
SUBSTITUTE HOUSE BILL 1096

State of Washington

61st Legislature

2009 Regular Session

By House Community & Economic Development & Trade (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins, and Moeller)

READ FIRST TIME 02/10/09.

1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 39.29.050 and 43.19.1901; adding a new section
3 to chapter 43.19 RCW; creating a new section; prescribing penalties;
4 and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
7 state's economic interest and serves a public purpose to promote and
8 facilitate the fullest possible participation by Washington businesses
9 of all sizes in the process by which goods and services are purchased
10 by the state. The legislature further finds that large businesses have
11 the resources to participate fully and effectively in the state's
12 purchasing system, and because of many factors, including economies of
13 scale, the purchasing system tends to create a preference in favor of
14 large businesses and to disadvantage small businesses. The legislature
15 intends, therefore, to assist, to the maximum extent possible, small
16 businesses to participate in order to enhance and preserve competitive
17 enterprise and to ensure that small businesses have a fair opportunity
18 to be awarded contracts or subcontracts for goods and services
19 purchased by the state.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.19 RCW
2 to read as follows:

3 (1) To facilitate the participation of small business in the
4 provision of goods and services purchased by the department of general
5 administration for the state, including purchases under chapters 39.29
6 and 43.105 RCW, the state purchasing and material control director,
7 under the powers granted by RCW 43.19.190 through 43.19.1939, must:

8 (a) Apply a preference in the award of contracts for goods and
9 services as follows:

10 (i) A preference to small business bidders that is seven percent of
11 the lowest responsible bidder meeting specifications; and

12 (ii) A preference to in-state business bidders that are not small
13 businesses but who provide for small business subcontractor
14 participation in the contract that may be up to seven percent of the
15 lowest responsible bidder meeting specifications, determined according
16 to rules adopted by the department of general administration;

17 (b) Give assistance to small businesses by:

18 (i) Providing technical assistance that would be reasonably
19 expected to mitigate barriers that result from experience requirements
20 related to the contract;

21 (ii) Allowing for alternative methods for meeting any inventory
22 level requirements related to the contract; and

23 (iii) Assisting small businesses with the qualification application
24 required under RCW 43.19.1908.

25 (2) Small business bidders qualified under this chapter shall have
26 precedence over other business bidders so that the application of any
27 bidder preference for which another business bidder may be eligible by
28 law does not result in the denial of the contract award to a small
29 business bidder. This subsection applies if the small business bidder
30 is the lowest responsible bidder, as well as if the small business is
31 eligible for the contract award as the result of the small business
32 bidder preference applied under this section.

33 (3) The preferences under subsection (1)(a) of this section may not
34 be awarded to a noncompliant bidder and may not be used to achieve any
35 applicable minimum bidding requirements. The preferences may be used
36 only in evaluating bids or proposals for awards. In no instance may
37 the increase be paid to a bidder whose bid is accepted.

1 (4) This section applies to the department of general
2 administration's purchases of goods and services to the maximum extent
3 consistent with international trade agreement commitments.

4 (5)(a) A business that is given the preference provided for in this
5 section based on false information, including false information
6 provided or other information withheld, and which by reason of the
7 information has been awarded a contract to which it would not otherwise
8 have been entitled:

9 (i) Must pay the state an assessment equal to the difference
10 between the contract amount and what the state's cost would have been
11 if the contract had been properly awarded;

12 (ii) In addition to the amount specified in this subsection (5)(a)
13 and except as provided in (b) of this subsection, must pay a civil
14 penalty of ten percent of the amount of the contract involved or one
15 thousand dollars, whichever is less; and

16 (iii) Is ineligible to directly or indirectly transact any business
17 with the state for a period of not less than six months and not more
18 than three years, as determined by the director of general
19 administration. This ineligibility shall apply to the principals of
20 the business and any subsequent businesses formed by those principals.

