

1 interests of Washington state, its residents, and its economy.
2 These procurement policies and procedures shall require state
3 agencies to consider the following when making decisions to enter
4 into contracts:

5 (1) Whether the provision of certain goods or services to this
6 state from a location in Washington or the United States would
7 benefit Washington, its residents, or its economy;

8 (2) Whether the provision of certain goods or services to this
9 state from a location in Washington or the United States would
10 benefit the privacy interests of Washington residents, or protect
11 the personal information of Washington residents, such as social
12 security, financial, or medical data; and

13 (3) Whether the provision of certain goods or services to this
14 state from a location in Washington or the United States would
15 safeguard state assets and enhance Washington's loss prevention and
16 risk management policies, practices, or procedures.

17 NEW SECTION. **Sec. 102.** A new section is added to chapter
18 28B.10 RCW to read as follows:

19 HIGHER EDUCATION. (1) Except as provided in subsection (2) of
20 this section, contracts for services, food, and agricultural
21 commodities entered into by the state under this chapter, and any
22 subcontracts awarded under such contracts, must be in the state's
23 best interests, as specified in section 101 of this act.

24 (2) Subsection (1) of this section does not apply to any
25 contract entered into under faculty research and study abroad
26 programs authorized by a higher education institution where an
27 opportunity to consider whether the contract is in the state's best
28 interest does not exist and the amount of the contract is less than
29 fifty thousand dollars.

30 NEW SECTION. **Sec. 103.** A new section is added to chapter 39.04
31 RCW to read as follows:

32 PUBLIC WORKS. Public works contracts entered into by the state
33 under this chapter, and any subcontracts awarded under such
34 contracts, including but not limited to contracts and subcontracts
35 for the fabrication or manufacture of non-standard items
36 specifically for a public works project, must be in the state's
37 best interests, as specified in section 101 of this act.

1 **Sec. 104.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to
2 read as follows:

3 PERSONAL SERVICES. (1) Personal services may be procured only
4 to resolve a particular agency problem or issue or to expedite a
5 specific project that is temporary in nature. An agency may
6 procure personal services only if it documents that:

7 ~~((1))~~ (a) The service is critical to agency responsibilities
8 or operations, or is mandated or authorized by the legislature;

9 ~~((2))~~ (b) Sufficient staffing or expertise is not available
10 within the agency to perform the service; and

11 ~~((3))~~ (c) Other qualified public resources are not available
12 to perform the service.

13 (2) Personal services contracts entered into by the state under
14 this chapter, and any subcontracts awarded under such contracts,
15 must be in the state's best interests, as specified in section 101
16 of this act.

17 **Sec. 105.** RCW 41.06.142 and 2002 c 354 s 208 are each amended
18 to read as follows:

19 CIVIL SERVICE. (1) Any department, agency, or institution of
20 higher education may purchase services, including services that
21 have been customarily and historically provided by employees in the
22 classified service under this chapter, by contracting with
23 individuals, nonprofit organizations, businesses, employee business
24 units, or other entities if the following criteria are met:

25 (a) The department, agency, or institution of higher education
26 has determined that the contract, and any subcontracts awarded
27 under such contract, is in the state's best interests, as specified
28 in section 101 of this act;

29 (b) The invitation for bid or request for proposal contains
30 measurable standards for the performance of the contract;

31 ~~((b))~~ (c) Employees in the classified service whose positions
32 or work would be displaced by the contract are provided an
33 opportunity to offer alternatives to purchasing services by
34 contract and, if these alternatives are not accepted, compete for
35 the contract under competitive contracting procedures in subsection
36 (4) of this section;

1 (~~(e)~~) (d) The contract with an entity other than an employee
2 business unit includes a provision requiring the entity to consider
3 employment of state employees who may be displaced by the contract;

4 (~~(d)~~) (e) The department, agency, or institution of higher
5 education has established a contract monitoring process to measure
6 contract performance, costs, service delivery quality, and other
7 contract standards, and to cancel contracts that do not meet those
8 standards; and

9 (~~(e)~~) (f) The department, agency, or institution of higher
10 education has determined that the contract results in savings or
11 efficiency improvements. The contracting agency must consider the
12 consequences and potential mitigation of improper or failed
13 performance by the contractor.

14 (2) Any provision contrary to or in conflict with this section
15 in any collective bargaining agreement in effect on July 1, 2005,
16 is not effective beyond the expiration date of the agreement.

17 (3) Contracting for services that is expressly mandated by the
18 legislature or was authorized by law prior to July 1, 2005,
19 including contracts and agreements between public entities, shall
20 not be subject to the processes set forth in subsections (1) and
21 (4) through (6) of this section.

