
SENATE BILL 6357

State of Washington 62nd Legislature 2012 Regular Session

By Senators Rolfes, Conway, Keiser, Chase, Benton, and McAuliffe

Read first time 01/19/12. Referred to Committee on Government Operations, Tribal Relations & Elections.

1 AN ACT Relating to increasing the purchase of made in America
2 products by the state of Washington; amending RCW 43.19.1905; adding
3 new sections to chapter 39.04 RCW; adding a new section to chapter
4 43.19 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the state of
7 Washington's procurement policies should replicate the state of
8 Washington's and the United States' goal to accelerate economic growth
9 through local job creation. It is therefore the intent of the
10 legislature to encourage all state agencies to aid and promote the
11 economy of the state of Washington and the United States by requiring
12 a process to be established that increases the procurement of iron,
13 steel, and manufactured goods produced in the United States in all
14 public works and procurement contracts.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.04 RCW
16 to read as follows:

17 For the purposes of this section, section 3 of this act, RCW
18 43.19.1905, and section 5 of this act:

1 (1) "Agency" means any state office or activity of the executive
2 and judicial branches of state government, including the state
3 agencies, departments, offices, divisions, boards, commissions,
4 institutions of higher education as defined in RCW 28B.10.016, and
5 correctional and other types of institutions.

6 (2) "Bid" means an offer, proposal, or quote for goods or services
7 in response to a solicitation issued for such goods or services by an
8 agency of Washington state.

9 (3) "Bidder" means an individual or entity who submits a bid,
10 quotation, or proposal in response to a solicitation issued for such
11 goods or services by an agency of Washington state.

12 (4) "Board" means the capital projects advisory review board
13 created in RCW 39.10.220.

14 (5) "Made in America" means:

15 (a) In the case of an iron or steel product, such product is deemed
16 to be made in America if all manufacturing has taken place in the
17 United States, except metallurgical processes involving the refinement
18 of steel additives; and

19 (b) In the case of a manufactured good, such good is deemed to be
20 made in America if:

21 (i) All of the manufacturing processes for the good take place in
22 the United States; and

23 (ii) All of the components of the good are of United States origin.
24 A component will be considered a good of United States origin if all of
25 the manufacturing processes of the component have taken place in the
26 United States, regardless of the origin of its subcomponents.

27 (6) "Public works" has the same meaning as defined in RCW
28 39.04.010.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04 RCW
30 to read as follows:

31 (1)(a) In determining "lowest responsible bidder," in addition to
32 price, an agency must consider whether the iron, steel, and
33 manufactured goods to be used or supplied in the performance of the
34 public works project contract or any subcontract thereto have been made
35 in America.

36 (b) An agency shall give a preference to a bidder that includes

1 additional information in their bid that verifies the use of products
2 made in America to fulfill the obligations of the public works project
3 contract.

4 (2) Subsection (1) of this section does not apply if the director
5 of the agency or the director's designee finds that:

6 (a) After consultation with the governor's advisor for trade
7 policy, the application of subsection (1) of this section would be in
8 violation of an international trade agreement in which the United
9 States is a signatory country and the state of Washington is subject to
10 the terms of such agreement;

11 (b) The application of subsection (1) of this section would be
12 inconsistent with the public interest;

13 (c) Such materials and products as required by subsection (1) of
14 this section are not produced in the United States in sufficient and
15 reasonably available quantities and of a satisfactory quality;

16 (d) Inclusion of such materials and products as required by
17 subsection (1) of this section will increase the cost of the overall
18 project contract by more than: (i) Five percent on projects valued
19 under one million dollars; (ii) the greater of fifty thousand dollars
20 or two and one-half percent for projects valued between one million and
21 five million dollars; or (iii) the greater of one hundred twenty-five
22 thousand dollars or one percent for projects valued over five million
23 dollars; or

24 (e) An emergency necessitates the immediate execution of such
25 public works project.

26 (3) If the director of the agency or the director's designee
27 determines it is necessary to waive the application of subsection (1)
28 of this section based on a finding under subsection (2) of this
29 section, the director of the agency or director's designee shall,
30 before the date on which such finding takes effect:

31 (a) Publish a notice detailing the reason for the waiver at least
32 once in a legal newspaper of general circulation published in or as
33 near as possible to that part of the county in which such work is to be
34 done;

35 (b) Provide notice of such finding and an opportunity for public
36 comment on such finding for a period not to exceed fifteen days; and

37 (c) Consider all comments received during the comment period in
38 evaluating the waiver request.

1 (4) Notwithstanding the provisions of subsection (3) of this
2 section, when an emergency necessitates the immediate execution of a
3 public works project, the director of the agency or the director's
4 designee shall make public a description and estimate of the public
5 work within seven days after the commencement of the work.

6 (5) If a court or federal or state agency determines that any
7 person intentionally committed one of the following acts, such person
8 is ineligible to receive any contract or subcontract from a state
9 agency:

10 (a) Affixed a label bearing a made in America inscription or any
11 inscription with the same meaning to any material or product sold in or
12 shipped to the United States that was not manufactured in the United
13 States and that was in a project to which this section applies; or

14 (b) Represented that any material or product sold in or shipped to
15 the United States that was not made in America and that was used in a
16 project to which this section applies was made in America.

