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HOUSE BILL 1439

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Green, Nixon, Haigh, Upthegrove, Chase and Dunn;  
by request of Department of General Administration

Read first time 01/24/2005. Referred to Committee on State  
Government Operations & Accountability.

1 AN ACT Relating to electronic and web-based bidding; and amending  
2 RCW 43.19.1906, 43.19.1908, and 43.19.1911.

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

4 **Sec. 1.** RCW 43.19.1906 and 2002 c 332 s 4 are each amended to read  
5 as follows:

6 Insofar as practicable, all purchases and sales shall be based on  
7 competitive bids, and a formal sealed, electronic, or web-based bid  
8 procedure shall be used as standard procedure for all purchases and  
9 contracts for purchases and sales executed by the state purchasing and  
10 material control director and under the powers granted by RCW 43.19.190  
11 through 43.19.1939. This requirement also applies to purchases and  
12 contracts for purchases and sales executed by agencies, including  
13 educational institutions, under delegated authority granted in  
14 accordance with provisions of RCW 43.19.190 or under RCW 28B.10.029.  
15 However, formal sealed, electronic, or web-based competitive bidding is  
16 not necessary for:

17 (1) Emergency purchases made pursuant to RCW 43.19.200 if the  
18 sealed bidding procedure would prevent or hinder the emergency from  
19 being met appropriately;

1           (2) Purchases not exceeding thirty-five thousand dollars, or  
2 subsequent limits as calculated by the office of financial management:  
3 PROVIDED, That the state director of general administration shall  
4 establish procedures to assure that purchases made by or on behalf of  
5 the various state agencies shall not be made so as to avoid the thirty-  
6 five thousand dollar bid limitation, or subsequent bid limitations as  
7 calculated by the office of financial management: PROVIDED FURTHER,  
8 That the state purchasing and material control director is authorized  
9 to reduce the formal sealed bid limits of thirty-five thousand dollars,  
10 or subsequent limits as calculated by the office of financial  
11 management, to a lower dollar amount for purchases by individual state  
12 agencies if considered necessary to maintain full disclosure of  
13 competitive procurement or otherwise to achieve overall state  
14 efficiency and economy in purchasing and material control. Quotations  
15 from three thousand dollars to thirty-five thousand dollars, or  
16 subsequent limits as calculated by the office of financial management,  
17 shall be secured from at least three vendors to assure establishment of  
18 a competitive price and may be obtained by telephone or written  
19 quotations, or both. The agency shall invite at least one quotation  
20 each from a certified minority and a certified women-owned vendor who  
21 shall otherwise qualify to perform such work. Immediately after the  
22 award is made, the bid quotations obtained shall be recorded and open  
23 to public inspection and shall be available by telephone inquiry. A  
24 record of competition for all such purchases from three thousand  
25 dollars to thirty-five thousand dollars, or subsequent limits as  
26 calculated by the office of financial management, shall be documented  
27 for audit purposes. Purchases up to three thousand dollars may be made  
28 without competitive bids based on buyer experience and knowledge of the  
29 market in achieving maximum quality at minimum cost;

30           (3) Purchases which are clearly and legitimately limited to a  
31 single source of supply and purchases involving special facilities,  
32 services, or market conditions, in which instances the purchase price  
33 may be best established by direct negotiation;

34           (4) Purchases of insurance and bonds by the risk management  
35 division under RCW 43.41.310;

36           (5) Purchases and contracts for vocational rehabilitation clients  
37 of the department of social and health services: PROVIDED, That this  
38 exemption is effective only when the state purchasing and material

1 control director, after consultation with the director of the division  
2 of vocational rehabilitation and appropriate department of social and  
3 health services procurement personnel, declares that such purchases may  
4 be best executed through direct negotiation with one or more suppliers  
5 in order to expeditiously meet the special needs of the state's  
6 vocational rehabilitation clients;

7 (6) Purchases by universities for hospital operation or biomedical  
8 teaching or research purposes and by the state purchasing and material  
9 control director, as the agent for state hospitals as defined in RCW  
10 72.23.010, and for health care programs provided in state correctional  
11 institutions as defined in RCW 72.65.010(3) and veterans' institutions  
12 as defined in RCW 72.36.010 and 72.36.070, made by participating in  
13 contracts for materials, supplies, and equipment entered into by  
14 nonprofit cooperative hospital group purchasing organizations;

15 (7) Purchases for resale by institutions of higher education to  
16 other than public agencies when such purchases are for the express  
17 purpose of supporting instructional programs and may best be executed  
18 through direct negotiation with one or more suppliers in order to meet  
19 the special needs of the institution;

