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**SUBSTITUTE HOUSE BILL 2257**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Conway, Morrell and Wood)

READ FIRST TIME 03/07/05.

1            AN ACT Relating to requiring state agencies to contract for  
2 services in a manner consistent with the state's best interests;  
3 amending RCW 39.29.008, 41.06.142, 43.19.1911, and 43.19.1932; adding  
4 new sections to chapter 39.29 RCW; adding new sections to chapter  
5 28B.10 RCW; adding new sections to chapter 39.04 RCW; adding new  
6 sections to chapter 47.28 RCW; adding a new section to chapter 41.06  
7 RCW; adding a new section to chapter 43.19 RCW; creating new sections;  
8 repealing RCW 43.19.700; providing an effective date; and declaring an  
9 emergency.

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

11            NEW SECTION.    **Sec. 1.** LEGISLATIVE INTENT. It is essential that  
12 the legislature and state agencies spend tax dollars in a manner that  
13 is both responsible and consistent with the best interests of the state  
14 and the nation. The legislature and state agencies should, therefore,  
15 consider indirect benefits that may be achieved when entering into  
16 state contracts for goods and services. Such benefits include, but are  
17 not limited to, job creation, capital investment, and economic  
18 stimulus. Additionally, such benefits include greater protection of

1 privacy interests, less risk of disclosure of personal information, and  
2 avoidance of undue risk.

3 **PART I - BEST INTERESTS**

4 NEW SECTION. **Sec. 101.** A new section is added to chapter 39.29  
5 RCW to read as follows:

6 BEST INTERESTS. For purposes of sections 102, 103, and 108 of this  
7 act, and RCW 39.29.008, 41.06.142, 43.19.1911, and 43.19.1932, the  
8 governor or the governor's designee, in consultation with  
9 representatives of state agency management and labor, shall develop and  
10 implement procurement policies and procedures necessary to determine  
11 whether state contracts for goods and services, and any subcontracts  
12 awarded under such contracts, are in the best interests of Washington  
13 state, its residents, and its economy. These procurement policies and  
14 procedures shall require state agencies to consider the following when  
15 making decisions to enter into contracts:

16 (1) Whether the provision of goods or services to this state from  
17 a location outside of this state or the United States would be  
18 detrimental to Washington, its residents, or its economy;

19 (2) Whether the acquisition of goods or services from an  
20 expatriated business entity located in a tax haven country or an  
21 affiliate of an expatriated business entity located in a tax haven  
22 country would be detrimental to Washington, its residents, or its  
23 economy. As used in this subsection:

24 (a) "Expatriated business entity" means a corporation or an  
25 affiliate of the corporation incorporated in a tax haven country after  
26 September 11, 2001, but with the United States as the principal market  
27 for the public trading of the corporation's stock, as determined by the  
28 director of the office of financial management;

29 (b) "Tax haven country" means a country that has no corporate  
30 income tax or an effective tax rate less than ten percent on income  
31 that does not arise in or is not derived from that country. Tax haven  
32 countries include, but are not limited to, Barbados, Bermuda, British  
33 Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus,  
34 Gibraltar, Isle of Man, the Principality of Liechtenstein, the  
35 Principality of Monaco, and the Republic of the Seychelles;

1 (3) Whether the provision of goods or services to this state from  
2 a location outside of this state or the United States would be  
3 detrimental to the privacy interests of Washington residents, or risk  
4 the disclosure of personal information of Washington residents, such as  
5 social security, financial, or medical data; and

6 (4) Whether the provision of goods or services to this state from  
7 a location outside of this state or the United States would constitute  
8 undue risk under Washington's risk management policies, practices, or  
9 procedures.

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

12 HIGHER EDUCATION. (1) Except as provided in subsection (2) of this  
13 section, contracts for goods and services entered into by the state  
14 under this chapter, and any subcontracts awarded under such contracts,  
15 must be in the state's best interests, as specified in section 101 of  
16 this act.

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

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

25 PUBLIC WORKS. Public works contracts entered into by the state  
26 under this chapter, and any subcontracts awarded under such contracts,  
27 must be in the state's best interests, as specified in section 101 of  
28 this act.

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

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

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

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

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

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

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

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

19       (a) The department, agency, or institution of higher education has  
20 determined that the contract, and any subcontracts awarded under such  
21 contract, are in the state's best interests, as specified in section  
22 101 of this act;

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

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

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

33       ~~((d))~~ (e) The department, agency, or institution of higher  
34 education has established a contract monitoring process to measure  
35 contract performance, costs, service delivery quality, and other  
36 contract standards, and to cancel contracts that do not meet those  
37 standards; and

1       (~~(e)~~) (f) The department, agency, or institution of higher  
2 education has determined that the contract results in savings or  
3 efficiency improvements. The contracting agency must consider the  
4 consequences and potential mitigation of improper or failed performance  
5 by the contractor.

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

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

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

15       (a) At least ninety days prior to the date the contracting agency  
16 requests bids from private entities for a contract for services  
17 provided by classified employees, the contracting agency shall notify  
18 the classified employees whose positions or work would be displaced by  
19 the contract. The employees shall have sixty days from the date of  
20 notification to offer alternatives to purchasing services by contract,  
21 and the agency shall consider the alternatives before requesting bids.

