
SECOND SUBSTITUTE HOUSE BILL 1095

State of Washington

61st Legislature

2009 Regular Session

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

READ FIRST TIME 03/02/09.

1 AN ACT Relating to increasing small business access to state
2 contracting opportunities; amending RCW 39.29.006, 39.29.011,
3 39.29.018, 39.29.065, 43.19.1905, 43.19.1908, 43.78.110, 43.105.041,
4 and 43.105.020; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that state government
7 procurement of goods and services is a largely untapped market for
8 Washington state small businesses. The legislature further finds that
9 small businesses generally lack awareness of state procurement
10 opportunities and how such opportunities can be pursued. The
11 legislature recognizes that up to forty percent of all state
12 procurement is awarded with limited or no competition due to exceptions
13 in law for contracts within certain dollar thresholds, and that between
14 the years 2000 and 2006, state contracts with certified minority
15 businesses dropped from five percent of total expenditures to less than
16 one percent. The legislature believes that it is in the state's
17 economic interest to increase small business awareness of and access to
18 state contracting opportunities because: (1) Retaining and
19 strengthening the private sector creates jobs, income, and revenues;

1 and (2) increased competition for procurement awards will result in
2 more competitive pricing of public contracts. The legislature is aware
3 that state government has an internet-based common vendor registration
4 and bid notification system, but its use by state agencies is voluntary
5 and inconsistent. The legislature therefore intends to require state
6 agencies to use the state's common vendor registration and bid
7 notification system for publishing all procurement notices. The
8 legislature also intends to direct the state's central services
9 agencies to develop procurement policies, procedures, and materials
10 that encourage and facilitate the purchase of products and services by
11 state agencies from Washington small businesses.

12 **Sec. 2.** RCW 39.29.006 and 2002 c 354 s 235 are each amended to
13 read as follows:

14 As used in this chapter:

15 (1) "Agency" means any state office or activity of the executive
16 and judicial branches of state government, including state agencies,
17 departments, offices, divisions, boards, commissions, and educational,
18 correctional, and other types of institutions.

19 (2) "Client services" means services provided directly to agency
20 clients including, but not limited to, medical and dental services,
21 employment and training programs, residential care, and subsidized
22 housing.

23 (3) "Common vendor registration and bid notification system" means
24 the internet-based vendor registration and bid notification system
25 maintained by and housed within the department of general
26 administration. The requirements contained in chapter . . . , Laws of
27 2009 (this act) shall continue to apply to this system, regardless of
28 future changes to its name or management structure.

29 (4) "Competitive solicitation" means a documented formal process
30 providing an equal and open opportunity to qualified parties and
31 culminating in a selection based on criteria which may include such
32 factors as the consultant's fees or costs, ability, capacity,
33 experience, reputation, responsiveness to time limitations,
34 responsiveness to solicitation requirements, quality of previous
35 performance, and compliance with statutes and rules relating to
36 contracts or services. "Competitive solicitation" includes posting of

1 the contract opportunity on the state's common vendor registration and
2 bid notification system.

3 ((+4)) (5) "Consultant" means an independent individual or firm
4 contracting with an agency to perform a service or render an opinion or
5 recommendation according to the consultant's methods and without being
6 subject to the control of the agency except as to the result of the
7 work. The agency monitors progress under the contract and authorizes
8 payment.

9 ((+5)) (6) "Emergency" means a set of unforeseen circumstances
10 beyond the control of the agency that either:

11 (a) Present a real, immediate threat to the proper performance of
12 essential functions; or

13 (b) May result in material loss or damage to property, bodily
14 injury, or loss of life if immediate action is not taken.

15 ((+6)) (7) "Evidence of competition" means documentation
16 demonstrating that the agency has solicited responses from multiple
17 firms in selecting a consultant. "Evidence of competition" includes
18 documentation that the agency has posted the contract opportunity on
19 the state's common vendor registration and bid notification system.

20 ((+7)) (8) "Personal service" means professional or technical
21 expertise provided by a consultant to accomplish a specific study,
22 project, task, or other work statement. This term does not include
23 purchased services as defined under subsection ((+9)) (10) of this
24 section. This term does include client services.

