency or authorized local government  
24 may waive the payment and performance bond requirements of chapter  
25 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby  
26 assuming the liability for the contractor's nonpayment of laborers,  
27 mechanics, subcontractors, material suppliers, suppliers, and taxes  
28 imposed under Title 82 RCW that may be due from the contractor for the  
29 limited public works project, however the state agency or authorized  
30 local government shall have the right of recovery against the  
31 contractor for any payments made on the contractor's behalf.

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

36 (5)(a) A state agency or authorized local government may use the  
37 limited public works process of subsection (3) of this section to

1 solicit and award small works roster contracts to small businesses that  
2 are registered contractors with gross revenues under one million  
3 dollars annually as reported on their federal tax return.

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

9 (6) As used in this section, "state agency" means the department of  
10 general administration, the state parks and recreation commission, the  
11 department of natural resources, the department of fish and wildlife,  
12 the department of transportation, any institution of higher education  
13 as defined under RCW 28B.10.016, and any other state agency delegated  
14 authority by the department of general administration to engage in  
15 construction, building, renovation, remodeling, alteration,  
16 improvement, or repair activities.

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

19 In addition to any other remedies or penalties contained in any  
20 law, municipal charter, ordinance, resolution, or other enactment, any  
21 municipal officer by or through whom or under whose supervision, in  
22 whole or in part, any contract is made in willful and intentional  
23 violation of any law, municipal charter, ordinance, resolution, or  
24 other enactment requiring competitive bidding or procurement procedures  
25 for public work consultant services, upon such contract shall be held  
26 liable to a civil penalty of not less than three hundred dollars and  
27 may be held liable, jointly and severally with any other such municipal  
28 officer, for all consequential damages to the municipal corporation.  
29 If, as a result of a criminal action, the violation is found to have  
30 been intentional, the municipal officer shall immediately forfeit his  
31 office. For purposes of this section, "municipal officer" (~~shall~~)  
32 means an "officer" or "municipal officer" as those terms are defined in  
33 RCW 42.23.020(2).

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

36 The legislature hereby establishes a state policy, to the extent

1 provided in this chapter, that governmental agencies publicly announce  
2 requirements for architectural ~~((and))~~, engineering, and other  
3 construction-related services, and negotiate contracts for  
4 architectural ~~((and))~~, engineering, and other construction-related  
5 services on the basis of demonstrated competence and qualification for  
6 the type of professional services required and at fair and reasonable  
7 prices.

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

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

12 (1) "State agency" means any department, agency, commission,  
13 bureau, office, or any other entity or authority of the state  
14 government.

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

19 (3) "Special district" means a local unit of government, other than  
20 a city, town, or county, authorized by law to perform a single function  
21 or a limited number of functions, and including but not limited to,  
22 water-sewer districts, irrigation districts, fire districts, school  
23 districts, community college districts, hospital districts,  
24 transportation districts, and metropolitan municipal corporations  
25 organized under chapter 35.58 RCW.

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

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

33 (6) "Other construction-related services" means consultant services  
34 provided by any person, other than as an employee of the agency, in  
35 connection with and furtherance of any public work for project  
36 management, construction supervision, or construction management.  
37 Other construction-related services do not include architectural and

1 engineering services, legal services, accounting or auditing services,  
2 claims consultant services, or other similar services that may be  
3 required in connection with any public work.

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

5 (8) "Public work consultant services" means architectural,  
6 engineering, and other construction-related services provided by a  
7 consultant.

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

11 ~~((7))~~ (10) "Consultant" means any person providing  
12 ~~((professional))~~ architectural, engineering, or other construction-  
13 related consultant services who is not an employee of the agency for  
14 which the services are provided.

15 ~~((8))~~ (11) "Application" means a completed statement of  
16 qualifications together with a request to be considered for the award  
17 of one or more contracts for professional services.