21 (b) In addition to being subject to the penalties under (a)(i) and
22 (iii) of this subsection, a business that knowingly and with intent to
23 defraud makes a false statement or fails to provide or conceals, or
24 attempts to conceal, material information for the purpose of obtaining,
25 or aiding another in obtaining, a preference under this section is
26 subject to a civil penalty of ten percent of the amount of the contract
27 involved or ten thousand dollars, whichever is greater.

28 (c)(i) A business subject to sanction under this subsection may
29 request, within thirty days of the date of issuance of the notice of
30 sanction, a hearing conducted pursuant to chapter 34.05 RCW.

31 (ii) If a business fails to pay an assessment or civil penalty
32 after it has become final and not subject to further appeal, or after
33 the court has entered final judgment in favor of the state, the
34 attorney general may recover the assessment or penalty by action in the
35 appropriate superior court. In such action, the validity and
36 appropriateness of the final order imposing the assessment or penalty
37 shall not be subject to review.

38 (6) As used in this section:

1 (a) "In-state business" means a business that has its principal
2 office located in Washington and its officers domiciled in Washington.

3 (b)(i) "Small business" means an in-state business that certifies,
4 under penalty of perjury, that it:

5 (A) Is an independently owned and operated business performing a
6 commercially useful function that is not dominant in its field of
7 operation; and

8 (B) Together with affiliates, has fifty or fewer employees and
9 average annual gross receipts of ten million dollars or less over the
10 previous three consecutive years.

11 (ii)(A) A small business is deemed to perform a commercially useful
12 function if the business does all of the following:

13 (I) Is responsible for the execution of a distinct element of the
14 work of the contract;

15 (II) Carries out its obligation by actually performing, managing,
16 or supervising the work involved;

17 (III) Performs work that is normal for its business services and
18 functions; and

19 (IV) Is not further subcontracting a portion of the work that is
20 greater than that expected to be subcontracted by normal industry
21 practices.

22 (B) A contractor, subcontractor, or supplier will not be considered
23 to perform a commercially useful function if the contractor's,
24 subcontractor's, or supplier's role is limited to that of an extra
25 participant in a transaction, contract, or project through which funds
26 are passed in order to obtain the appearance of small business
27 participation.

28 (7) The department of general administration shall adopt rules
29 necessary to implement this section.

30 (8) Each December 1st, beginning with a preliminary report on
31 December 1, 2009, the department of general administration shall report
32 to the governor and the appropriate committees of the legislature on
33 the preference program under this section. Annual reports must include
34 information about the program's progress in increasing the number of
35 small businesses participating in state contracts, the number of
36 contracts under which preferences were given, and the characteristics
37 of small businesses that participated in the program.

1 (9) This section applies to contracts awarded on or after November
2 1, 2009, but before July 1, 2013.

3 (10) This section expires December 31, 2013.

4 **Sec. 3.** RCW 39.29.050 and 1983 c 120 s 12 are each amended to read
5 as follows:

6 All contracts entered into under this chapter (~~on or after~~
7 ~~September 1, 1983,~~) are subject to the requirements established under:

8 (1) Section 2 of this act, with respect to the department of
9 general administration; and

10 (2) On or after September 1, 1983, chapter 39.19 RCW.

11 **Sec. 4.** RCW 43.19.1901 and 1987 c 434 s 23 are each amended to
12 read as follows:

13 The term "purchase" as used in RCW 43.19.190 through 43.19.200, and
14 as they may hereafter be amended, shall include leasing or renting(~~+~~
15 ~~PROVIDED, That~~)). However, the purchasing, leasing, or renting of
16 electronic data processing equipment shall not be included in the term
17 "purchasing" if and when such transactions are otherwise expressly
18 provided for by law, except that such purchasing, leasing, or renting
19 by the department of general administration is subject to section 2 of
20 this act.

21 (~~The acquisition of job services and all other services for the~~
22 ~~family independence program under chapter 74.21 RCW shall not be~~
23 ~~included in the term "purchasing" under this chapter.))~~

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