25 ((+8)) (9) "Personal service contract" means an agreement, or any
26 amendment thereto, with a consultant for the rendering of personal
27 services to the state which is consistent with RCW 41.06.142.

28 ((+9)) (10) "Purchased services" means services provided by a
29 vendor to accomplish routine, continuing and necessary functions. This
30 term includes, but is not limited to, services acquired under RCW
31 43.19.190 or 43.105.041 for equipment maintenance and repair; operation
32 of a physical plant; security; computer hardware and software
33 maintenance; data entry; key punch services; and computer time-sharing,
34 contract programming, and analysis.

35 ((+10)) (11) "Small business" means an in-state business that is
36 independently owned and operated and together with affiliates, has
37 fifty or fewer employees, and average annual gross receipts of ten
38 million dollars or less over the previous three consecutive years. As

1 used in this definition, "in-state business" means a business that has
2 its principal office located in Washington and its officers domiciled
3 in Washington.

4 (12) "Sole source" means a consultant providing professional or
5 technical expertise of such a unique nature that the consultant is
6 clearly and justifiably the only practicable source to provide the
7 service. The justification shall be based on either the uniqueness of
8 the service or sole availability at the location required.

9 **Sec. 3.** RCW 39.29.011 and 1998 c 101 s 3 are each amended to read
10 as follows:

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

- 13 (1) Emergency contracts;
- 14 (2) Sole source contracts;
- 15 (3) Contract amendments;
- 16 (4) Contracts between a consultant and an agency of less than
17 twenty thousand dollars. However, contracts of five thousand dollars
18 or greater but less than twenty thousand dollars shall have documented
19 evidence of competition, which must include agency posting of the
20 contract opportunity on the state's common vendor registration and bid
21 notification system. Agencies shall not structure contracts to evade
22 these requirements; and
- 23 (5) Other specific contracts or classes or groups of contracts
24 exempted from the competitive solicitation process by the director of
25 the office of financial management when it has been determined that a
26 competitive solicitation process is not appropriate or cost-effective.

27 **Sec. 4.** RCW 39.29.018 and 1998 c 101 s 5 are each amended to read
28 as follows:

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

1 justification shall also include evidence that the agency attempted to
2 identify potential consultants by advertising through statewide or
3 regional newspapers.

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

13 **Sec. 5.** RCW 39.29.065 and 1998 c 101 s 9 are each amended to read
14 as follows:

15 To implement this chapter, the director of the office of financial
16 management shall establish procedures for the competitive solicitation
17 and award of personal service contracts, recordkeeping requirements,
18 and procedures for the reporting and filing of contracts. The director
19 shall develop procurement policies and procedures, such as unbundled
20 contracting and subcontracting, that encourage and facilitate the
21 purchase of products and services by state agencies and institutions
22 from Washington small businesses to the maximum extent practicable and
23 consistent with international trade agreement commitments. For
24 reporting purposes, the director may establish categories for grouping
25 of contracts. The procedures required under this section shall also
26 include the criteria for amending personal service contracts. At the
27 beginning of each biennium, the director may, by administrative policy,
28 adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018,
29 and 39.29.040(~~(, and 39.29.068)~~) to levels not to exceed the percentage
30 increase in the implicit price deflator. Adjusted dollar thresholds
31 shall be rounded to the nearest five hundred dollar increment.

32 **Sec. 6.** RCW 43.19.1905 and 2008 c 215 s 4 are each amended to read
33 as follows:

34 (1) The director of general administration shall establish overall
35 state policy for compliance by all state agencies, including

1 educational institutions, regarding the following purchasing and
2 material control functions:

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

5 (b) Determination where consolidations, closures, or additions of
6 stores operated by state agencies and educational institutions should
7 be initiated;

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

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

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

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

18 (g) Standardization of records and forms used statewide for supply
19 system activities involving purchasing, receiving, inspecting, storing,
20 requisitioning, and issuing functions, including a standard
21 notification form for state agencies to report cost-effective direct
22 purchases, which shall at least identify the price of the goods as
23 available through the division of purchasing, the price of the goods as
24 available from the alternative source, the total savings, and the
25 signature of the notifying agency's director or the director's
26 designee;

