

MembersLetter

Upcoming Events

Legislative Session
Olympia, WA
January 13, 2014

Available Loans & Grants

Aquatic Lands Enhancement Account Grants

Applications due February 28, 2014.
For more information, click [here](#).

Boating Facilities Program Grants

Plans establishing grant eligibility due March 1, 2014. For more information, click [here](#).

Boating Infrastructure Grants

Applications due May 1, 2014.
For more information, click [here](#).

December 2013



Ports Win on SeaTac Minimum Wage Applicability to Airport Employees

A King County Superior Court Judge has ruled that Proposition 1, the ballot measure in the City of SeaTac which would have set a \$15 wage floor for an estimated 6,000 airport and hotel workers, cannot be enforced at the airport. This is important news because the ruling affirms that a public entity that operates an airport has sole jurisdiction over the airport's facilities and operations.

"The law makes it clear that only one jurisdiction operates an airport – in this case the Port of Seattle – and we are pleased that the judge agrees," stated WPPA Executive Director Eric Johnson. "This is not about establishing a minimum wage, it is about the precedent of allowing another jurisdiction to impose operational requirements on an airport."

Earlier this month, WPPA won leave of the Court to file an Amicus Curiae brief supporting the argument that one municipality does not have the jurisdiction to set rules and regulations that apply to an airport operated by a port (or any other municipality). The judge agreed with this argument. Judge Andrea Darvas ruled that the legislature made it explicitly clear through its passage of RCW 14.08 that the municipality which operates an airport has the exclusive jurisdiction over airport facilities and operations. Therefore, the City of SeaTac has no authority, and the Port of Seattle has no obligation, to enforce the \$15 minimum wage statute on SeaTac International Airport property.

The court ruling specifically states that "It is only the Port of Seattle that has legislative authorization '[t]o adopt ... all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control ...' RCW 14.08.120 (2)."

In addition to a \$15 minimum wage, the new law would have required affected employers to provide paid sick leave, promote part-time workers to full time before hiring additional part-timers and retain employees for at least 90 days after an ownership change.

There are 27 ports in our state that own and operate airports. This ruling allows those ports to retain exclusive jurisdiction over the activities at their airports. The labor-backed group Yes! for SeaTac has promised to appeal the ruling.

To read the entire ruling, visit the WPPA website or click this link: <http://washingtonports.org/wp-content/uploads/2013/12/0000-FINAL-ORDER-ON-MOT-FOR-DECLAR-JMT.pdf>



Knowing the Waters by Frank Chmelik of Chmelik, Sitkin & Davis, P.S.

It is the time of year when ports are again considering public work projects. Over the next few months *Knowing the Waters* will focus on legal issues in public work projects. This month will focus on creating and using "Supplemental Bidder Criteria" in the bid documents. In the following months we will look at other issues that arise in public work contracting.

What is a "public work?" RCW 39.04.010 defines a "public work" as any work, construction, alteration, repair or improvement (other than ordinary maintenance) paid for with public funds. Issues seem to always arise around unique arrangements where port property is improved ancillary to a contract that has another purpose. For example, a tenant may approach a port and offer to improve the port road leading to a tenant's leasehold in exchange for a rent reduction. The best advice is if port property is improved and if the port is using public funds (even if the funds are in the form of a rent reduction) the contract must be analyzed carefully.

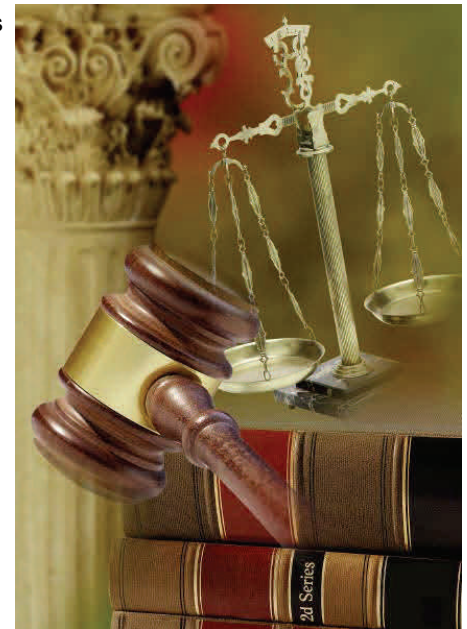
Who is the "lowest responsive and responsible bidder?" The long standing rule in Washington requires governments to award a public work project to the lowest "responsive" and "responsible" bidder. The term "responsive" means that the bidder correctly responded to the invitation for bids – that is to say the bidder filled all the bid forms out correctly, provided all the necessary signatures and submitted the bid on time. The term "responsible" was historically held to mean that the bidder was appropriately licensed to do business in the State of Washington, had a valid contractor's license, had complied with rules relating to paying workers prevailing wage and could provide the 100% performance bond. Of course, it is not usual for governments to be disappointed when the low bidder is known to have little expertise or a reputation for poor quality work.

