
HOUSE BILL 1770

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Hasegawa, Kenney, Orcutt, Frockt, and Stanford

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1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 39.29.050, 43.19.1901, and 43.19.1905; adding
3 new sections to chapter 43.19 RCW; creating new sections; and
4 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 all state purchasing agencies, including educational
8 institutions, operating under delegated authority granted under RCW
9 43.19.190 or 28B.10.029, must apply a bidding preference in the
10 purchase of goods and services as follows:

11 (a)(i) Apply a five percent bidding preference to the bids of in-
12 state small businesses; and

13 (ii) Apply a bidding preference that may be up to five percent, as
14 determined under rules adopted by the state purchasing and material
15 control director, to the bids of in-state businesses that are not small
16 businesses but that provide for small business subcontractor
17 participation in the contract;

18 (b) Give assistance to small businesses by providing opportunities
19 for the agency to answer vendor questions about the bid solicitation
20 requirements in advance of the bid due date and, upon request after the
21 contract award, for the agency to hold a debriefing to assist the
22 vendor in understanding how to improve his or her responses for future
23 competitive procurements.

24 (2) The preferences provided for under subsection (1) of this
25 section may not be awarded to a noncompliant bidder and may not be used
26 to achieve any applicable minimum bidding requirements.

27 (3) A purchasing agency that, in good faith, awards a procurement
28 contract based on a bidding preference provided for in this section is
29 not liable in any cause of action for damages arising out of the
30 contract award. A purchasing agency prevailing on the good faith
31 defense provided in this subsection is entitled to recover expenses and
32 reasonable attorneys' fees incurred in establishing the defense. For
33 the purposes of this subsection, the purchasing agency is entitled to
34 rely on the certification made by a business under penalty of perjury
35 as to its qualifications as a small business.

36 (4)(a) This section applies to the state's purchase of goods and
37 services to the maximum extent consistent with international trade
38 agreement commitments and with applicable requirements of federal law.

1 If the state purchasing and material control director determines that
2 compliance with this section may conflict with international trade
3 agreement commitments or with federal requirements that are a
4 prescribed condition to the allocation of federal funds to the state or
5 if such compliance would otherwise conflict with federal law, the
6 purchasing agency shall not apply the bidding preference provided under
7 this section only to the extent necessary to eliminate the conflict.
8 A finding by the director with regard to one purchasing agency does not
9 affect the application of this section to purchases by another
10 purchasing agency or in another circumstance.

11 (b) A purchasing agency may not use its authority under RCW
12 43.19.190(2) to avoid applying the bidding preference required under
13 this section.

14 (c) As authorized under rules adopted by the state purchasing and
15 material control director, a purchasing agency may determine that the
16 bidding preference provided for under this section is not applicable to
17 purchases made through a multistate contracting consortium or under the
18 interlocal cooperation act, but such action is prohibited if it is
19 taken solely to avoid applying the bidding preference required under
20 this section.

21 (5)(a) A business that is given the preference provided for in this
22 section based on false information provided or on material information
23 withheld and, which by reason of the information or lack thereof, has
24 been awarded a contract to which it would not otherwise have been
25 entitled:

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

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

33 (iii) Is ineligible to directly or indirectly submit bids or
34 proposals for any new contracts with the state for a period of not less
35 than six months and not more than three years, as determined under
36 criteria adopted by the affected purchasing agency. This ineligibility
37 shall apply to the principals of the business and any subsequent

1 businesses formed by those principals. The affected purchasing agency
2 may also without penalty or cost to the state terminate, prior to
3 expiration, any existing contract with those principals.

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

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

14 (ii) If a business fails to pay an assessment or civil penalty
15 after it has become final and not subject to further appeal, or after
16 the court has entered final judgment in favor of the state, the
17 attorney general may recover the assessment or penalty by action in the
18 appropriate superior court. In such action, the validity and
19 appropriateness of the final order imposing the assessment or penalty
20 shall not be subject to review.

21 (d) Civil penalties collected under (a)(ii) and (b) of this
22 subsection must be deposited in the small business bidding preference
23 account created in section 3 of this act.

24 (6) As used in this section:

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

27 (b) "Percent bidding preference" means the percent by which an in-
28 state business's responsive bid is allowed to exceed the lowest
29 responsive bid submitted by a responsible bidder who is not an in-state
30 business and have the in-state business be awarded the contract.

31 (c) "Small business" means a business, including a sole
32 proprietorship, corporation, partnership, or other legal entity, that:

33 (i) Certifies, under penalty of perjury, that it is owned and operated
34 independently from all other businesses and has either (A) fifty or
35 fewer employees, or (B) a gross revenue of less than seven million
36 dollars annually averaged over the previous three consecutive years as
37 reported on its federal income tax returns or its returns filed with

1 the Washington state department of revenue; or (ii) is certified under
2 chapter 39.19 RCW.

3 (7) Each December 1st, beginning with a preliminary report on
4 December 1, 2011, the department of general administration shall report
5 to the governor and the appropriate committees of the legislature on
6 the bidding preference program under this section. Annual reports must
7 include information about the program's progress in increasing the
8 number of small businesses participating in state contracts, the number
9 and dollar amounts of contracts awarded under which bidding preferences
10 were given, and the basic demographic characteristics, including the
11 number of employment positions in Washington, of businesses that bid or
12 were awarded contracts under the bidding preference program.