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

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

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

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

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

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

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

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

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

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

19 (r) Development of procedures for mutual and voluntary cooperation
20 between state agencies, including educational institutions, and
21 political subdivisions for exchange of purchasing and material control
22 services;

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

26 (t) Development of guidelines and criteria for the purchase of
27 vehicles, high gas mileage vehicles, alternate vehicle fuels and
28 systems, equipment, and materials that reduce overall energy-related
29 costs and energy use by the state, including investigations into all
30 opportunities to aggregate the purchasing of clean technologies by
31 state and local governments, and including the requirement that new
32 passenger vehicles purchased by the state meet the minimum standards
33 for passenger automobile fuel economy established by the United States
34 secretary of transportation pursuant to the energy policy and
35 conservation act (15 U.S.C. Sec. 2002);

36 (u) Development of goals for state use of recycled or
37 environmentally preferable products through specifications for products

1 and services, processes for requests for proposals and requests for
2 qualifications, contractor selection, and contract negotiations;

3 (v) Development of procurement policies and procedures, such as
4 unbundled contracting and subcontracting, that encourage and facilitate
5 the purchase of products and services by state agencies and
6 institutions from Washington small businesses to the maximum extent
7 practicable and consistent with international trade agreement
8 commitments;

9 (w) Development of food procurement procedures and materials that
10 encourage and facilitate the purchase of Washington grown food by state
11 agencies and institutions to the maximum extent practicable and
12 consistent with international trade agreement commitments; and

13 ~~((w))~~ (x) Development of policies requiring all food contracts to
14 include a plan to maximize to the extent practicable and consistent
15 with international trade agreement commitments the availability of
16 Washington grown food purchased through the contract.

17 ~~((As used in this section,))~~ The department of general
18 administration shall convene a working group including representatives
19 of the office of financial management, the department of information
20 services, and the state printer. The purpose of the working group is
21 to work collaboratively to develop common policies and procedures that
22 encourage and facilitate state government purchases from Washington
23 small businesses, as required in subsection (1)(v) of this section, and
24 in RCW 39.29.065, 43.78.110, and 43.105.041(1)(j). By December 1,
25 2009, these central services agencies shall jointly provide a written
26 progress report to the governor and legislature on actions taken and
27 planned, barriers identified, and solutions recommended to reach this
28 goal.

29 (3) The definitions in this subsection apply throughout this
30 section and RCW 43.19.1908.

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

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

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

35 **Sec. 7.** RCW 43.19.1908 and 2006 c 363 s 2 are each amended to read
36 as follows:

37 Competitive bidding required by RCW 43.19.190 through 43.19.1939

1 shall be solicited by public notice, by posting of the contract
2 opportunity on the state's common vendor registration and bid
3 notification system, and through the sending of notices by mail,
4 electronic transmission, or other means to bidders on the appropriate
5 list of bidders who shall have qualified by application to the division
6 of purchasing. Bids may be solicited by the purchasing division from
7 any source thought to be of advantage to the state. All bids shall be
8 in written or electronic form and conform to rules of the division of
9 purchasing.

10 **Sec. 8.** RCW 43.78.110 and 1993 c 379 s 107 are each amended to
11 read as follows:

12 (1) Whenever in the judgment of the public printer certain
13 printing, ruling, binding, or supplies can be secured from private
14 sources more economically than by doing the work or preparing the
15 supplies in the state printing plant, the public printer may obtain
16 such work or supplies from such private sources. The solicitation for
17 the contract opportunity must be posted on the state's common vendor
18 registration and bid notification system. The public printer shall
19 develop procurement policies and procedures, such as unbundled
20 contracting and subcontracting, that encourage and facilitate the
21 purchase of such services or supplies from Washington small businesses
22 to the maximum extent practicable and consistent with international
23 trade agreement commitments.