20 (8) Purchases by institutions of higher education not exceeding  
21 thirty-five thousand dollars: PROVIDED, That for purchases between  
22 three thousand dollars and thirty-five thousand dollars quotations  
23 shall be secured from at least three vendors to assure establishment of  
24 a competitive price and may be obtained by telephone or written  
25 quotations, or both. For purchases between three thousand dollars and  
26 thirty-five thousand dollars, each institution of higher education  
27 shall invite at least one quotation each from a certified minority and  
28 a certified women-owned vendor who shall otherwise qualify to perform  
29 such work. A record of competition for all such purchases made from  
30 three thousand to thirty-five thousand dollars shall be documented for  
31 audit purposes; and

32 (9) Negotiation of a contract by the department of transportation,  
33 valid until June 30, 2001, with registered tow truck operators to  
34 provide roving service patrols in one or more Washington state patrol  
35 tow zones whereby those registered tow truck operators wishing to  
36 participate would cooperatively, with the department of transportation,  
37 develop a demonstration project upon terms and conditions negotiated by  
38 the parties.

1           Beginning on July 1, 1995, and on July 1 of each succeeding odd-  
2 numbered year, the dollar limits specified in this section shall be  
3 adjusted as follows:     The office of financial management shall  
4 calculate such limits by adjusting the previous biennium's limits by  
5 the appropriate federal inflationary index reflecting the rate of  
6 inflation for the previous biennium.   Such amounts shall be rounded to  
7 the nearest one hundred dollars.   However, the three thousand dollar  
8 figure in subsections (2) and (8) of this section may not be adjusted  
9 to exceed five thousand dollars.

10           **Sec. 2.**   RCW 43.19.1908 and 1994 c 300 s 2 are each amended to read  
11 as follows:

12           Competitive bidding required by RCW 43.19.190 through 43.19.1939  
13 shall be solicited by public notice, and through the sending of notices  
14 by mail, electronic transmission, or other means to bidders on the  
15 appropriate list of bidders who shall have qualified by application to  
16 the division of purchasing.   Bids may be solicited by the purchasing  
17 division from any source thought to be of advantage to the state.   All  
18 bids shall be in (~~writing~~) written or electronic form and conform to  
19 rules of the division of purchasing.

20           **Sec. 3.**   RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read  
21 as follows:

22           (1) Preservation of the integrity of the competitive bid system  
23 dictates that after competitive bids have been opened, award must be  
24 made to that responsible bidder who submitted the lowest responsive bid  
25 pursuant to subsections (7) and (9) of this section, unless there is a  
26 compelling reason to reject all bids and cancel the solicitation.

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

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

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

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

11 (b) Specifications, terms, conditions, or requirements have been  
12 revised;

13 (c) The supplies or services being contracted for are no longer  
14 required;

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

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

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

23 (g) No responsive bid has been received from a responsible bidder;  
24 or

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

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

28 (6) After the opening of bids, an agency may not reject all bids  
29 and enter into direct negotiations to complete the planned acquisition.  
30 However, the agency can enter into negotiations exclusively with the  
31 lowest responsible bidder in order to determine if the lowest  
32 responsible bid may be improved. Until December 31, 2007, for  
33 purchases requiring a formal bid process the agency shall also enter  
34 into negotiations with and may consider for award the lowest  
35 responsible bidder that is a vendor in good standing, as defined in RCW  
36 43.19.525. An agency shall not use this negotiation opportunity to  
37 permit a bidder to change a nonresponsive bid into a responsive bid.

1 (7) In determining the lowest responsible bidder, the agency shall  
2 consider any preferences provided by law to Washington products and  
3 vendors and to RCW 43.19.704, and further, may take into consideration  
4 the quality of the articles proposed to be supplied, their conformity  
5 with specifications, the purposes for which required, and the times of  
6 delivery.

7 (8) Each bid with the name of the bidder shall be entered of record  
8 and each record, with the successful bid indicated, shall, after  
9 letting of the contract, be open to public inspection. However, bid  
10 prices may be disclosed during electronic or web-based bidding.

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

13 (a) The ability, capacity, and skill of the bidder to perform the  
14 contract or provide the service required;

15 (b) The character, integrity, reputation, judgment, experience, and  
16 efficiency of the bidder;

17 (c) Whether the bidder can perform the contract within the time  
18 specified;

19 (d) The quality of performance of previous contracts or services;

20 (e) The previous and existing compliance by the bidder with laws  
21 relating to the contract or services;

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

1 other state-level entity from allowing for preferential purchase of  
2 products made from recycled materials or products that may be recycled  
3 or reused.

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