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HOUSE BILL 1095

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Hasegawa, Green, Nelson, Kelley, Kenney, Chase, Conway, and Hudgins

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1            AN ACT Relating to increasing small business access to state  
2 contracting opportunities; amending RCW 39.29.006, 39.29.011,  
3 39.29.018, 39.29.065, 43.19.1905, 43.19.1908, 43.78.110, and  
4 43.105.041; 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 state government  
7 procurement of goods and services is a largely untapped market for  
8 Washington state small businesses. The legislature further finds that  
9 small businesses generally lack awareness of state procurement  
10 opportunities and how such opportunities can be pursued. The  
11 legislature recognizes that up to forty percent of all state  
12 procurement is awarded with limited or no competition due to exceptions  
13 in law for contracts within certain dollar thresholds, and that between  
14 the years 2000 and 2006, state contracts with certified minority  
15 businesses dropped from five percent of total expenditures to less than  
16 one percent. The legislature believes that it is in the state's  
17 economic interest to increase small business awareness of and access to  
18 state contracting opportunities because:        (1) Retaining and  
19 strengthening the private sector creates jobs, income, and revenues;

1 and (2) increased competition for procurement awards will result in  
2 more competitive pricing of public contracts. The legislature is aware  
3 that state government has an internet-based common vendor registration  
4 and bid notification system, but its use by state agencies is voluntary  
5 and inconsistent. The legislature therefore intends to require state  
6 agencies to use the state's common vendor registration and bid  
7 notification system for publishing all procurement notices. The  
8 legislature also intends to direct the state's central services  
9 agencies to develop procurement policies, procedures, and materials  
10 that encourage and facilitate the purchase of products and services by  
11 state agencies from Washington small businesses.

12 **Sec. 2.** RCW 39.29.006 and 2002 c 354 s 235 are each amended to  
13 read as follows:

14 As used in this chapter:

15 (1) "Agency" means any state office or activity of the executive  
16 and judicial branches of state government, including state agencies,  
17 departments, offices, divisions, boards, commissions, and educational,  
18 correctional, and other types of institutions.

19 (2) "Client services" means services provided directly to agency  
20 clients including, but not limited to, medical and dental services,  
21 employment and training programs, residential care, and subsidized  
22 housing.

23 (3) "Competitive solicitation" means a documented formal process  
24 providing an equal and open opportunity to qualified parties and  
25 culminating in a selection based on criteria which may include such  
26 factors as the consultant's fees or costs, ability, capacity,  
27 experience, reputation, responsiveness to time limitations,  
28 responsiveness to solicitation requirements, quality of previous  
29 performance, and compliance with statutes and rules relating to  
30 contracts or services. "Competitive solicitation" includes posting of  
31 the contract opportunity on the state's common vendor registration and  
32 bid notification system.

33 (4) "Consultant" means an independent individual or firm  
34 contracting with an agency to perform a service or render an opinion or  
35 recommendation according to the consultant's methods and without being  
36 subject to the control of the agency except as to the result of the

1 work. The agency monitors progress under the contract and authorizes  
2 payment.

3 (5) "Emergency" means a set of unforeseen circumstances beyond the  
4 control of the agency that either:

5 (a) Present a real, immediate threat to the proper performance of  
6 essential functions; or

7 (b) May result in material loss or damage to property, bodily  
8 injury, or loss of life if immediate action is not taken.

9 (6) "Evidence of competition" means documentation demonstrating  
10 that the agency has solicited responses from multiple firms in  
11 selecting a consultant. "Evidence of competition" includes  
12 documentation that the agency has posted the contract opportunity on  
13 the state's common vendor registration and bid notification system.

14 (7) "Personal service" means professional or technical expertise  
15 provided by a consultant to accomplish a specific study, project, task,  
16 or other work statement. This term does not include purchased services  
17 as defined under subsection (9) of this section. This term does  
18 include client services.

19 (8) "Personal service contract" means an agreement, or any  
20 amendment thereto, with a consultant for the rendering of personal  
21 services to the state which is consistent with RCW 41.06.142.

22 (9) "Purchased services" means services provided by a vendor to  
23 accomplish routine, continuing and necessary functions. This term  
24 includes, but is not limited to, services acquired under RCW 43.19.190  
25 or 43.105.041 for equipment maintenance and repair; operation of a  
26 physical plant; security; computer hardware and software maintenance;  
27 data entry; key punch services; and computer time-sharing, contract  
28 programming, and analysis.

29 (10) "Sole source" means a consultant providing professional or  
30 technical expertise of such a unique nature that the consultant is  
31 clearly and justifiably the only practicable source to provide the  
32 service. The justification shall be based on either the uniqueness of  
33 the service or sole availability at the location required.

