

HOUSE BILL REPORT

HB 1471

As Passed House:

February 13, 2023

Title: An act relating to modifying state procurement procedures for competitive, sole source, convenience, and emergency goods and services contracts.

Brief Description: Modifying state procurement procedures for competitive, sole source, convenience, and emergency goods and services contracts.

Sponsors: Representatives Stearns, Ramos, Gregerson and Ryu; by request of Department of Enterprise Services.

Brief History:

Committee Activity:

State Government & Tribal Relations: 1/25/23, 2/1/23 [DP].

Floor Activity:

Passed House: 2/13/23, 96-0.

Brief Summary of Bill

- Repeals the requirement for the Department of Enterprise Services (DES) to adopt rules establishing a reciprocity increase on bids from businesses in other states that grant in-state preferences by law, and for the Director of the DES to maintain a list of states with in-state preferences.
- Extends the amount of time that a sole source contract must be filed and made available for public inspection from at least 10 business days before the proposed starting date of the contract to at least 15 business days.
- Extends the time for an agency making an emergency purchase to submit its emergency contract to the DES from three business days to 10 business days.

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

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

Staff: Desiree Omli (786-7105).

Background:

Sole Source, Convenience, and Emergency Contracts.

The Department of Enterprise Services (DES) is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies, and adopts uniform policies and procedures for the effective and efficient management of contracts by all state agencies. All contracts for purchases of goods and services must be based on a competitive solicitation process. The DES may grant exemptions from competitive solicitation, including for emergency contracts, sole source contracts, and direct buy purchases.

A "sole source" refers to a contractor that provides goods or services of such a unique nature or sole availability at the location required that the contractor is clearly and justifiably the only practical source to provide the goods and services. Agencies must submit sole source contracts to the DES and make the contracts available for public inspection at least 10 working days before the proposed start date of the contract.

A "convenience contract" is a contract for specific goods, services, or both, that is solicited and established in accordance with procurement laws and that is for use by a specific agency or specified group of agencies as needed from time to time. This is in contrast to a master contract, which is solicited and established by the DES on behalf of and for the general use by agencies as specified by the DES. A convenience contract is not meant to replace master contracts, is not available for general use, and may only be used as specified by the DES.

Any agency may make emergency purchases when a set of unforeseen circumstances beyond the control of the agency that either: (a) presents a real, immediate, and extreme threat to the proper performance of essential functions; or (b) may reasonably be expected to result in material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken. Emergency contracts must be submitted to the DES and made available for inspection within three working days following the commencement of work or execution of the contract, whichever is first.

In-State Preferences.

In-state preferences in state contracting generally require that agencies, when purchasing goods and services, give preference to supplies, materials, and equipment produced,

assembled, or manufactured in the state and services originating and provided in the state. Washington law does not require that preference be given to in-state bidders, however the Director of the DES must compile a list of statutes and regulations of each state which grants preferences to vendors located within that state or goods manufactured within that state, as it relates to state purchasing. The DES is required to establish rules creating a reciprocity increase on bids from states granting in-state preference by law. For competitive solicitations, when evaluating bids for awards, state agencies must add the appropriate percentage increase to each bid originating from another state with in-state preference laws, rather than subtracting that amount from a bid originating in Washington.

Summary of Bill:

Sole Source, Convenience, and Emergency Contracts.

Goods and services that qualify for sole source contracts are modified such that the goods or services must be of sole availability, rather than be of sole availability at the location required. The amount of time before the proposed starting date of the contract that an agency must file the contract with the DES and make the contract available for public inspection is extended to no less than 15 business days before the proposed starting date of the contract.

The definition of a convenience contract is modified to remove language that a convenience contract may be established for use by a specific agency. Specified groups of agencies may only use a convenience contract with the approval of the DES, rather than be used as needed from time to time.

The time for an agency that makes an emergency purchase to submit its emergency contract to the DES is extended to 10 business days. The DES may authorize exceptions for filing requirements due to exigent circumstances.

In-State Preference—Washington's Reciprocity Increase.

The following are repealed:

- the requirement that the Director of the DES compile a list of statutes and regulations of each state which grants preferences to vendors located within that state or goods manufactured within that state, as it relates to state purchasing; and
- the requirement that the DES establish rules creating a reciprocity increase on bids from states granting in-state preference by law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The act improves competition, accountability, transparency, equity, and opportunity for small, diverse, and veteran-owned businesses. The changes to the sole source contracting criteria prevents agencies from over relying on the location clause for sole source contracts, thereby tightening the circumstances in which an agency awards a sole source contract. It also increases the timeframe that agency decisions are available to the public with regard to sole source contracts. This increases the existence of competitive solicitation in contracting. Requiring the DES to approve all convenience contracts ensures that agencies don't use convenience contracts to circumvent the competitive solicitation process. The act also lengthens the time for an agency to report their emergency purchases. The act repeals outdated and little used trade-war style provisions that punish business from other states that have in-state preferences. These statutes were enacted before the DES started engaging in best value procurement. Instead of penalizing those out-of-state businesses, current DES policy and strategy is to apply preferences to Washington's in-state businesses. This change is aligned with the DES's goal of increasing equity and supplier diversity in state contracting.

(Opposed) None.

Persons Testifying: Representative Chris Stearns, prime sponsor; and Jaime Rossman, Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.