24 (2) In event any work or supplies are secured on behalf of the
25 state under this section the state printing plant shall be entitled to
26 add up to five percent to the cost thereof to cover the handling of the
27 orders which shall be added to the bills and charged to the respective
28 authorities ordering the work or supplies. The five percent handling
29 charge shall not apply to contracts with institutions of higher
30 education.

31 (3) The definitions in this subsection apply throughout this
32 section.

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

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

1 **Sec. 9.** RCW 43.105.041 and 2003 c 18 s 3 are each amended to read
2 as follows:

3 (1) The board shall have the following powers and duties related to
4 information services:

5 (a) To develop standards and procedures governing the acquisition
6 and disposition of equipment, proprietary software and purchased
7 services, licensing of the radio spectrum by or on behalf of state
8 agencies, and confidentiality of computerized data;

9 (b) To purchase, lease, rent, or otherwise acquire, dispose of, and
10 maintain equipment, proprietary software, and purchased services, or to
11 delegate to other agencies and institutions of state government, under
12 appropriate standards, the authority to purchase, lease, rent, or
13 otherwise acquire, dispose of, and maintain equipment, proprietary
14 software, and purchased services: PROVIDED, That, agencies and
15 institutions of state government are expressly prohibited from
16 acquiring or disposing of equipment, proprietary software, and
17 purchased services without such delegation of authority. The
18 acquisition and disposition of equipment, proprietary software, and
19 purchased services is exempt from RCW 43.19.1919 and, as provided in
20 RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200,
21 except that the board, the department, and state agencies, as
22 delegated, must post notices of technology procurement bids on the
23 state's common vendor registration and bid notification system. This
24 subsection (1)(b) does not apply to the legislative branch;

25 (c) To develop statewide or interagency technical policies,
26 standards, and procedures;

27 (d) To review and approve standards and common specifications for
28 new or expanded telecommunications networks proposed by agencies,
29 public postsecondary education institutions, educational service
30 districts, or statewide or regional providers of K-12 information
31 technology services, and to assure the cost-effective development and
32 incremental implementation of a statewide video telecommunications
33 system to serve: Public schools; educational service districts;
34 vocational-technical institutes; community colleges; colleges and
35 universities; state and local government; and the general public
36 through public affairs programming;

37 (e) To provide direction concerning strategic planning goals and

1 objectives for the state. The board shall seek input from the
2 legislature and the judiciary;

3 (f) To develop and implement a process for the resolution of
4 appeals by:

5 (i) Vendors concerning the conduct of an acquisition process by an
6 agency or the department; or

7 (ii) A customer agency concerning the provision of services by the
8 department or by other state agency providers;

9 (g) To establish policies for the periodic review by the department
10 of agency performance which may include but are not limited to analysis
11 of:

12 (i) Planning, management, control, and use of information services;

13 (ii) Training and education; and

14 (iii) Project management;

15 (h) To set its meeting schedules and convene at scheduled times, or
16 meet at the request of a majority of its members, the chair, or the
17 director; ((and))

18 (i) To review and approve that portion of the department's budget
19 requests that provides for support to the board; and

20 (j) To develop procurement policies and procedures, such as
21 unbundled contracting and subcontracting, that encourage and facilitate
22 the purchase of products and services by state agencies and
23 institutions from Washington small businesses to the maximum extent
24 practicable and consistent with international trade agreement
25 commitments.

26 (2) Statewide technical standards to promote and facilitate
27 electronic information sharing and access are an essential component of
28 acceptable and reliable public access service and complement content-
29 related standards designed to meet those goals. The board shall:

30 (a) Establish technical standards to facilitate electronic access
31 to government information and interoperability of information systems,
32 including wireless communications systems. Local governments are
33 strongly encouraged to follow the standards established by the board;
34 and

35 (b) Require agencies to consider electronic public access needs
36 when planning new information systems or major upgrades of systems.

37 In developing these standards, the board is encouraged to include

1 the state library, state archives, and appropriate representatives of
2 state and local government.