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

20 Each agency shall publish in advance that agency's requirement for  
21 ~~((professional))~~ public work consultant services. The announcement  
22 shall state concisely the general scope and nature of the project or  
23 work for which the services are required and the address of a  
24 representative of the agency who can provide further details. An  
25 agency may comply with this section by: (1) Publishing an announcement  
26 on each occasion when ~~((professional))~~ public work consultant services  
27 provided by a consultant are required by the agency; or (2) announcing  
28 generally to the public its projected requirements for any category or  
29 type of ~~((professional))~~ public work consultant services.

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

32 (1) In the procurement of ~~((architectural and engineering))~~ public  
33 work consultant services, the agency shall encourage firms engaged in  
34 the lawful practice of their profession to submit annually a statement  
35 of qualifications and performance data. The agency shall evaluate  
36 current statements of qualifications and performance data on file with

1 the agency, together with those that may be submitted by other firms  
2 regarding the proposed project, and shall conduct discussions with one  
3 or more firms regarding anticipated concepts and the relative utility  
4 of alternative methods of approach for furnishing the required services  
5 and then shall select therefrom, based upon criteria established by the  
6 agency, the firm deemed to be the most highly qualified to provide the  
7 services required for the proposed project. Such agency procedures and  
8 guidelines shall include a plan to insure that minority and women-owned  
9 firms are afforded the maximum practicable opportunity to compete for  
10 and obtain public contracts for services. The level of participation  
11 by minority and women-owned firms shall be consistent with their  
12 general availability within the professional communities involved.

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

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

20 (b) The type and scale of business and industrial activities the  
21 development is likely to later attract to the site and to the nearby  
22 area;

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

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

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

34 (1) The agency shall negotiate a contract with the most qualified  
35 firm for (~~architectural and engineering~~) public work consultant  
36 services at a price which the agency determines is fair and reasonable

1 to the agency. In making its determination, the agency shall take into  
2 account the estimated value of the services to be rendered as well as  
3 the scope, complexity, and professional nature thereof.

4 (2) If the agency is unable to negotiate a satisfactory contract  
5 with the firm selected at a price the agency determines to be fair and  
6 reasonable, negotiations with that firm shall be formally terminated  
7 and the agency shall select other firms in accordance with RCW  
8 39.80.040 and continue in accordance with this section until an  
9 agreement is reached or the process is terminated.

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

12 All material required by a port district may be procured in the  
13 open market or by contract and all public work, as defined in RCW  
14 39.04.010, ordered may be done by contract or day labor. All such  
15 contracts for public work, the estimated cost of which exceeds two  
16 hundred thousand dollars, shall be let at public bidding upon notice  
17 published in a newspaper of general circulation in the district at  
18 least thirteen days before the last date upon which bids will be  
19 received, calling for sealed bids upon the work, plans and  
20 specifications for which shall then be on file in the office of the  
21 commission for public inspection. The same notice may call for bids on  
22 such work or material based upon plans and specifications submitted by  
23 the bidder. The competitive bidding requirements for purchases or  
24 public works may be waived pursuant to RCW 39.04.280 if an exemption  
25 contained within that section applies to the purchase or public work.

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

31 When awarding such a contract for public work, when utilizing  
32 proposals from the small works roster, the managing official shall give  
33 weight to the contractor submitting the lowest and best proposal, and  
34 whenever it would not violate the public interest, such contracts shall  
35 be distributed equally among contractors, including minority  
36 contractors, on the small works roster.

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

3        A port district shall specifically comply with chapter 39.80 RCW in  
4 the procurement of all architectural, engineering, and other  
5 construction-related services, as those terms are defined in RCW  
6 39.80.020.

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

9        (1) The commission may delegate to the managing official of a port  
10 district such administrative powers and duties of the commission as it  
11 may deem proper for the efficient and proper management of port  
12 district operations. Any such delegation shall be authorized by  
13 appropriate resolution of the commission, which resolution must also  
14 establish guidelines and procedures for the managing official to  
15 follow.

16        (2) The commission shall establish, by resolution, policies to  
17 comply with RCW 39.04.280 that set forth the conditions by which  
18 competitive bidding requirements for public works contracts may be  
19 waived.

--- END ---