

SENATE BILL REPORT

HB 1770

As Reported by Senate Committee On:
Economic Development, Trade & Innovation, March 17, 2011

Title: An act relating to enhancing small business participation in state purchasing.

Brief Description: Enhancing small business participation in state purchasing.

Sponsors: Representatives Hasegawa, Kenney, Orcutt, Frockt and Stanford.

Brief History: Passed House: 3/05/11, 74-23.

Committee Activity: Economic Development, Trade & Innovation: 3/10/11, 3/17/11 [DPA, DNP].

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

Majority Report: Do pass as amended.

Signed by Senators Kastama, Chair; Chase, Vice Chair; Baumgartner, Ranking Minority Member; Hatfield, Holmquist Newbry, Kilmer and Shin.

Minority Report: Do not pass.

Signed by Senator Ericksen.

Staff: Edward Redmond (786-7471)

Background: The Department of General Administration (GA) establishes overall state policy for state purchasing, and contracts with individuals and companies outside of state government to provide goods and services to the state. Under delegated authority, other state agencies and the institutions of higher education also contract for goods and services. The state's purchasing authority is generally organized into categories based on the type of service. Among these categories are:

- Purchased Goods and Services. These goods and services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- Personal Services. This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- Information Services. These services include data processing, telecommunications, office automation, and computerized information systems.
- Printing Services. This term refers to the production of the state's printed materials.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Except in specific circumstances, Washington law does not provide preferences to bidders who are in-state. The statutory exceptions include:

- Ferries. In Washington, the Department of Transportation's bid documents for jumbo ferries must include a requirement that the vessels be constructed within Washington, with exceptions for certain equipment and systems.
- Washington-Grown Food for Schools. School districts are authorized to implement policies to maximize the purchases of Washington-grown food. Such policies may include permitting a percentage price preference for Washington-grown food.
- In-State Printing. Printing for state agencies must be done within Washington, unless the work cannot be executed in state or the lowest in-state bid exceeds the customary charges in the private sector.

In addition to these in-state preferences, GA is required to identify other states that provide in-state preferences to their own bidders. If a bidder from one of those states submits a bid for a state contract in Washington, GA may add a percentage increase to that bidder's proposal. This increase is used only to evaluate the bid and is not paid to any supplier whose bid is accepted.

State procurement laws that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are (1) invalid exercises of state power under the federal Commerce Clause; (2) preempted by federal statute or in violation of international agreements on government procurement; or (3) in violation of Equal Protection/Privileges and Immunities clauses.

Summary of Bill (Recommended Amendments): All state purchasing agencies, including institutions of higher education, are required to establish and implement a plan to increase the number of small businesses annually receiving state contracts for goods and services. Purchasing agencies must give technical assistance to small businesses prior to and after the contract award to help small businesses understand how to improve their responses for future procurements. Purchasing agencies must adopt rules that identify the effects the technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

EFFECT OF CHANGES MADE BY ECONOMIC DEVELOPMENT, TRADE & INNOVATION COMMITTEE (Recommended Amendments): Removes the 5 percent bidding preference and requirement for an annual comprehensive report regarding the implementation of the bidding preference program. Requires state purchasing agencies and institutions of higher education to adopt rules that identify the effects the technical assistance is having on the number of small businesses annually receiving state contracts for goods and services purchased by the state.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This is essentially a good government and smart spending bill. The purpose of it is not just to stimulate our own economy, but to use our taxpayer money wisely so we are not just exporting profits out of state. The 5 percent bid preference is only applied for winning the bid; it should not increase the cost because the contract rate should be the lowest bid. The state has the right to apply a retaliatory sanction against another state that imposes a bidding preference, but we never have applied such sanction. This is a bipartisan bill that passed the House 74-20. The original fiscal note two years ago was \$29,000, last year it increased to \$79,000, and now it has increased to \$516,000 just on the GA portion. It is unclear what has changed, but I am willing to work with the departments and the Senate to figure it out.

OTHER: GA is very interested in helping small businesses capture state government business. GA has actually done quite a bit of work in this regard in response to the passage of Senate Bill 5723 a couple of years ago. For example, all bids are now posted on the Washington Electronic Bids System (WEBS). GA is also working on helping small businesses capture regional awards and is active in working with the vendor community. This includes attending numerous events throughout the year providing small businesses with training on how to better position themselves to capture state contracts. The preference requirement in the bill is a concern. GA anticipates an increase in protest activity if the preference is enacted. In terms of the 5 percent preference, GA interprets this language to mean that the winning bidder would receive the 5 percent preference in the awarded contract. The penalties included in the bill could result in stifling small business participation. With fewer bidders responding to the bids, there will be less competition, which will result in the GA paying higher prices for contracts. Additionally, the in-state preference could adversely affect state businesses competing for state contracts outside of Washington due to the imposition of retaliatory sanctions by other states. GA does not have the database, technology, or financial resources to comply with the reporting requirements in the bill.

Persons Testifying: PRO: Representative Hasegawa, prime sponsor; Mark Johnson, Washington Retail Association.

OTHER: Steve Krueger, Washington GA.