
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1096

State of Washington

61st Legislature

2010 Regular Session

By House General Government Appropriations (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins, and Moeller)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 39.29.050 and 43.19.1901; adding new sections
3 to chapter 43.19 RCW; creating a new section; prescribing penalties;
4 and providing expiration dates.

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 purchased by purchasing agencies for
5 the use only of the respective agency, including purchases under
6 chapters 39.29 and 43.105 RCW, the purchasing agency must:

7 (a) Apply a preference in the award of contracts for goods and
8 services as follows:

9 (i) A preference to small business bidders that is five percent of
10 the lowest responsible bidder meeting specifications; and

11 (ii) A preference to in-state business bidders that are not small
12 businesses but who provide for small business subcontractor
13 participation in the contract that may be up to five percent of the
14 lowest responsible bidder meeting specifications, determined according
15 to rules adopted by the purchasing agency;

16 (b) Give assistance to small businesses by:

17 (i) Providing technical assistance that would be reasonably
18 expected to mitigate barriers that result from experience requirements
19 related to the contract;

20 (ii) Allowing for alternative methods for meeting any inventory
21 level requirements related to the contract; and

22 (iii) Assisting small businesses with the qualification application
23 required under RCW 43.19.1908.

24 (2) Small business bidders qualified under this chapter shall have
25 precedence over other business bidders so that the application of any
26 bidder preference for which another business bidder may be eligible by
27 law does not result in the denial of the contract award to a small
28 business bidder. This subsection applies if the small business bidder
29 is the lowest responsible bidder, as well as if the small business is
30 eligible for the contract award as the result of the small business
31 bidder preference applied under this section.

32 (3) The preferences under subsection (1)(a) of this section may not
33 be awarded to a noncompliant bidder and may not be used to achieve any
34 applicable minimum bidding requirements. The preferences may be used
35 only in evaluating bids or proposals for awards. In no instance may
36 the increase be paid to a bidder whose bid is accepted.

37 (4)(a) This section applies to a purchasing agency's purchase of
38 goods and services to the maximum extent consistent with international

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

11 (b) Rules adopted under this section must meet federal requirements
12 that are a necessary condition to the receipt of federal funds by the
13 state.

14 (c) A purchasing agency may suspend the preference granted under
15 this section for purchases made through a multistate contracting
16 consortium, but the suspension is prohibited if it is done for the
17 purpose of avoiding the application of the preference required under
18 this section.

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

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

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

31 (iii) Is ineligible to directly or indirectly transact any business
32 with the state for a period of not less than six months and not more
33 than three years, as determined under criteria adopted by the affected
34 purchasing agency. This ineligibility shall apply to the principals of
35 the business and any subsequent businesses formed by those principals.

36 (b) In addition to being subject to the penalties under (a)(i) and
37 (iii) of this subsection, a business that knowingly and with intent to
38 defraud makes a false statement or fails to provide or conceals, or

1 attempts to conceal, material information for the purpose of obtaining,
2 or aiding another in obtaining, a preference under this section is
3 subject to a civil penalty of ten percent of the amount of the contract
4 involved or ten thousand dollars, whichever is greater.

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

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

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

18 (6) As used in this section:

19 (a) "Purchasing agencies" are limited to the department of general
20 administration, the department of information services, and the
21 department of transportation.

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

24 (c) "Small business" means an in-state business, including a sole
25 proprietorship, corporation, partnership, or other legal entity, that:

26 (i) Certifies, under penalty of perjury, that it is owned and operated
27 independently from all other businesses and has either (A) fifty or
28 fewer employees, or (B) a gross revenue of less than seven million
29 dollars annually as reported on its federal income tax return or its
30 return filed with the department of revenue over the previous three
31 consecutive years; or (ii) is certified under chapter 39.19 RCW.

32 (7) Each purchasing agency must, in consultation with each other,
33 adopt rules necessary to implement this section.

34 (8) Each December 1st, beginning with a preliminary report on
35 December 1, 2010, the department of general administration, in
36 consultation with the department of information services and the
37 department of transportation, shall report to the governor and the
38 appropriate committees of the legislature on the preference program

1 under this section. Annual reports must include information about the
2 program's progress in increasing the number of small businesses
3 participating in state contracts, the number of contracts under which
4 preferences were given, and the characteristics of small businesses
5 that participated in the program.

6 (9) This section applies to contracts awarded on or after November
7 1, 2010, but before July 1, 2014.

8 (10) This section expires December 31, 2014.

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

11 (1) The small business bidding preference account is created in the
12 custody of the state treasurer. All receipts from civil penalties
13 collected under section 2 of this act must be deposited into the
14 account. Expenditures from the account may be used only toward
15 defraying the costs of adjudications that occur under section 2 of this
16 act. Only the director of the office of financial management or the
17 director's designee may authorize expenditures from the account on the
18 request of the director of general administration, the director of
19 information services, or the secretary of transportation, or their
20 respective designees. The account is subject to allotment procedures
21 under chapter 43.88 RCW, but an appropriation is not required for
22 expenditures.

23 (2) This section expires July 1, 2015.

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

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

28 (1) Section 2 of this act, with respect to the departments of
29 general administration, information services, and transportation; and

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

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

33 The term "purchase" as used in RCW 43.19.190 through 43.19.200, and
34 as they may hereafter be amended, shall include leasing or renting(~~+~~
35 ~~PROVIDED, That~~). However, the purchasing, leasing, or renting of

1 electronic data processing equipment shall not be included in the term
2 "purchasing" if and when such transactions are otherwise expressly
3 provided for by law, except that such purchasing, leasing, or renting
4 by the departments of general administration, information services, and
5 transportation is subject to section 2 of this act.

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

9 NEW SECTION. Sec. 6. If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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