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

26       (c) The director of personnel, with the advice and assistance of  
27 the department of general administration, shall develop and make  
28 available to employee business units training in the bidding process  
29 and general bid preparation.

30       (d) The director of general administration, with the advice and  
31 assistance of the department of personnel, shall, by rule, establish  
32 procedures to ensure that bids are submitted and evaluated in a fair  
33 and objective manner and that there exists a competitive market for the  
34 service. Such rules shall include, but not be limited to: (i)  
35 Prohibitions against participation in the bid evaluation process by  
36 employees who prepared the business unit's bid or who perform any of  
37 the services to be contracted; (ii) provisions to ensure no bidder  
38 receives an advantage over other bidders and that bid requirements are

1 applied equitably to all parties; and (iii) procedures that require the  
2 contracting agency to receive complaints regarding the bidding process  
3 and to consider them before awarding the contract. Appeal of an  
4 agency's actions under this subsection is an adjudicative proceeding  
5 and subject to the applicable provisions of chapter 34.05 RCW, the  
6 administrative procedure act, with the final decision to be rendered by  
7 an administrative law judge assigned under chapter 34.12 RCW.

8 (e) An employee business unit's bid must include the fully  
9 allocated costs of the service, including the cost of the employees'  
10 salaries and benefits, space, equipment, materials, and other costs  
11 necessary to perform the function. An employee business unit's cost  
12 shall not include the state's indirect overhead costs unless those  
13 costs can be attributed directly to the function in question and would  
14 not exist if that function were not performed in state service.

15 (f) A department, agency, or institution of higher education may  
16 contract with the department of general administration to conduct the  
17 bidding process.

18 (5) As used in this section:

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

22 (b) "Indirect overhead costs" means the pro rata share of existing  
23 agency administrative salaries and benefits, and rent, equipment costs,  
24 utilities, and materials associated with those administrative  
25 functions.

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

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

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

37 GOODS AND PURCHASED SERVICES. (1) Preservation of the integrity of

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

6 (2) Every effort shall be made to anticipate changes in a  
7 requirement before the date of opening and to provide reasonable notice  
8 to all prospective bidders of any resulting modification or  
9 cancellation. If, in the opinion of the purchasing agency, division,  
10 or department head, it is not possible to provide reasonable notice,  
11 the published date for receipt of bids may be postponed and all known  
12 bidders notified. This will permit bidders to change their bids and  
13 prevent unnecessary exposure of bid prices. In addition, every effort  
14 shall be made to include realistic, achievable requirements in a  
15 solicitation.

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

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

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

26 (b) Specifications, terms, conditions, or requirements have been  
27 revised;

28 (c) The supplies or services being contracted for are no longer  
29 required;

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

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

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

1 (g) No responsive bid has been received from a responsible bidder;  
2 or  
3 (h) The bid process was not fair or equitable.  
4 (5) The agency, division, or department head may not delegate his  
5 or her authority under this section.  
6 (6) After the opening of bids, an agency may not reject all bids  
7 and enter into direct negotiations to complete the planned acquisition.  
8 However, the agency can enter into negotiations exclusively with the  
9 lowest responsible bidder in order to determine if the lowest  
10 responsible bid may be improved. Until December 31, 2007, for  
11 purchases requiring a formal bid process the agency shall also enter  
12 into negotiations with and may consider for award the lowest  
13 responsible bidder that is a vendor in good standing, as defined in RCW  
14 43.19.525. An agency shall not use this negotiation opportunity to  
15 permit a bidder to change a nonresponsive bid into a responsive bid.  
16 (7) In determining the lowest responsible bidder, the agency shall  
17 consider any preferences provided by law to Washington products and  
18 vendors and to RCW 43.19.704, and further, may take into consideration  
19 the quality of the articles proposed to be supplied, their conformity  
20 with specifications, the purposes for which required, and the times of  
21 delivery.  
22 (8) Each bid with the name of the bidder shall be entered of record  
23 and each record, with the successful bid indicated, shall, after  
24 letting of the contract, be open to public inspection.  
25 (9) In determining "lowest responsible bidder", in addition to  
26 price, the following elements shall be given consideration:  
27 (a) Whether the contract, and any subcontracts awarded under such  
28 contract, are in the state's best interests, as specified in section  
29 101 of this act;  
30 (b) The ability, capacity, and skill of the bidder to perform the  
31 contract or provide the service required;  
32 ((+b)) (c) The character, integrity, reputation, judgment,  
33 experience, and efficiency of the bidder;  
34 ((+e)) (d) Whether the bidder can perform the contract within the  
35 time specified;  
36 ((+d)) (e) The quality of performance of previous contracts or  
37 services;

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

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

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

24        CORRECTIONS. (1) Except as provided in subsection (2) of this  
25 section, the department of corrections shall be exempt from the  
26 following provisions of this chapter in respect to goods or services  
27 purchased or sold pursuant to the operation of correctional industries:  
28 RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905, 43.19.1906,  
29 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, 43.19.1917, 43.19.1919,  
30 43.19.1921, 43.19.1925, and 43.19.200.

