

SENATE BILL REPORT

HB 1471

As Reported by Senate Committee On:
State Government & Elections, February 20, 2024

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: Passed House: 1/10/24, 97-1.

Committee Activity: State Government & Elections: 3/10/23, 3/17/23 [DPA]; 1/30/24, 2/20/24 [DPA].

Brief Summary of Amended 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 DES to maintain a list of states with in-state preferences.
- Requires convenience contracts to be approved by DES.
- Extends the deadline for submission of a written notification of an emergency purchase from three working days to ten business days.
- Extends the deadline for agencies to submit and make publicly available sole source contracts from ten to fifteen working days.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Majority Report: Do pass as amended.

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.

Signed by Senators Hunt, Chair; Valdez, Vice Chair; Wilson, J., Ranking Member; Dozier, Fortunato, Hasegawa and Kuderer.

Staff: Danielle Creech (786-7412)

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. DES may grant exemptions from competitive solicitation, including for emergency contracts, sole source contracts, and direct buy purchases.

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

A convenience contract is a contract for specific goods, services, or both, solicited and established in accordance with procurement laws and rules for use by a specific agency or a specified group of agencies as needed from time to time. A convenience contract is not available for general use, and may only be used as specified by DES. Convenience contracts are not intended to replace nor supersede master contracts, which are solicited and established by DES in accordance with procurement laws and rules on behalf of and for general use by agencies specified by DES.

Agencies may make emergency purchases under a set of unforeseen circumstances beyond the control of the agency that either present a real, immediate, and extreme threat to the proper performance of essential functions, or 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. When an emergency purchase is made, the agency head must submit written notification of the purchase within three business days of the purchase to the director of DES. This notification must contain a description of the purchase, a description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances require an emergency purchase. Emergency contracts must be submitted to DES and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first.

In-State Preferences. In-state preferences for state contracting generally require that when purchasing goods and services, agencies must give preference to supplies, materials, and equipment produced, assembled, or manufactured in the state, as well as services originating and provided in the state. Washington law does not require that preference be given to in-state bidders, however the director of 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. 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 Amended Bill: Sole Source, Convenience, and Emergency Contracts. Goods or services must be of sole availability, rather than be of sole availability at the location required, to qualify for sole source contracting. The amount of time before the proposed starting date of the contract that an agency must file the contract with 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 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 DES is extended to ten business days. DES may authorize exceptions for filing requirements due to exigent circumstances.

In-State Preference—Washington's Reciprocity Increase. The following requirements are repealed:

- requiring the director of DES to 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
- requiring DES to establish rules creating a reciprocity increase on bids from states granting in-state preference by law.

EFFECT OF STATE GOVERNMENT & ELECTIONS COMMITTEE AMENDMENT(S):

- Restores provisions regarding equal compensation, in-state preference and reciprocity in bidding.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on House Bill (Regular Session 2023): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is identical to the senate companion bill and will improve state procurement by increasing competition, transparency, and compliance. The goal is to increase equity and diversity in contracting, especially for veterans. It intends to end a trade war style provision in our law that encourages other states to retaliate. It will eliminate agencies' ability to rely on location-based sole source contracting which will make the industry more fair.

Persons Testifying: PRO: Representative Chris Stearns, Prime Sponsor; Rebecca Linville, Washington State Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on House Bill (Regular Session 2024): *The committee recommended a different version of the bill than what was heard.* PRO: This agency request legislation will alleviate the issue of other states' reluctance to engage with our state due to restrictive controls. Removing them will improve commerce and get more business in Washington. This bill improves competition, transparency, compliance and equity in public contracting by tightening the circumstances in which agencies may award a sole-source contract. This aligns the procurement code with DES policy structure.

Persons Testifying: PRO: Representative Chris Stearns, Prime Sponsor; Rebecca Linville, Washington State Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: No one.