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**SUBSTITUTE HOUSE BILL 2691**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** House Local Government (originally sponsored by Representatives Appleton, Griffey, and Peterson)

1 AN ACT Relating to clarifying the authority and procedures for  
2 unit priced contracting by public port districts; amending RCW  
3 53.08.120; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that unit priced  
6 contracting is a decades old, proven practice used at ports for  
7 competitively bid maintenance and repair work that is common but  
8 unpredictable in its timing and scope. Unit priced contracting is an  
9 efficient mechanism to maintain essential services to port customers,  
10 often on short notice or in emergency situations.

11 (2) The legislature also finds that unit priced contracting  
12 ensures that necessary work is performed safely and at a competitive  
13 rate by qualified contractors, and also saves public money because of  
14 additional costs that would be incurred by bidding each work order  
15 separately.

16 (3) The legislature also finds that, in order to avoid litigation  
17 and audit risk, statutory clarification is needed regarding the  
18 authority for port districts to engage in unit priced contracting.

19 **Sec. 2.** RCW 53.08.120 and 2009 c 74 s 2 are each amended to read  
20 as follows:

1 (1) All material and work required by a port district not meeting  
2 the definition of public work in RCW 39.04.010(4) may be procured in  
3 the open market or by contract and all work ordered may be done by  
4 contract or day labor.

5 (2)(a) All such contracts for work meeting the definition of  
6 "public work" in RCW 39.04.010(4), the estimated cost of which  
7 exceeds three hundred thousand dollars, shall be awarded using a  
8 competitive bid process. The contract must be awarded at public  
9 bidding upon notice published in a newspaper of general circulation  
10 in the district at least thirteen days before the last date upon  
11 which bids will be received, calling for bids upon the work, plans  
12 and specifications for which shall then be on file in the office of  
13 the commission for public inspection. The same notice may call for  
14 bids on such work or material based upon plans and specifications  
15 submitted by the bidder. The competitive bidding requirements for  
16 purchases or public works may be waived pursuant to RCW 39.04.280 if  
17 an exemption contained within that section applies to the purchase or  
18 public work.

19 (b) For all contracts related to work meeting the definition of  
20 "public work" in RCW 39.04.010(4) that are estimated at three hundred  
21 thousand dollars or less, a port district may let contracts using the  
22 small works roster process under RCW 39.04.155 in lieu of advertising  
23 for bids. Whenever possible, the managing official shall invite at  
24 least one proposal from a minority contractor who shall otherwise  
25 qualify under this section.

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

32 (3)(a) A port district may procure public works with a unit  
33 priced contract under this section or RCW 39.04.010(2) for the  
34 purpose of completing anticipated types of work based on hourly rates  
35 or unit pricing for one or more categories of work or trades.

36 (b) For the purposes of this section, unit priced contract means  
37 a competitively bid contract in which public works are anticipated on  
38 a recurring basis to meet the business or operational needs of a port  
39 district, under which the contractor agrees to a fixed period

1 indefinite quantity delivery of work, at a defined unit price, for  
2 each category of work.

3 (c) Unit priced contracts must be executed for an initial  
4 contract term not to exceed three years, with the port district  
5 having the option of extending or renewing the unit priced contract  
6 for one additional year.

7 (d) Invitations for unit priced bids shall include, for purposes  
8 of the bid evaluation, estimated quantities of the anticipated types  
9 of work or trades, and specify how the port district will issue or  
10 release work assignments, work orders, or task authorizations  
11 pursuant to a unit priced contract for projects, tasks, or other work  
12 based on the hourly rates or unit prices bid by the contractor.  
13 Contracts must be awarded to the lowest responsible bidder as per RCW  
14 39.04.010.

15 (e) Unit priced contractors shall pay prevailing wages for all  
16 work that would otherwise be subject to the requirements of chapter  
17 39.12 RCW. Prevailing wages for all work performed pursuant to each  
18 work order must be the prevailing wage rates in effect at the  
19 beginning date for each contract year. Unit priced contracts shall  
20 have prevailing wage rates updated annually. Intents and affidavits  
21 for prevailing wages paid shall be submitted annually for all work  
22 completed within the previous twelve-month period of the unit priced  
23 contract.

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