13 (8) State agencies and institutions of higher education affected by
14 this section must adopt rules deemed necessary by the executive head of
15 the agency or its board, as applicable, to implement this section.

16 (9) This section applies to contracts awarded on or after November
17 1, 2011.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.19 RCW
19 to read as follows:

20 The small business bidding preference account is created in the
21 custody of the state treasurer. All receipts from civil penalties
22 collected under section 2 of this act must be deposited into the
23 account. Expenditures from the account may be used only toward
24 defraying the costs of adjudications that occur under section 2 of this
25 act. Only the director of the office of financial management or the
26 director's designee may authorize expenditures from the account. The
27 account is subject to allotment procedures under chapter 43.88 RCW, but
28 an appropriation is not required for expenditures.

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

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

33 (1) Section 2 of this act; and

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

1 **Sec. 5.** RCW 43.19.1901 and 1987 c 434 s 23 are each amended to
2 read as follows:

3 The term "purchase" as used in RCW 43.19.190 through 43.19.200, and
4 as they may hereafter be amended, shall include leasing or renting(~~(+
5 PROVIDED, That))~~). However, the purchasing, leasing, or renting of
6 electronic data processing equipment shall not be included in the term
7 "purchasing" if and when such transactions are otherwise expressly
8 provided for by law, except that such purchasing, leasing, or renting
9 is subject to section 2 of this act.

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

13 **Sec. 6.** RCW 43.19.1905 and 2009 c 486 s 10 are each amended to
14 read as follows:

15 (1) The director of general administration shall establish overall
16 state policy for compliance by all state agencies, including
17 educational institutions, regarding the following purchasing and
18 material control functions:

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

21 (b) Determination where consolidations, closures, or additions of
22 stores operated by state agencies and educational institutions should
23 be initiated;

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

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

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

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

34 (g) Standardization of records and forms used statewide for supply
35 system activities involving purchasing, receiving, inspecting, storing,
36 requisitioning, and issuing functions, including a standard
37 notification form for state agencies to report cost-effective direct

1 purchases, which shall at least identify the price of the goods as
2 available through the division of purchasing, the price of the goods as
3 available from the alternative source, the total savings, and the
4 signature of the notifying agency's director or the director's
5 designee;

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

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

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

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

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

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

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

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

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

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

35 (r) Development of procedures for mutual and voluntary cooperation
36 between state agencies, including educational institutions, and
37 political subdivisions for exchange of purchasing and material control
38 services;

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

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

14 (u) Development of goals for state use of recycled or
15 environmentally preferable products through specifications for products
16 and services, processes for requests for proposals and requests for
17 qualifications, contractor selection, and contract negotiations;

18 (v) Development of procurement procedures and policies implementing
19 the bidding preference program provided for in section 2 of this act,
20 with model bidding application documents that include, at a minimum,
21 basic demographic information about the business, including the number
22 of employment positions in Washington.

23 (w) Development of procurement policies and procedures, such as
24 unbundled contracting and subcontracting, 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 ((+w)) (x) Development of food procurement procedures and
30 materials that encourage and facilitate the purchase of Washington
31 grown food by state agencies and institutions to the maximum extent
32 practicable and consistent with international trade agreement
33 commitments; and

34 ((+x)) (y) Development of policies requiring all food contracts to
35 include a plan to maximize to the extent practicable and consistent
36 with international trade agreement commitments the availability of
37 Washington grown food purchased through the contract.

1 (2) The department of general administration shall convene a
2 working group including representatives of the office of financial
3 management, the department of information services, and the state
4 printer. The purpose of the working group is to work collaboratively
5 to develop common policies and procedures that encourage and facilitate
6 state government purchases from Washington small businesses, as
7 required in subsection (1)((~~v~~)) (w) of this section, and in RCW
8 39.29.065, 43.78.110, and 43.105.041(1)(j). By December 1, 2009, these
9 central services agencies shall jointly provide a written progress
10 report to the governor and legislature on actions taken and planned,
11 barriers identified, and solutions recommended to reach this goal.

12 (3) The definitions in this subsection apply throughout this
13 section and RCW 43.19.1908.

14 (a) "Common vendor registration and bid notification system" has
15 the definition in RCW 39.29.006.

16 (b) "Small business" has the definition in RCW 39.29.006.

17 (c) "Washington grown" has the definition in RCW 15.64.060.

18 NEW SECTION. **Sec. 7.** If any part of this act is found to be in
19 conflict with federal requirements that are a prescribed condition to
20 the allocation of federal funds to the state, the conflicting part of
21 this act is inoperative solely to the extent of the conflict and with
22 respect to the agencies directly affected, and this finding does not
23 affect the operation of the remainder of this act in its application to
24 the agencies concerned. Rules adopted under this act must meet federal
25 requirements that are a necessary condition to the receipt of federal
26 funds by the state.

27 NEW SECTION. **Sec. 8.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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