3 (3)(a) The board, in consultation with the K-20 board, has the duty
4 to govern, operate, and oversee the technical design, implementation,
5 and operation of the K-20 network including, but not limited to, the
6 following duties: Establishment and implementation of K-20 network
7 technical policy, including technical standards and conditions of use;
8 review and approval of network design; procurement of shared network
9 services and equipment; and resolving user/provider disputes concerning
10 technical matters. The board shall delegate general operational and
11 technical oversight to the K-20 network technical steering committee as
12 appropriate.

13 (b) The board has the authority to adopt rules under chapter 34.05
14 RCW to implement the provisions regarding the technical operations and
15 conditions of use of the K-20 network.

16 **Sec. 10.** RCW 43.105.020 and 2003 c 18 s 2 are each amended to read
17 as follows:

18 As used in this chapter, unless the context indicates otherwise,
19 the following definitions shall apply:

20 (1) "Department" means the department of information services;

21 (2) "Board" means the information services board;

22 (3) "Committee" means the state interoperability executive
23 committee;

24 (4) "Local governments" includes all municipal and quasi municipal
25 corporations and political subdivisions, and all agencies of such
26 corporations and subdivisions authorized to contract separately;

27 (5) "Director" means the director of the department;

28 (6) "Purchased services" means services provided by a vendor to
29 accomplish routine, continuing, and necessary functions. This term
30 includes, but is not limited to, services acquired for equipment
31 maintenance and repair, operation of a physical plant, security,
32 computer hardware and software installation and maintenance,
33 telecommunications installation and maintenance, data entry, keypunch
34 services, programming services, and computer time-sharing;

35 (7) "Backbone network" means the shared high-density portions of
36 the state's telecommunications transmission facilities. It includes
37 specially conditioned high-speed communications carrier lines,

1 multiplexors, switches associated with such communications lines, and
2 any equipment and software components necessary for management and
3 control of the backbone network;

4 (8) "Telecommunications" means the transmission of information by
5 wire, radio, optical cable, electromagnetic, or other means;

6 (9) "Information" includes, but is not limited to, data, text,
7 voice, and video;

8 (10) "Information processing" means the electronic capture,
9 collection, storage, manipulation, transmission, retrieval, and
10 presentation of information in the form of data, text, voice, or image
11 and includes telecommunications and office automation functions;

12 (11) "Information services" means data processing,
13 telecommunications, office automation, and computerized information
14 systems;

15 (12) "Equipment" means the machines, devices, and transmission
16 facilities used in information processing, such as computers, word
17 processors, terminals, telephones, wireless communications system
18 facilities, cables, and any physical facility necessary for the
19 operation of such equipment;

20 (13) "Information technology portfolio" or "portfolio" means a
21 strategic management process documenting relationships between agency
22 missions and information technology and telecommunications investments;

23 (14) "Oversight" means a process of comprehensive risk analysis and
24 management designed to ensure optimum use of information technology
25 resources and telecommunications;

26 (15) "Proprietary software" means that software offered for sale or
27 license;

28 (16) "Video telecommunications" means the electronic
29 interconnection of two or more sites for the purpose of transmitting
30 and/or receiving visual and associated audio information. Video
31 telecommunications shall not include existing public television
32 broadcast stations as currently designated by the department of
33 community, trade, and economic development under chapter 43.330 RCW;

34 (17) "K-20 educational network board" or "K-20 board" means the K-
35 20 educational network board created in RCW 43.105.800;

36 (18) "K-20 network technical steering committee" or "committee"
37 means the K-20 network technical steering committee created in RCW
38 43.105.810;

1 (19) "K-20 network" means the network established in RCW
2 43.105.820;

3 (20) "Educational sectors" means those institutions of higher
4 education, school districts, and educational service districts that use
5 the network for distance education, data transmission, and other uses
6 permitted by the K-20 board.

7 (21) "Common vendor registration and bid notification system" has
8 the definition in RCW 39.29.006.

9 (22) "Small business" has the definition in RCW 39.29.006.

10 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
11 this act, referencing this act by bill or chapter number, is not
12 provided by June 30, 2009, in the omnibus appropriations act, this act
13 is null and void.

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