
SENATE BILL 5519

State of Washington

62nd Legislature

2011 Regular Session

By Senators Tom, Hill, Kilmer, and Shin

Read first time 01/28/11. Referred to Committee on Higher Education & Workforce Development.

1 AN ACT Relating to public contracting authority; amending RCW
2 28B.10.029, 39.04.370, 39.29.011, 39.29.018, and 43.19.1906; and
3 reenacting and amending RCW 39.29.040.

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

5 **Sec. 1.** RCW 28B.10.029 and 2010 c 61 s 1 are each amended to read
6 as follows:

7 (1)(a) An institution of higher education may exercise
8 independently those powers otherwise granted to the director of general
9 administration in chapter 43.19 RCW in connection with the purchase and
10 disposition of all material, supplies, services, and equipment needed
11 for the support, maintenance, and use of the respective institution of
12 higher education.

13 (b) Property disposition policies followed by institutions of
14 higher education shall be consistent with policies followed by the
15 department of general administration.

16 (c) Purchasing policies and procedures followed by institutions of
17 higher education shall be in compliance with chapters 39.19, 39.29, and
18 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917,

1 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and
2 43.19.560 through 43.19.637.

3 (d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by
4 institutions of higher education may be made by using contracts for
5 materials, supplies, services, or equipment negotiated or entered into
6 by, for, or through group purchasing organizations.

7 (e) The community and technical colleges shall comply with RCW
8 43.19.450.

9 (f) Except for the University of Washington, institutions of higher
10 education shall comply with RCW 43.41.310, 43.41.290, and 43.41.350.

11 (g) If an institution of higher education can satisfactorily
12 demonstrate to the director of the office of financial management that
13 the cost of compliance is greater than the value of benefits from any
14 of the following statutes, then it shall be exempt from them: RCW
15 43.19.685, 43.19.534, and 43.19.637.

16 (h) Any institution of higher education that chooses to exercise
17 independent purchasing authority for a commodity or group of
18 commodities shall notify the director of general administration.
19 Thereafter the director of general administration shall not be required
20 to provide those services for that institution for the duration of the
21 general administration contract term for that commodity or group of
22 commodities.

23 (2) The council of presidents and the state board for community and
24 technical colleges shall convene its correctional industries business
25 development advisory committee, and work collaboratively with
26 correctional industries, to:

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

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

32 (c) Develop recommendations on ways to continue to build
33 correctional industries' business with institutions of higher
34 education.

35 (3) Higher education and correctional industries shall develop a
36 plan to build higher education business with correctional industries to
37 increase higher education purchases of correctional industries
38 products, based upon the criteria established in subsection (2) of this

1 section. The plan shall include the correctional industries'
2 production and sales goals for higher education and an approved list of
3 products from which higher education institutions shall purchase, based
4 on the criteria established in subsection (2) of this section. Higher
5 education and correctional industries shall report to the legislature
6 regarding the plan and its implementation no later than January 30,
7 2005.

8 (4) Institutions of higher education shall (~~set as a target to~~
9 ~~contract, beginning not later than June 30, 2006, to purchase one~~
10 ~~percent of the total goods and services required by the institutions~~
11 ~~each year produced or provided in whole or in part from class II inmate~~
12 ~~work programs operated by the department of corrections. Institutions~~
13 ~~of higher education shall set as a target to contract, beginning not~~
14 ~~later than June 30, 2008, to purchase two percent of the total goods~~
15 ~~and services required by the institutions each year produced or~~
16 ~~provided in whole or in part from class II inmate work programs~~
17 ~~operated by the department of corrections)) endeavor to purchase any
18 goods or services produced in part or in whole from correctional
19 industries when quality, service, and delivery will meet institutional
20 needs and result in the best value for expenditure of state and
21 institutional dollars.~~

22 (5) An institution of higher education may exercise independently
23 those powers otherwise granted to the public printer in chapter 43.78
24 RCW in connection with the production or purchase of any printing and
25 binding needed by the respective institution of higher education.
26 Purchasing policies and procedures followed by institutions of higher
27 education shall be in compliance with chapter 39.19 RCW. Any
28 institution of higher education that chooses to exercise independent
29 printing production or purchasing authority shall notify the public
30 printer. Thereafter the public printer shall not be required to
31 provide those services for that institution.