22 (4) Competitive contracting shall be implemented as follows:

23 (a) At least ninety days prior to the date the contracting
24 agency requests bids from private entities for a contract for
25 services provided by classified employees, the contracting agency
26 shall notify the classified employees whose positions or work would
27 be displaced by the contract. The employees shall have sixty days
28 from the date of notification to offer alternatives to purchasing
29 services by contract, and the agency shall consider the
30 alternatives before requesting bids.

31 (b) If the employees decide to compete for the contract, they
32 shall notify the contracting agency of their decision. Employees
33 must form one or more employee business units for the purpose of
34 submitting a bid or bids to perform the services.

35 (c) The director of personnel, with the advice and assistance of
36 the department of general administration, shall develop and make
37 available to employee business units training in the bidding
38 process and general bid preparation.

1 (d) The director of general administration, with the advice and
2 assistance of the department of personnel, shall, by rule,
3 establish procedures to ensure that bids are submitted and
4 evaluated in a fair and objective manner and that there exists a
5 competitive market for the service. Such rules shall include, but
6 not be limited to: (i) Prohibitions against participation in the
7 bid evaluation process by employees who prepared the business
8 unit's bid or who perform any of the services to be contracted;
9 (ii) provisions to ensure no bidder receives an advantage over
10 other bidders and that bid requirements are applied equitably to
11 all parties; and (iii) procedures that require the contracting
12 agency to receive complaints regarding the bidding process and to
13 consider them before awarding the contract. Appeal of an agency's
14 actions under this subsection is an adjudicative proceeding and
15 subject to the applicable provisions of chapter 34.05 RCW, the
16 administrative procedure act, with the final decision to be
17 rendered by an administrative law judge assigned under chapter
18 34.12 RCW.

19 (e) An employee business unit's bid must include the fully
20 allocated costs of the service, including the cost of the
21 employees' salaries and benefits, space, equipment, materials, and
22 other costs necessary to perform the function. An employee
23 business unit's cost shall not include the state's indirect
24 overhead costs unless those costs can be attributed directly to the
25 function in question and would not exist if that function were not
26 performed in state service.

27 (f) A department, agency, or institution of higher education may
28 contract with the department of general administration to conduct
29 the bidding process.

30 (5) As used in this section:

31 (a) "Employee business unit" means a group of employees who
32 perform services to be contracted under this section and who submit
33 a bid for the performance of those services under subsection (4) of
34 this section.

35 (b) "Indirect overhead costs" means the pro rata share of
36 existing agency administrative salaries and benefits, and rent,
37 equipment costs, utilities, and materials associated with those
38 administrative functions.

1 (c) "Competitive contracting" means the process by which
2 classified employees of a department, agency, or institution of
3 higher education compete with businesses, individuals, nonprofit
4 organizations, or other entities for contracts authorized by
5 subsection (1) of this section.

6 (6) The joint legislative audit and review committee shall
7 conduct a performance audit of the implementation of this section,
8 including the adequacy of the appeals process in subsection (4)(d)
9 of this section, and report to the legislature by January 1, 2007,
10 on the results of the audit.

11 **Sec. 106.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to
12 read as follows:

13 CERTAIN GOODS AND PURCHASED SERVICES. (1) Preservation of the
14 integrity of the competitive bid system dictates that after
15 competitive bids have been opened, award must be made to that
16 responsible bidder who submitted the lowest responsive bid pursuant
17 to subsections (7) and (9) of this section, unless there is a
18 compelling reason to reject all bids and cancel the solicitation.

19 (2) Every effort shall be made to anticipate changes in a
20 requirement before the date of opening and to provide reasonable
21 notice to all prospective bidders of any resulting modification or
22 cancellation. If, in the opinion of the purchasing agency,
23 division, or department head, it is not possible to provide
24 reasonable notice, the published date for receipt of bids may be
25 postponed and all known bidders notified. This will permit bidders
26 to change their bids and prevent unnecessary exposure of bid
27 prices. In addition, every effort shall be made to include
28 realistic, achievable requirements in a solicitation.

29 (3) After the opening of bids, a solicitation may not be
30 canceled and resolicited solely because of an increase in
31 requirements for the items being acquired. Award may be made on
32 the initial solicitation and an increase in requirements may be
33 treated as a new acquisition.

34 (4) A solicitation may be canceled and all bids rejected before
35 award but after bid opening only when, consistent with subsection
36 (1) of this section, the purchasing agency, division, or department
37 head determines in writing that:

1 (a) Unavailable, inadequate, ambiguous specifications, terms,
2 conditions, or requirements were cited in the solicitation;

3 (b) Specifications, terms, conditions, or requirements have been
4 revised;

5 (c) The supplies or services being contracted for are no longer
6 required;

7 (d) The solicitation did not provide for consideration of all
8 factors of cost to the agency;

9 (e) Bids received indicate that the needs of the agency can be
10 satisfied by a less expensive article differing from that for which
11 the bids were invited;

12 (f) All otherwise acceptable bids received are at unreasonable
13 prices or only one bid is received and the agency cannot determine
14 the reasonableness of the bid price;

15 (g) No responsive bid has been received from a responsible
16 bidder; or

17 (h) The bid process was not fair or equitable.