34 **Sec. 3.** RCW 39.29.011 and 1998 c 101 s 3 are each amended to read  
35 as follows:

36 All personal service contracts shall be entered into pursuant to  
37 competitive solicitation, except for:

- 1 (1) Emergency contracts;
- 2 (2) Sole source contracts;
- 3 (3) Contract amendments;
- 4 (4) Contracts between a consultant and an agency of less than  
5 twenty thousand dollars. However, contracts of five thousand dollars  
6 or greater but less than twenty thousand dollars shall have documented  
7 evidence of competition, which must include agency posting of the  
8 contract opportunity on the state's common vendor registration and bid  
9 notification system. Agencies shall not structure contracts to evade  
10 these requirements; and
- 11 (5) Other specific contracts or classes or groups of contracts  
12 exempted from the competitive solicitation process by the director of  
13 the office of financial management when it has been determined that a  
14 competitive solicitation process is not appropriate or cost-effective.

15 **Sec. 4.** RCW 39.29.018 and 1998 c 101 s 5 are each amended to read  
16 as follows:

17 (1) Sole source contracts shall be filed with the office of  
18 financial management and made available for public inspection at least  
19 ten working days prior to the proposed starting date of the contract.  
20 Documented justification for sole source contracts shall be provided to  
21 the office of financial management when the contract is filed, and must  
22 include evidence that the agency posted the contract opportunity on the  
23 state's common vendor registration and bid notification system. For  
24 sole source contracts of twenty thousand dollars or more, documented  
25 justification shall also include evidence that the agency attempted to  
26 identify potential consultants by advertising through statewide or  
27 regional newspapers.

28 (2) The office of financial management shall approve sole source  
29 contracts of twenty thousand dollars or more before any such contract  
30 becomes binding and before any services may be performed under the  
31 contract. These requirements shall also apply to sole source contracts  
32 of less than twenty thousand dollars if the total amount of such  
33 contracts between an agency and the same consultant is twenty thousand  
34 dollars or more within a fiscal year. Agencies shall ensure that the  
35 costs, fees, or rates negotiated in filed sole source contracts of  
36 twenty thousand dollars or more are reasonable.

1       **Sec. 5.** RCW 39.29.065 and 1998 c 101 s 9 are each amended to read  
2 as follows:

3       To implement this chapter, the director of the office of financial  
4 management shall establish procedures for the competitive solicitation  
5 and award of personal service contracts, recordkeeping requirements,  
6 and procedures for the reporting and filing of contracts. The director  
7 shall develop procurement policies and procedures, including unbundled  
8 and second tier contracting, that encourage and facilitate the purchase  
9 of products and services by state agencies and institutions from  
10 Washington small businesses to the maximum extent practicable and  
11 consistent with international trade agreement commitments. For  
12 reporting purposes, the director may establish categories for grouping  
13 of contracts. The procedures required under this section shall also  
14 include the criteria for amending personal service contracts. At the  
15 beginning of each biennium, the director may, by administrative policy,  
16 adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018,  
17 and 39.29.040(~~(, and 39.29.068)~~) to levels not to exceed the percentage  
18 increase in the implicit price deflator. Adjusted dollar thresholds  
19 shall be rounded to the nearest five hundred dollar increment.

20       **Sec. 6.** RCW 43.19.1905 and 2008 c 215 s 4 are each amended to read  
21 as follows:

22       (1) The director of general administration 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, including  
27 common stock numbers for items maintained in stores for reissue;

28       (b) Determination where consolidations, closures, or additions of  
29 stores operated by state agencies and educational institutions should  
30 be initiated;

31       (c) Institution of standard criteria for determination of when and  
32 where an item in the state supply system should be stocked;

33       (d) Establishment of stock levels to be maintained in state stores,  
34 and formulation of standards for replenishment of stock;

35       (e) Formulation of an overall distribution and redistribution  
36 system for stock items which establishes sources of supply support for  
37 all agencies, including interagency supply support;

1 (f) Determination of what function data processing equipment,  
2 including remote terminals, shall perform in statewide purchasing and  
3 material control for improvement of service and promotion of economy;

4 (g) Standardization of records and forms used statewide for supply  
5 system activities involving purchasing, receiving, inspecting, storing,  
6 requisitioning, and issuing functions, including a standard  
7 notification form for state agencies to report cost-effective direct  
8 purchases, which shall at least identify the price of the goods as  
9 available through the division of purchasing, the price of the goods as  
10 available from the alternative source, the total savings, and the  
11 signature of the notifying agency's director or the director's  
12 designee;

13 (h) Screening of supplies, material, and equipment excess to the  
14 requirements of one agency for overall state need before sale as  
15 surplus;