32 **Sec. 2.** RCW 39.04.370 and 2010 c 276 s 1 are each amended to read
33 as follows:

34 (1) For any public work estimated to cost over one million dollars,
35 the contract must contain a provision requiring the submission of
36 certain information about off-site, prefabricated, nonstandard, project
37 specific items produced under the terms of the contract and produced

1 outside Washington. The information must be submitted to the
2 (~~department of labor and industries~~) awarding agency under subsection
3 (2) of this section. The information that must be provided is:

4 (a) The estimated cost of the public works project;

5 (b) The name of the awarding agency and the title of the public
6 works project;

7 (c) The contract value of the off-site, prefabricated, nonstandard,
8 project specific items produced outside Washington, including labor and
9 materials; and

10 (d) The name, address, and federal employer identification number
11 of the contractor that produced the off-site, prefabricated,
12 nonstandard, project specific items.

13 (2)(a) (~~The required information under this section must be~~
14 ~~submitted by the contractor or subcontractor as a part of the affidavit~~
15 ~~of wages paid form filed with the department of labor and industries~~
16 ~~under RCW 39.12.040.~~) This information is only required to be
17 submitted by the contractor or subcontractor who directly contracted
18 for the off-site, prefabricated, nonstandard, project specific items
19 produced outside Washington.

20 (b) The (~~department of labor and industries~~) awarding agency
21 shall include requests for the information about off-site,
22 prefabricated, nonstandard, project specific items produced outside
23 Washington on the affidavit of wages paid form required under RCW
24 39.12.040.

25 (c) The department of general administration shall develop standard
26 contract language to meet the requirements of subsection (1) of this
27 section and make the language available on its web site.

28 (d) Failure to submit the information required in subsection (1) of
29 this section as part of the affidavit of wages paid form does not
30 constitute a violation of RCW 39.12.050.

31 (3) For the purposes of this section, "off-site, prefabricated,
32 nonstandard, project specific items" means products or items that are:

33 (a) Made primarily of architectural or structural precast concrete,
34 fabricated steel, pipe and pipe systems, or sheet metal and sheet metal
35 duct work; (b) produced specifically for the public work and not
36 considered to be regularly available shelf items; (c) produced or
37 manufactured by labor expended to assemble or modify standard items;
38 and (d) produced at an off-site location.

1 (4) The (~~department of labor and industries~~) awarding agency
2 shall transmit information collected under this section to the capital
3 projects advisory review board created in RCW 39.10.220 for review.

4 (5) This section applies to contracts entered into between
5 September 1, 2010, and December 31, 2013.

6 (6) This section does not apply to department of transportation
7 public works projects.

8 (7) This section does not apply to local transportation public
9 works projects.

10 **Sec. 3.** RCW 39.29.011 and 2009 c 486 s 7 are each amended to read
11 as follows:

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

14 (1) Emergency contracts;

15 (2) Sole source contracts;

16 (3) Contract amendments;

17 (4) Contracts between a consultant and an agency of less than
18 twenty thousand dollars. (~~However, contracts of five thousand dollars
19 or greater but less than twenty thousand dollars shall have documented
20 evidence of competition, which must include agency posting of the
21 contract opportunity on the state's common vendor registration and bid
22 notification system.~~) Agencies shall not structure contracts to evade
23 these requirements; and

24 (5) Other specific contracts or classes or groups of contracts
25 exempted from the competitive solicitation process by the director of
26 the office of financial management when it has been determined that a
27 competitive solicitation process is not appropriate or cost-effective.

28 **Sec. 4.** RCW 39.29.018 and 2009 c 486 s 8 are each amended to read
29 as follows:

30 (1) Sole source contracts shall be filed with the office of
31 financial management and made available for public inspection at least
32 ten working days prior to the proposed starting date of the contract.
33 Documented justification for sole source contracts shall be provided to
34 the office of financial management when the contract is filed, and for
35 contracts over twenty thousand dollars must include evidence that the
36 agency posted the contract opportunity on the state's common vendor

1 registration and bid notification system. For sole source contracts of
2 twenty thousand dollars or more, documented justification shall also
3 include evidence that the agency attempted to identify potential
4 consultants by advertising through statewide or regional newspapers.