What are "Supplemental Bidder Responsibility Criteria?" In 2007 the legislature changed RCW 39.04.350 to allow for the adoption of "relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet." The use of Supplemental Bidder Responsibility Criteria is very useful in public works projects where the port wants to make sure that the contractor has the needed expertise and personnel to successfully complete the project. Supplemental Bidder Responsibility Criteria have been used in environmental cleanup, runway rehabilitation, marina float rehabilitation and sewage treatment facilities projects. For example, in the environmental cleanup context the criteria have been used to address past experience dealing with the Department of Ecology and past experience handling contaminated marine sediments. In the runway project a port required that the contractor have experience with the special pavement required by the FAA.

How are Supplemental Bidder Responsibility Criteria used? In order to utilize Supplemental Bidder Responsibility Criteria the port commission should first adopt a resolution generally authorizing the use of Supplemental Bidder Responsibility Criteria at the port and providing the authority to the executive director to determine which projects warrant the use of the criteria. Then, for each project where Supplemental Bidder Responsibility Criteria is used, the port must establish in the bid documents: (i) a list of the criteria that will be used for determining bidder responsibility, (ii) how a potential bidder can request modification of the criteria before the bid occurs, (iii) how the criteria will be evaluated and (iv) how any determination that a bidder is "not responsible" may be appealed.

How is an evaluation conducted? One method to evaluate criteria is to create a score sheet with points attached for each separate criterion (for example, 5 separate criteria with 5 possible points per criteria). Using this method a "passing score" is set (for example, 20 points and no less than 3 points for any criteria). After bid opening, the low bidder is evaluated by the port using the scoring system. If the low bidder is found "not responsible" the next low bidder is evaluated. This process continues until a responsible bidder is found. Of course, the evaluation is necessarily subjective. Interestingly, the criteria can include such things as: (i) has the bidder demonstrated the ability to work on projects without excessive numbers of change orders or (ii) the bidder has not been involved in excessive numbers of claims against government owners. However, the better advice is to limit the criteria to project specific experience and demonstrations of personnel with relevant experience. The Washington State Capital Projects Advisory Review Board ("CPARB") www.des.wa.gov/about/Committees/CPARB has developed *Suggested Guidelines for Bidder Responsibility* (last revised January 2012).

Continued on next page.



Employment Opportunities

[Economic Development Manager, Port of Douglas County](#)

[Office Assistant, Port of Camas Washougal](#)

[Sr. Project Manager, Engineering, Port of Tacoma](#)

[Sr. Manager, Business Development, Port of Tacoma](#)

[Business Development & Marketing Analyst, Port of Tacoma](#)

Knowing the Waters, *continued.*

Experience shows that the use of Supplemental Bidder Responsibility Criteria is not appropriate for every public works project; however, for the specialized or large projects the use of Supplemental Bidder Responsibility Criteria has proven to be a very useful tool to deliver an “on-time” and “on-budget” project.

As always, please contact your port counsel with any questions regarding this topic. And, if you have a particular question for a *Knowing the Waters*, please email me at fchmelik@chmelik.com.



News from the State Auditor

Local Government Billing Rate Changes

As announced in a letter sent by State Auditor Troy Kelley earlier this month, the State Auditor's Office will now be sending annual notifications of any adjustments in local government billing rates.

Each July, the office will let you know if it plans to change the rates for the following year – and if it does not. In July of 2014, for example, it will notify you of any rate change for 2015.

The office has also announced that there will be no change for 2014 in the current rate of \$83.50 per hour, which has been in effect since July 2011.

Through thoughtful, yearly rate evaluation, the office hopes to minimize the impact of future increases.

Auditor's Office to Provide Annual Report Training

The State Auditors' Office is offering free four-hour trainings, How to Prepare and File Your Annual Report all across the state. Ports are eligible for the training and the office strongly encourages you to attend. The training will emphasize the importance of your responsibility to file the annual report using information provided by the county treasurer and the county auditor.

The training will provide a brief overview of governmental fund accounting, Budgeting, Accounting and Reporting System (BARS) coding and then focus on the preparation of all required annual report items, specifically Schedules 01 and 22. At the end of the session, the class will demonstrate the online filing application. Instructors will then provide as much one-on-one assistance as time permits.

Please respond to Duane.Walz@sao.wa.gov to let the office know whether you will or will not be able to attend. Classes will be held all over the state. Please bring as much information to the training as you currently use to prepare your reports.

Class Date: **Various (Feb 10 – Apr 3, 2014)**
Class Time:
Location: **Almost all 39 counties**

Washington Aviation System Plan Update Slated for Summer 2014

An update to the Washington Aviation System Plan is scheduled to kick off next summer.

The Washington State Department of Transportation Aviation Division is spearheading this system planning effort, which will help the state strategically maintain and improve its aviation system for the future. The update focuses on several specific goals:

- Capturing changes at airports and determining future needs.
- Identifying and planning for emerging technologies and trends that support aviation and aerospace.
- Examining current and future commercial passenger service and air cargo needs.
- Addressing known and anticipated changes in general aviation.
- Establishing safety standards and updating performance objectives.
- Seeking input from aviation stakeholders and the public.