16 (i) Establishment of warehouse operation and storage standards to  
17 achieve uniform, effective, and economical stores operations;

18 (j) Establishment of time limit standards for the issuing of  
19 material in store and for processing requisitions requiring purchase;

20 (k) Formulation of criteria for determining when centralized rather  
21 than decentralized purchasing shall be used to obtain maximum benefit  
22 of volume buying of identical or similar items, including procurement  
23 from federal supply sources;

24 (l) Development of criteria for use of leased, rather than state  
25 owned, warehouse space based on relative cost and accessibility;

26 (m) Institution of standard criteria for purchase and placement of  
27 state furnished materials, carpeting, furniture, fixtures, and nonfixed  
28 equipment, in newly constructed or renovated state buildings;

29 (n) Determination of how transportation costs incurred by the state  
30 for materials, supplies, services, and equipment can be reduced by  
31 improved freight and traffic coordination and control;

32 (o) Establishment of a formal certification program for state  
33 employees who are authorized to perform purchasing functions as agents  
34 for the state under the provisions of chapter 43.19 RCW;

35 (p) Development of performance measures for the reduction of total  
36 overall expense for material, supplies, equipment, and services used  
37 each biennium by the state;

1 (q) Establishment of a standard system for all state organizations  
2 to record and report dollar savings and cost avoidance which are  
3 attributable to the establishment and implementation of improved  
4 purchasing and material control procedures;

5 (r) Development of procedures for mutual and voluntary cooperation  
6 between state agencies, including educational institutions, and  
7 political subdivisions for exchange of purchasing and material control  
8 services;

9 (s) Resolution of all other purchasing and material matters which  
10 require the establishment of overall statewide policy for effective and  
11 economical supply management;

12 (t) Development of guidelines and criteria for the purchase of  
13 vehicles, high gas mileage vehicles, alternate vehicle fuels and  
14 systems, equipment, and materials that reduce overall energy-related  
15 costs and energy use by the state, including investigations into all  
16 opportunities to aggregate the purchasing of clean technologies by  
17 state and local governments, and including the requirement that new  
18 passenger vehicles purchased by the state meet the minimum standards  
19 for passenger automobile fuel economy established by the United States  
20 secretary of transportation pursuant to the energy policy and  
21 conservation act (15 U.S.C. Sec. 2002);

22 (u) Development of goals for state use of recycled or  
23 environmentally preferable products through specifications for products  
24 and services, processes for requests for proposals and requests for  
25 qualifications, contractor selection, and contract negotiations;

26 (v) Development of procurement policies and procedures, such as  
27 unbundled and second tier contracting, that encourage and facilitate  
28 the purchase of products and services by state agencies and  
29 institutions from Washington small businesses to the maximum extent  
30 practicable and consistent with international trade agreement  
31 commitments;

32 (w) Development of food procurement procedures and materials that  
33 encourage and facilitate the purchase of Washington grown food by state  
34 agencies and institutions to the maximum extent practicable and  
35 consistent with international trade agreement commitments; and

36 ~~((w))~~ (x) Development of policies requiring all food contracts to  
37 include a plan to maximize to the extent practicable and consistent

1 with international trade agreement commitments the availability of  
2 Washington grown food purchased through the contract.

3 (2) As used in this section, "Washington grown" has the definition  
4 in RCW 15.64.060.

5 **Sec. 7.** RCW 43.19.1908 and 2006 c 363 s 2 are each amended to read  
6 as follows:

7 Competitive bidding required by RCW 43.19.190 through 43.19.1939  
8 shall be solicited by public notice, by posting of the contract  
9 opportunity on the state's common vendor registration and bid  
10 notification system, and through the sending of notices by mail,  
11 electronic transmission, or other means to bidders on the appropriate  
12 list of bidders who shall have qualified by application to the division  
13 of purchasing. Bids may be solicited by the purchasing division from  
14 any source thought to be of advantage to the state. All bids shall be  
15 in written or electronic form and conform to rules of the division of  
16 purchasing.

17 **Sec. 8.** RCW 43.78.110 and 1993 c 379 s 107 are each amended to  
18 read as follows:

19 Whenever in the judgment of the public printer certain printing,  
20 ruling, binding, or supplies can be secured from private sources more  
21 economically than by doing the work or preparing the supplies in the  
22 state printing plant, the public printer may obtain such work or  
23 supplies from such private sources. The solicitation for the contract  
24 opportunity must be posted on the state's common vendor registration  
25 and bid notification system. The public printer shall develop  
26 procurement policies and procedures, including unbundled and second  
27 tier contracting, that encourage and facilitate the purchase of such  
28 services or supplies from Washington small businesses to the maximum  
29 extent practicable and consistent with international trade agreement  
30 commitments.