5 (2) The office of financial management shall approve sole source
6 contracts of twenty thousand dollars or more before any such contract
7 becomes binding and before any services may be performed under the
8 contract. These requirements shall also apply to sole source contracts
9 of less than twenty thousand dollars if the total amount of such
10 contracts between an agency and the same consultant is twenty thousand
11 dollars or more within a fiscal year. Agencies shall ensure that the
12 costs, fees, or rates negotiated in filed sole source contracts of
13 twenty thousand dollars or more are reasonable.

14 **Sec. 5.** RCW 39.29.040 and 2002 c 260 s 11 and 2002 c 200 s 2 are
15 each reenacted and amended to read as follows:

16 This chapter does not apply to:

17 (1) Contracts specifying a fee of less than (~~five~~) twenty
18 thousand dollars if the total of the contracts from that agency with
19 the contractor within a fiscal year does not exceed (~~five~~) twenty
20 thousand dollars;

21 (2) Contracts awarded to companies that furnish a service where the
22 tariff is established by the utilities and transportation commission or
23 other public entity;

24 (3) Intergovernmental agreements awarded to any governmental
25 entity, whether federal, state, or local and any department, division,
26 or subdivision thereof;

27 (4) Contracts awarded for services to be performed for a standard
28 fee, when the standard fee is established by the contracting agency or
29 any other governmental entity and a like contract is available to all
30 qualified applicants;

31 (5) Contracts for services that are necessary to the conduct of
32 collaborative research if prior approval is granted by the funding
33 source;

34 (6) Contracts for client services except as otherwise indicated in
35 this chapter;

36 (7) Contracts for architectural and engineering services as defined
37 in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

1 (8) Contracts for the employment of expert witnesses for the
2 purposes of litigation;

3 (9) Contracts for bank supervision authorized under RCW 30.38.040;
4 and

5 (10) Contracts for interpreter services and interpreter brokerage
6 services on behalf of limited-English speaking or sensory-impaired
7 applicants and recipients of public assistance.

8 **Sec. 6.** RCW 43.19.1906 and 2008 c 215 s 5 are each amended to read
9 as follows:

10 Insofar as practicable, all purchases and sales shall be based on
11 competitive bids, and a formal sealed, electronic, or web-based bid
12 procedure, subject to RCW 43.19.1911, shall be used as standard
13 procedure for all purchases and contracts for purchases and sales
14 executed by the state purchasing and material control director and
15 under the powers granted by RCW 43.19.190 through 43.19.1939. This
16 requirement also applies to purchases and contracts for purchases and
17 sales executed by agencies, including educational institutions, under
18 delegated authority granted in accordance with provisions of RCW
19 43.19.190 or under RCW 28B.10.029. However, formal sealed, electronic,
20 or web-based competitive bidding is not necessary for:

21 (1) Emergency purchases made pursuant to RCW 43.19.200 if the
22 sealed bidding procedure would prevent or hinder the emergency from
23 being met appropriately;

24 (2) Purchases not exceeding thirty-five thousand dollars, or
25 subsequent limits as calculated by the office of financial management:
26 PROVIDED, That the state director of general administration shall
27 establish procedures to assure that purchases made by or on behalf of
28 the various state agencies shall not be made so as to avoid the thirty-
29 five thousand dollar bid limitation, or subsequent bid limitations as
30 calculated by the office of financial management: PROVIDED FURTHER,
31 That the state purchasing and material control director is authorized
32 to reduce the formal sealed bid limits of thirty-five thousand dollars,
33 or subsequent limits as calculated by the office of financial
34 management, to a lower dollar amount for purchases by individual state
35 agencies if considered necessary to maintain full disclosure of
36 competitive procurement or otherwise to achieve overall state
37 efficiency and economy in purchasing and material control. Quotations

