
HOUSE BILL 1096

State of Washington 61st Legislature 2009 Regular Session

By Representatives Hasegawa, Green, Kenney, Chase, Hudgins, and Moeller

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Community & Economic Development & Trade.

1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 43.19.1905, 28B.10.029, 39.29.050, and
3 43.19.1901; adding a new section to chapter 43.19 RCW; creating a new
4 section; and prescribing penalties.

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 to the state, including purchases under
5 chapters 39.29 and 43.105 RCW, the state purchasing and material
6 control director, under the powers granted by RCW 43.19.190 through
7 43.19.1939, and the agencies, including educational institutions,
8 operating under delegated authority granted under RCW 43.19.190 or
9 28B.10.029, must:

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

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

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

19 (b) Give assistance to small businesses by:

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

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

25 (iii) Assisting small businesses with the qualification application
26 required under RCW 43.19.1908.

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

35 (3) The preferences under subsection (1)(a) of this section may not
36 be awarded to a noncompliant bidder and may not be used to achieve any
37 applicable minimum bidding requirements. The preferences may be used

1 only in evaluating bids or proposals for awards. In no instance may
2 the increase be paid to a bidder whose bid is accepted.

3 (4) This section applies to the state's purchases of goods and
4 services to the maximum extent consistent with international trade
5 agreement commitments.

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

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

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

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

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

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

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

1 (6) As used in this section:

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

4 (b)(i) "Small business" means an in-state business that:

5 (A) Is an independently owned and operated business performing a
6 commercial 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 **Sec. 3.** RCW 43.19.1905 and 2008 c 215 s 4 are each amended to read
31 as follows:

32 (1) The director of general administration shall establish overall
33 state policy for compliance by all state agencies, including
34 educational institutions, regarding the following purchasing and
35 material control functions:

36 (a) Development of a state commodity coding system, including
37 common stock numbers for items maintained in stores for reissue;

1 (b) Determination where consolidations, closures, or additions of
2 stores operated by state agencies and educational institutions should
3 be initiated;

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

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

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

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

14 (g) Standardization of records and forms used statewide for supply
15 system activities involving purchasing, receiving, inspecting, storing,
16 requisitioning, and issuing functions, including a standard
17 notification form for state agencies to report cost-effective direct
18 purchases, which shall at least identify the price of the goods as
19 available through the division of purchasing, the price of the goods as
20 available from the alternative source, the total savings, and the
21 signature of the notifying agency's director or the director's
22 designee;

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

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

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

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

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

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

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

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

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

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

14 (r) Development of procedures for mutual and voluntary cooperation
15 between state agencies, including educational institutions, and
16 political subdivisions for exchange of purchasing and material control
17 services;

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

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

31 (u) Development of goals for state use of recycled or
32 environmentally preferable products through specifications for products
33 and services, processes for requests for proposals and requests for
34 qualifications, contractor selection, and contract negotiations;

35 (v) Development of procedures and policies implementing the small
36 business participation in state purchasing provided in section 2 of
37 this act;

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

5 ((+w)) (x) Development of policies requiring all food contracts to
6 include a plan to maximize to the extent practicable and consistent
7 with international trade agreement commitments the availability of
8 Washington grown food purchased through the contract.

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

11 **Sec. 4.** RCW 28B.10.029 and 2004 c 167 s 10 are each amended to
12 read as follows:

13 (1) An institution of higher education may exercise independently
14 those powers otherwise granted to the director of general
15 administration in chapter 43.19 RCW in connection with the purchase and
16 disposition of all material, supplies, services, and equipment needed
17 for the support, maintenance, and use of the respective institution of
18 higher education. Property disposition policies followed by
19 institutions of higher education shall be consistent with policies
20 followed by the department of general administration. Purchasing
21 policies and procedures followed by institutions of higher education
22 shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and
23 RCW 43.19.1901, 43.19.1906, 43.19.1911, section 2 of this act,
24 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through
25 43.19.704, and 43.19.560 through 43.19.637. The community and
26 technical colleges shall comply with RCW 43.19.450. Except for the
27 University of Washington, institutions of higher education shall comply
28 with RCW 43.41.310, 43.41.290, and 43.41.350. If an institution of
29 higher education can satisfactorily demonstrate to the director of the
30 office of financial management that the cost of compliance is greater
31 than the value of benefits from any of the following statutes, then it
32 shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637.
33 Any institution of higher education that chooses to exercise
34 independent purchasing authority for a commodity or group of
35 commodities shall notify the director of general administration.
36 Thereafter the director of general administration shall not be required

1 to provide those services for that institution for the duration of the
2 general administration contract term for that commodity or group of
3 commodities.

4 (2) The council of presidents and the state board for community and
5 technical colleges shall convene its correctional industries business
6 development advisory committee, and work collaboratively with
7 correctional industries, to:

8 (a) Reaffirm purchasing criteria and ensure that quality, service,
9 and timely delivery result in the best value for expenditure of state
10 dollars;

11 (b) Update the approved list of correctional industries products
12 from which higher education shall purchase; and

13 (c) Develop recommendations on ways to continue to build
14 correctional industries' business with institutions of higher
15 education.

16 (3) Higher education and correctional industries shall develop a
17 plan to build higher education business with correctional industries to
18 increase higher education purchases of correctional industries
19 products, based upon the criteria established in subsection (2) of this
20 section. The plan shall include the correctional industries'
21 production and sales goals for higher education and an approved list of
22 products from which higher education institutions shall purchase, based
23 on the criteria established in subsection (2) of this section. Higher
24 education and correctional industries shall report to the legislature
25 regarding the plan and its implementation no later than January 30,
26 2005.

27 (4) Institutions of higher education shall set as a target to
28 contract, beginning not later than June 30, 2006, to purchase one
29 percent of the total goods and services required by the institutions
30 each year produced or provided in whole or in part from class II inmate
31 work programs operated by the department of corrections. Institutions
32 of higher education shall set as a target to contract, beginning not
33 later than June 30, 2008, to purchase two percent of the total goods
34 and services required by the institutions each year produced or
35 provided in whole or in part from class II inmate work programs
36 operated by the department of corrections.

37 (5) An institution of higher education may exercise independently
38 those powers otherwise granted to the public printer in chapter 43.78

1 RCW in connection with the production or purchase of any printing and
2 binding needed by the respective institution of higher education.
3 Purchasing policies and procedures followed by institutions of higher
4 education shall be in compliance with chapter 39.19 RCW. Any
5 institution of higher education that chooses to exercise independent
6 printing production or purchasing authority shall notify the public
7 printer. Thereafter the public printer shall not be required to
8 provide those services for that institution.

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

11 All contracts entered into under this chapter (~~on or after~~
12 ~~September 1, 1983,~~) are subject to the requirements established under
13 RCW 43.19.1905(1)(v) and section 2 of this act, and, on or after
14 September 1, 1983, under chapter 39.19 RCW.

15 **Sec. 6.** RCW 43.19.1901 and 1987 c 434 s 23 are each amended to
16 read as follows:

17 The term "purchase" as used in RCW 43.19.190 through 43.19.200, and
18 as they may hereafter be amended, shall include leasing or renting(~~+~~
19 ~~PROVIDED, That~~)). However, the purchasing, leasing, or renting of
20 electronic data processing equipment shall not be included in the term
21 "purchasing" if and when such transactions are otherwise expressly
22 provided for by law, except that such purchasing, leasing, or renting
23 is subject to RCW 43.19.1905(1)(v) and section 2 of this act.

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

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