18 (5) The agency, division, or department head may not delegate
19 his or her authority under this section.

20 (6) After the opening of bids, an agency may not reject all bids
21 and enter into direct negotiations to complete the planned
22 acquisition. However, the agency can enter into negotiations
23 exclusively with the lowest responsible bidder in order to
24 determine if the lowest responsible bid may be improved. Until
25 December 31, 2007, for purchases requiring a formal bid process the
26 agency shall also enter into negotiations with and may consider for
27 award the lowest responsible bidder that is a vendor in good
28 standing, as defined in RCW 43.19.525. An agency shall not use
29 this negotiation opportunity to permit a bidder to change a
30 nonresponsive bid into a responsive bid.

31 (7) In determining the lowest responsible bidder, the agency
32 shall consider any preferences provided by law to Washington
33 products and vendors and to RCW 43.19.704, and further, may take
34 into consideration the quality of the articles proposed to be
35 supplied, their conformity with specifications, the purposes for
36 which required, and the times of delivery.

37 (8) Each bid with the name of the bidder shall be entered of
38 record and each record, with the successful bid indicated, shall,
39 after letting of the contract, be open to public inspection.

1 (9) In determining "lowest responsible bidder", in addition to
2 price, the following elements shall be given consideration:

3 (a) Whether a contract for services, food, or agricultural
4 commodities, and any subcontracts awarded under such a contract, is
5 in the state's best interests, as specified in section 101 of this
6 act;

7 (b) The ability, capacity, and skill of the bidder to perform
8 the contract or provide the service required;

9 ~~((b))~~ (c) The character, integrity, reputation, judgment,
10 experience, and efficiency of the bidder;

11 ~~((c))~~ (d) Whether the bidder can perform the contract within
12 the time specified;

13 ~~((d))~~ (e) The quality of performance of previous contracts or
14 services;

15 ~~((e))~~ (f) The previous and existing compliance by the bidder
16 with laws relating to the contract or services;

17 ~~((f))~~ (g) Such other information as may be secured having a
18 bearing on the decision to award the contract: PROVIDED, That in
19 considering bids for purchase, manufacture, or lease, and in
20 determining the "lowest responsible bidder," whenever there is
21 reason to believe that applying the "life cycle costing" technique
22 to bid evaluation would result in lowest total cost to the state,
23 first consideration shall be given by state purchasing activities
24 to the bid with the lowest life cycle cost which complies with
25 specifications. "Life cycle cost" means the total cost of an item
26 to the state over its estimated useful life, including costs of
27 selection, acquisition, operation, maintenance, and where
28 applicable, disposal, as far as these costs can reasonably be
29 determined, minus the salvage value at the end of its estimated
30 useful life. The "estimated useful life" of an item means the
31 estimated time from the date of acquisition to the date of
32 replacement or disposal, determined in any reasonable manner.
33 Nothing in this section shall prohibit any state agency,
34 department, board, commission, committee, or other state-level
35 entity from allowing for preferential purchase of products made
36 from recycled materials or products that may be recycled or reused.

37 **Sec. 107.** RCW 43.19.1932 and 1989 c 185 s 2 are each amended to
38 read as follows:

1 CORRECTIONS. (1) Except as provided in subsection (2) of this
2 section, the department of corrections shall be exempt from the
3 following provisions of this chapter in respect to goods or
4 services purchased or sold pursuant to the operation of
5 correctional industries: RCW 43.19.180, 43.19.190, 43.19.1901,
6 43.19.1905, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913,
7 43.19.1915, 43.19.1917, 43.19.1919, 43.19.1921, 43.19.1925, and
8 43.19.200.

9 (2) Contracts for services, food, and agricultural commodities
10 entered into by the state under this chapter, and any subcontracts
11 awarded under such contracts, must be in the state's best
12 interests, as specified in section 101 of this act.

13 NEW SECTION. Sec. 108. A new section is added to chapter 47.28
14 RCW to read as follows:

15 TRANSPORTATION. Contracts for services, food, and agricultural
16 commodities entered into by the state under this chapter, and any
17 subcontracts awarded under such contracts, must be in the state's
18 best interests, as specified in section 101 of this act.