1 from three thousand dollars to thirty-five thousand dollars, or
2 subsequent limits as calculated by the office of financial management,
3 shall be secured from at least three vendors to assure establishment of
4 a competitive price and may be obtained by telephone or written
5 quotations, or both. The agency shall invite at least one quotation
6 each from a certified minority and a certified women-owned vendor who
7 shall otherwise qualify to perform such work. Immediately after the
8 award is made, the bid quotations obtained shall be recorded and open
9 to public inspection and shall be available by telephone inquiry. A
10 record of competition for all such purchases from three thousand
11 dollars to thirty-five thousand dollars, or subsequent limits as
12 calculated by the office of financial management, shall be documented
13 for audit purposes. Purchases up to three thousand dollars may be made
14 without competitive bids based on buyer experience and knowledge of the
15 market in achieving maximum quality at minimum cost;

16 (3) Purchases which are clearly and legitimately limited to a
17 single source of supply and purchases involving special facilities,
18 services, or market conditions, in which instances the purchase price
19 may be best established by direct negotiation;

20 (4) Purchases of insurance and bonds by the risk management
21 division under RCW 43.41.310;

22 (5) Purchases and contracts for vocational rehabilitation clients
23 of the department of social and health services: PROVIDED, That this
24 exemption is effective only when the state purchasing and material
25 control director, after consultation with the director of the division
26 of vocational rehabilitation and appropriate department of social and
27 health services procurement personnel, declares that such purchases may
28 be best executed through direct negotiation with one or more suppliers
29 in order to expeditiously meet the special needs of the state's
30 vocational rehabilitation clients;

31 (6) Purchases by universities for hospital operation or biomedical
32 teaching or research purposes and by the state purchasing and material
33 control director, as the agent for state hospitals as defined in RCW
34 72.23.010, and for health care programs provided in state correctional
35 institutions as defined in RCW 72.65.010(3) and veterans' institutions
36 as defined in RCW 72.36.010 and 72.36.070, made by participating in
37 contracts for materials, supplies, and equipment entered into by
38 nonprofit cooperative hospital group purchasing organizations;

1 (7) Purchases for resale by institutions of higher education to
2 other than public agencies when such purchases are for the express
3 purpose of supporting instructional programs and may best be executed
4 through direct negotiation with one or more suppliers in order to meet
5 the special needs of the institution;

6 (8) Purchases by institutions of higher education not exceeding
7 thirty-five thousand dollars: PROVIDED, That for purchases between
8 three thousand dollars and thirty-five thousand dollars quotations
9 shall be secured from at least three vendors to assure establishment of
10 a competitive price and may be obtained by telephone or written
11 quotations, or both. For purchases between three thousand dollars and
12 thirty-five thousand dollars, each institution of higher education
13 shall invite at least one quotation each from a certified minority and
14 a certified women-owned vendor who shall otherwise qualify to perform
15 such work. A record of competition for all such purchases made from
16 three thousand to thirty-five thousand dollars shall be documented for
17 audit purposes;

18 (9) Off-contract purchases of Washington grown food when such food
19 is not available from Washington sources through an existing contract.
20 However, Washington grown food purchased under this subsection must be
21 of an equivalent or better quality than similar food available through
22 the contract and be able to be paid from the agency's existing budget.
23 This requirement also applies to purchases and contracts for purchases
24 executed by state agencies, including institutions of higher education,
25 under delegated authority granted in accordance with RCW 43.19.190 or
26 under RCW 28B.10.029; and

27 (10) Negotiation of a contract by the department of transportation,
28 valid until June 30, 2001, with registered tow truck operators to
29 provide roving service patrols in one or more Washington state patrol
30 tow zones whereby those registered tow truck operators wishing to
31 participate would cooperatively, with the department of transportation,
32 develop a demonstration project upon terms and conditions negotiated by
33 the parties.

34 ~~((Beginning on July 1, 1995, and on July 1st of each succeeding~~
35 ~~odd-numbered year, the dollar limits specified in this section shall be~~
36 ~~adjusted as follows: The office of financial management shall~~
37 ~~calculate such limits by adjusting the previous biennium's limits by~~
38 ~~the appropriate federal inflationary index reflecting the rate of~~

1 ~~inflation for the previous biennium. Such amounts shall be rounded to~~
2 ~~the nearest one hundred dollars. However,~~) The three thousand dollar
3 figure in subsections (2) and (8) of this section may not be adjusted
4 to exceed five thousand dollars.

5 As used in this section, "Washington grown" has the definition in
6 RCW 15.64.060.

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