31        (2) Contracts for goods and services entered into by the state  
32 under this chapter, and any subcontracts awarded under such contracts,  
33 must be in the state's best interests, as specified in section 101 of  
34 this act.

35        NEW SECTION. **Sec. 108.** A new section is added to chapter 47.28  
36 RCW to read as follows:

1           TRANSPORTATION. Contracts for goods and services entered into by  
2 the state under this chapter, and any subcontracts awarded under such  
3 contracts, must be in the state's best interests, as specified in  
4 section 101 of this act.

5           NEW SECTION.   **Sec. 109.** A new section is added to chapter 39.29  
6 RCW to read as follows:

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

11           (a) Goods and services under such contracts if the director of the  
12 office of financial management determines that the only practicable  
13 source of the goods or services is clearly and justifiably located  
14 outside the United States. This exception to the requirement may  
15 apply, by way of illustration and not as a limitation, to goods or  
16 services related to the establishment and operation of foreign offices  
17 created for the purpose of promoting overseas trade and commerce;

18           (b) Goods and services under a contract entered into under faculty  
19 research and study abroad programs authorized by a higher education  
20 institution where an opportunity to consider whether the contract is in  
21 the state's best interest does not exist and the amount of the contract  
22 is less than fifty thousand dollars; and

23           (c) Goods and services related to the marketing of Washington state  
24 agricultural commodities under contracts entered into by foreign trade  
25 officers or consultants on behalf of the Washington state department of  
26 agriculture.

27           (2) By September 1st of each year, the director of the office of  
28 financial management shall provide the house of representatives  
29 commerce and labor committee and the senate labor, commerce, research  
30 and development committee, or their successor committees, with a list  
31 of contracts entered into in the previous fiscal year for which he or  
32 she determined that the only practicable source of the goods or  
33 services was clearly and justifiably located outside the United States.

34                           **PART II - PRICE PREFERENCES FOR WASHINGTON BUSINESSES**



1 entered into by the state under this chapter and that are subject to  
2 competitive bidding requirements must be awarded in a manner consistent  
3 with section 201 of this act.

4 NEW SECTION. **Sec. 203.** A new section is added to chapter 39.04  
5 RCW to read as follows:

6 PUBLIC WORKS. Public works contracts that are entered into by the  
7 state under this chapter and that are subject to competitive bidding  
8 requirements must be awarded in a manner consistent with section 201 of  
9 this act.

10 NEW SECTION. **Sec. 204.** A new section is added to chapter 39.29  
11 RCW to read as follows:

12 PERSONAL SERVICES. Personal services contracts that are entered  
13 into by the state under this chapter and that are subject to  
14 competitive bidding requirements must be awarded in a manner consistent  
15 with section 201 of this act.

16 NEW SECTION. **Sec. 205.** A new section is added to chapter 41.06  
17 RCW to read as follows:

18 CIVIL SERVICE. Contracts under RCW 41.06.142 must be awarded in a  
19 manner consistent with section 201 of this act.

20 NEW SECTION. **Sec. 206.** A new section is added to chapter 43.19  
21 RCW to read as follows:

22 GOODS AND PURCHASED SERVICES. Contracts for goods and services  
23 that are entered into by the state under this chapter and that are  
24 subject to competitive bidding requirements must be awarded in a manner  
25 consistent with section 201 of this act.

26 NEW SECTION. **Sec. 207.** A new section is added to chapter 47.28  
27 RCW to read as follows:

28 TRANSPORTATION. Contracts for goods and services that are entered  
29 into by the state under this chapter and that are subject to  
30 competitive bidding requirements must be awarded in a manner consistent  
31 with section 201 of this act.

1 **PART III - MISCELLANEOUS**

2 NEW SECTION. **Sec. 301.** RCW 43.19.700 (In-state preference  
3 clauses--Finding--Intent) and 1983 c 183 s 1 are each repealed.

4 NEW SECTION. **Sec. 302.** PART HEADINGS, CAPTIONS NOT LAW. Part  
5 headings and captions used in this act are not any part of the law.

6 NEW SECTION. **Sec. 303.** APPLICABILITY. This act does not apply to  
7 contracts entered into before July 1, 2005.

8 NEW SECTION. **Sec. 304.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 305.** If any part of this act is found to be in  
13 conflict with federal requirements that are a prescribed condition to  
14 the allocation of federal funds to the state, the conflicting part of  
15 this act is inoperative solely to the extent of the conflict and with  
16 respect to the agencies directly affected, and this finding does not  
17 affect the operation of the remainder of this act in its application to  
18 the agencies concerned. Rules adopted under this act must meet federal  
19 requirements that are a necessary condition to the receipt of federal  
20 funds by the state.

21 NEW SECTION. **Sec. 306.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of the  
23 state government and its existing public institutions, and takes effect  
24 immediately, except for section 105 of this act, which takes effect  
25 July 1, 2005.

--- END ---