17 (6) The board shall develop suggested guidelines to assist agencies
18 in developing the made in America bid preference criteria. The
19 guidelines must be posted on the board's web site.

20 **Sec. 4.** RCW 43.19.1905 and 2011 1st sp.s. c 43 s 208 are each
21 amended to read as follows:

22 (1) The director of enterprise services shall establish overall
23 state policy for compliance by all state agencies, including
24 educational institutions, regarding the following purchasing and
25 material control functions:

26 (a) Development of a state commodity coding system;

27 (b) A standard notification form for state agencies to report cost-
28 effective direct purchases, which shall at least identify the price of
29 the goods as available through the department, the price of the goods
30 as available from the alternative source, the total savings, and the
31 signature of the notifying agency's director or the director's
32 designee;

33 (c) Screening of supplies, material, and equipment excess to the
34 requirements of one agency for overall state need before sale as
35 surplus;

36 (d) Determining when centralized rather than decentralized

1 purchasing shall be used to obtain maximum benefit of volume buying of
2 identical or similar items, including procurement from federal supply
3 sources;

4 (e) Development of criteria for use of leased, rather than state
5 owned, warehouse space based on relative cost and accessibility;

6 (f) Determination of how transportation costs incurred by the state
7 for materials, supplies, services, and equipment can be reduced by
8 improved freight and traffic coordination and control;

9 (g) Establishment of a formal certification program for state
10 employees who are authorized to perform purchasing functions as agents
11 for the state under the provisions of this chapter (~~(43-19-RCW)~~);

12 (h) Development of performance measures for the reduction of total
13 overall expense for material, supplies, equipment, and services used
14 each biennium by the state;

15 (i) Establishment of a standard system for all state organizations
16 to record and report dollar savings and cost avoidance which are
17 attributable to the establishment and implementation of improved
18 purchasing and material control procedures;

19 (j) Development of procedures for mutual and voluntary cooperation
20 between state agencies, including educational institutions, and
21 political subdivisions for exchange of purchasing and material control
22 services;

23 (k) Resolution of all other purchasing and material matters which
24 require the establishment of overall statewide policy for effective and
25 economical supply management;

26 (l) Development of guidelines and criteria for the purchase of
27 vehicles, high gas mileage vehicles, alternate vehicle fuels and
28 systems, equipment, and materials that reduce overall energy-related
29 costs and energy use by the state, including investigations into all
30 opportunities to aggregate the purchasing of clean technologies by
31 state and local governments, and including the requirement that new
32 passenger vehicles purchased by the state meet the minimum standards
33 for passenger automobile fuel economy established by the United States
34 secretary of transportation pursuant to the energy policy and
35 conservation act (15 U.S.C. Sec. 2002);

36 (m) Development of goals for state use of recycled or
37 environmentally preferable products through specifications for products

1 and services, processes for requests for proposals and requests for
2 qualifications, contractor selection, and contract negotiations;

3 (n) Development of procurement policies and procedures, such as
4 unbundled contracting and subcontracting, that encourage and facilitate
5 the purchase of products and services by state agencies and
6 institutions from Washington small businesses to the maximum extent
7 practicable and consistent with international trade agreement
8 commitments;

9 (o) Development of food procurement procedures and materials that
10 encourage and facilitate the purchase of Washington grown food by state
11 agencies and institutions to the maximum extent practicable and
12 consistent with international trade agreement commitments; (~~and~~)

13 (p) Development of policies requiring all food contracts to include
14 a plan to maximize to the extent practicable and consistent with
15 international trade agreement commitments the availability of
16 Washington grown food purchased through the contract; and

17 (q) Development of procurement policies and procedures that
18 encourage, facilitate, and provide a preference for the purchase of
19 made in America products by state agencies and institutions to the
20 maximum extent practicable and consistent with international trade
21 agreement commitments.

22 (2) The definitions in this subsection apply throughout this
23 section and RCW 43.19.1908.

24 (a) "Common vendor registration and bid notification system" has
25 the definition in RCW 39.29.006.

26 (b) "Small business" has the definition in RCW 39.29.006.

27 (c) "Washington grown" has the definition in RCW 15.64.060.

28 NEW SECTION. Sec. 5. A new section is added to chapter 43.19 RCW
29 to read as follows:

30 If a court or federal or state agency determines that any person
31 intentionally committed one of the following acts, such person is
32 ineligible to receive any contract or subcontract from a state agency:

33 (1) Affixed a label bearing a made in America inscription or any
34 inscription with the same meaning to any material or product sold in or
35 shipped to the United States that was not manufactured in the United
36 States and that was in a contract or service to which this section
37 applies; or

1 (2) Represented that any material or product sold in or shipped to
2 the United States that was not made in America and that was used in a
3 contract or service to which this section applies was made in America.

4 NEW SECTION. **Sec. 6.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

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