19 NEW SECTION. Sec. 109. A new section is added to chapter 39.29
20 RCW to read as follows:

21 (1) The requirement in sections 102, 103, and 108 of this act,
22 and RCW 39.29.008, 41.06.142, 43.19.1911, and 43.19.1932, that
23 certain types of goods and services under certain contracts, and
24 subcontracts under such contracts, be in the state's best interests
25 does not apply to:

26 (a) Goods and services under such contracts if the director of
27 the office of financial management determines that the only
28 practicable source of the goods or services is clearly and
29 justifiably located outside the United States. This exception to
30 the requirement may apply, by way of illustration and not as a
31 limitation, to goods or services related to the establishment and
32 operation of foreign offices created for the purpose of promoting
33 overseas trade and commerce;

34 (b) Goods and services under a contract entered into under
35 faculty research and study abroad programs authorized by a higher
36 education institution where an opportunity to consider whether the

1 contract is in the state's best interest does not exist and the
2 amount of the contract is less than fifty thousand dollars; and

3 (c) Goods and services related to the marketing of Washington
4 state agricultural commodities under contracts entered into by
5 foreign trade representatives or consultants on behalf of the
6 Washington state department of agriculture or by commodity boards
7 or commissions established or formed under Title 15 RCW.

8 (2) By September 1st of each year, the director of the office of
9 financial management shall provide the house of representatives
10 commerce and labor committee and the senate labor, commerce,
11 research and development committee, or their successor committees,
12 with a list of contracts entered into in the previous fiscal year
13 for which he or she determined that the only practicable source of
14 the goods or services was clearly and justifiably located outside
15 the United States.

16 PART II - PRICE PREFERENCES FOR WASHINGTON BUSINESSES

17 NEW SECTION. **Sec. 201.** The office of financial management, in
18 consultation with representatives of state agency management,
19 business, labor, and agricultural groups, shall conduct a study of
20 the indirect benefits of adopting procurement policies giving
21 Washington businesses a price preference when determining the
22 lowest responsible bidder on civil service contracts and contracts
23 for public works, personal services, purchased services,
24 information services, highway design and construction, and
25 materials, supplies, and equipment. These benefits shall include,
26 but are not limited to, job creation and retention, capital
27 investment, state and local tax revenue, and economic stimulus.
28 The office of financial management shall report its findings, and
29 any recommendations for legislation adopting procurement policies
30 giving Washington businesses a price preference, to the legislature
31 by December 1, 2005.

32 PART III - MISCELLANEOUS

33 NEW SECTION. **Sec. 301.** PART HEADINGS, CAPTIONS NOT LAW. Part
34 headings and captions used in this act are not any part of the law.

1 NEW SECTION. **Sec. 302.** APPLICABILITY. This act does not apply
2 to contracts entered into before July 1, 2005.

3 NEW SECTION. **Sec. 303.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 304.** If any part of this act is found to be
8 in conflict with federal requirements that are a prescribed
9 condition to the allocation of federal funds to the state, the
10 conflicting part of this act is inoperative solely to the extent of
11 the conflict and with respect to the agencies directly affected,
12 and this finding does not affect the operation of the remainder of
13 this act in its application to the agencies concerned. Rules
14 adopted under this act must meet federal requirements that are a
15 necessary condition to the receipt of federal funds by the state.

16 NEW SECTION. **Sec. 305.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of
18 the state government and its existing public institutions, and
19 takes effect immediately, except for section 105 of this act, which
20 takes effect July 1, 2005."

21 Correct the title.

EFFECT: Adds the following provisions:

1. Certain state contracts, and subcontracts awarded under those contracts, must be in the state's best interests. These contracts include contracts for personal services, purchased services, food, and agricultural commodities, as well as civil service, public works, corrections, higher education, and transportation contracts.
2. The Governor, in consultation with representatives of state agency management, business, labor, and agricultural groups, must develop and implement procurement policies and procedures necessary to determine whether a particular contract or subcontract is in the state's best interests.
3. State agencies must consider the following when making decisions to contract for services:

- ∅ whether providing certain goods or services (as specified above) from a location in Washington or the United States would benefit Washington, its residents, or its economy;
 - ∅ whether providing goods or services (as specified above) from a location in Washington or the United States would benefit privacy interests or protect personal information; and
 - ∅ whether providing goods or services (as specified above) from a location in Washington or the United States would safeguard state assets and enhance loss prevention and risk management policies, practices, or procedures.
4. This requirement does not apply to certain contracts entered into by faculty research and study abroad programs authorized by higher education institutions, by foreign trade representatives on behalf of the Department of Agriculture, or by commodity boards and commissions. It also does not apply to contracts entered into prior to July 1, 2005.
 5. This requirement does not apply if the Director of the OFM determines that the only practicable source of the goods or services is clearly and justifiably located outside the United States. Annual reports from the Director of OFM to the House Commerce and Labor Committee and the Senate Labor, Commerce, Research, and Development Committee on such contracts are required.
 7. An emergency is declared and an immediate effective date is established (except for the section relating to civil service contracts, which takes effect July 1, 2005).