31 In event any work or supplies are secured on behalf of the state  
32 under this section the state printing plant shall be entitled to add up  
33 to five percent to the cost thereof to cover the handling of the orders  
34 which shall be added to the bills and charged to the respective  
35 authorities ordering the work or supplies. The five percent handling



1 charge shall not apply to contracts with institutions of higher  
2 education.

3 **Sec. 9.** RCW 43.105.041 and 2003 c 18 s 3 are each amended to read  
4 as follows:

5 (1) The board shall have the following powers and duties related to  
6 information services:

7 (a) To develop standards and procedures governing the acquisition  
8 and disposition of equipment, proprietary software and purchased  
9 services, licensing of the radio spectrum by or on behalf of state  
10 agencies, and confidentiality of computerized data;

11 (b) To purchase, lease, rent, or otherwise acquire, dispose of, and  
12 maintain equipment, proprietary software, and purchased services, or to  
13 delegate to other agencies and institutions of state government, under  
14 appropriate standards, the authority to purchase, lease, rent, or  
15 otherwise acquire, dispose of, and maintain equipment, proprietary  
16 software, and purchased services: PROVIDED, That, agencies and  
17 institutions of state government are expressly prohibited from  
18 acquiring or disposing of equipment, proprietary software, and  
19 purchased services without such delegation of authority. The  
20 acquisition and disposition of equipment, proprietary software, and  
21 purchased services is exempt from RCW 43.19.1919 and, as provided in  
22 RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200,  
23 except that the board, the department, and state agencies, as  
24 delegated, must post notices of technology procurement bids on the  
25 state's common vendor registration and bid notification system. This  
26 subsection (1)(b) does not apply to the legislative branch;

27 (c) To develop statewide or interagency technical policies,  
28 standards, and procedures;

29 (d) To review and approve standards and common specifications for  
30 new or expanded telecommunications networks proposed by agencies,  
31 public postsecondary education institutions, educational service  
32 districts, or statewide or regional providers of K-12 information  
33 technology services, and to assure the cost-effective development and  
34 incremental implementation of a statewide video telecommunications  
35 system to serve: Public schools; educational service districts;  
36 vocational-technical institutes; community colleges; colleges and

1 universities; state and local government; and the general public  
2 through public affairs programming;

3 (e) To provide direction concerning strategic planning goals and  
4 objectives for the state. The board shall seek input from the  
5 legislature and the judiciary;

6 (f) To develop and implement a process for the resolution of  
7 appeals by:

8 (i) Vendors concerning the conduct of an acquisition process by an  
9 agency or the department; or

10 (ii) A customer agency concerning the provision of services by the  
11 department or by other state agency providers;

12 (g) To establish policies for the periodic review by the department  
13 of agency performance which may include but are not limited to analysis  
14 of:

15 (i) Planning, management, control, and use of information services;

16 (ii) Training and education; and

17 (iii) Project management;

18 (h) To set its meeting schedules and convene at scheduled times, or  
19 meet at the request of a majority of its members, the chair, or the  
20 director; ((and))

21 (i) To review and approve that portion of the department's budget  
22 requests that provides for support to the board; and

23 (j) To develop procurement policies and procedures, including  
24 unbundled and second tier contracting, that encourage and facilitate  
25 the purchase of products and services by state agencies and  
26 institutions from Washington small businesses to the maximum extent  
27 practicable and consistent with international trade agreement  
28 commitments.

29 (2) Statewide technical standards to promote and facilitate  
30 electronic information sharing and access are an essential component of  
31 acceptable and reliable public access service and complement content-  
32 related standards designed to meet those goals. The board shall:

33 (a) Establish technical standards to facilitate electronic access  
34 to government information and interoperability of information systems,  
35 including wireless communications systems. Local governments are  
36 strongly encouraged to follow the standards established by the board;  
37 and

1 (b) Require agencies to consider electronic public access needs  
2 when planning new information systems or major upgrades of systems.

3 In developing these standards, the board is encouraged to include  
4 the state library, state archives, and appropriate representatives of  
5 state and local government.

6 (3)(a) The board, in consultation with the K-20 board, has the duty  
7 to govern, operate, and oversee the technical design, implementation,  
8 and operation of the K-20 network including, but not limited to, the  
9 following duties: Establishment and implementation of K-20 network  
10 technical policy, including technical standards and conditions of use;  
11 review and approval of network design; procurement of shared network  
12 services and equipment; and resolving user/provider disputes concerning  
13 technical matters. The board shall delegate general operational and  
14 technical oversight to the K-20 network technical steering committee as  
15 appropriate.

16 (b) The board has the authority to adopt rules under chapter 34.05  
17 RCW to implement the provisions regarding the technical operations and  
18 conditions of use of the K-20 network.

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