The system plan update will place an increased emphasis on air cargo and how it enhances Washington's aviation system and economy. WSDOT will also examine how multimodal transportation improves passenger and freight activity at airports.

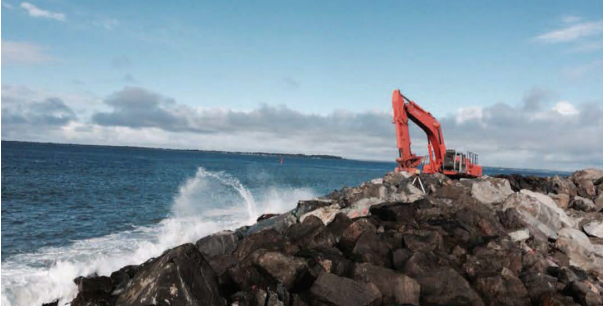
WSDOT will draw from existing initiatives and programs for the update, including [the Washington Airport Investment Study](#), [Statewide Capital Improvement Program](#), [Airport Pavement Management report](#) and the [Airport Economic Impact Study](#).

The Federal Aviation Administration will fund 90 percent of the aviation system plan update.

It is the state's role to guide development of a coherent statewide strategy to ensure that adequate aviation capacity exists to accommodate predicted growth. The last system plan was completed in 2009 as part of the Long-Term Air Transportation Study.

Learn more about the [Washington State Aviation System Plan](#).

Point Chehalis Revetment Improvements Completed in Westport



The U.S. Army Corps of Engineers awarded local contractor Roglin's, Inc. a \$500,600 contract in November to repair and restore a 300-foot section of the Point Chehalis Revetment. Frequent wave overtopping from winter storms has damaged sections of the revetment to the point of possible failure.

The revetment plays a critical role in protecting the hundreds of recreational and commercial fishing vessels that moor annually at the Westport Marina, the U.S. Coast Guard Station Grays Harbor, and the City of Westport.

“Westport remains Washington’s leading commercial fish landing port in terms of volume of product,” reports Port Commission President Chuck Caldwell. “During winter storms the revetment plays an important role in protecting the boat basin and downtown marina district. We were excited to work with the Corps and City of Westport to get the repairs underway and look forward to working with them in the future as the economic activities at the Marina continue to grow.” The project was completed in late November.

A Business Retention Success Story

The Port of Walla Walla is proud to have played an instrumental role in helping to retain Martin Archery in the Walla Walla Valley. In October, the Port purchased the Martin Archery Property for \$1.3 million in an effort to save jobs and retain bow manufacturing operations in the Walla Walla valley.

The Port then leased the facility to Martin Sports Inc., an affiliated of Diversis Capital LLC with the understanding they would work to return the bow manufacturing business into a profitable operation. Martin Sports Inc. took over the business on October 25th and is off to a great start. They are focused on producing a line of bows that are the most profitable for the company. They have also steadily increased employment and are now at 34.

The Port’s mission is to create and retain family wage jobs within Walla Walla County. The Port Commission continues to believe business retention efforts are an essential part of maintaining a healthy economy. At times this requires the Port to make direct investments in property and facilities in order to save jobs.

While the port is pleased with the great start of Martin Sports Inc., the true measure of success will be to build a strong business model that allows bow manufacturing operation to continue in the Walla Walla Valley for the next 50 years.

Quick Action by Port and Processor Saves Cabbage Crop

A Michigan-based food processing company is up and running with a temporary facility that is turning Skagit Valley cabbage into sauerkraut at the Port of Skagit’s La Conner Marina.

As reported by the Skagit Valley Herald on Nov. 4, Gielow Pickles Inc. is providing processing and a buyer for this year’s local cabbage crop, which was left without a contract when the Pleasant Valley Farms processing plant went out of business in August. On very short notice, Gielow brought in processing equipment and set up shop in the marina’s Peninsula Building, which was vacant at the time. Kirby Johnson, vice president of Farms Northwest Inc., told the newspaper he expects to salvage about half of his company’s cabbage crop, thanks to the quick work of port officials and Gielow.

Port officials have applied to the Town of La Conner for a shorelines conditional use permit, because the processing location is within the town’s shoreline jurisdiction. Currently, all process water generated on the site is being routed to the Town of La Conner’s sewage treatment plant. The port also has applied to the town for a permit to allow Gielow’s temporary structures on the site.



The port is providing the location for the temporary processing operation in an effort to solidify a long-term, value-added process for the Skagit Valley’s unique cabbage and cucumber crops. Gielow is now in talks with port officials about locating a permanent plant at the port’s Bayview Business Park to process cabbage and cucumbers. In recent years, Skagit Valley farmers have been growing about 1,000 acres of cucumbers and about 50 acres of cabbage.