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HOUSE BILL 1355

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State of Washington

62nd Legislature

2011 Regular Session

By Representative Pearson

Read first time 01/19/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to providing bidding preferences for Washington  
2 businesses in state purchasing; amending RCW 28B.10.029, 43.19.1901,  
3 and 43.19.1905; adding a new section to chapter 43.19 RCW; adding a new  
4 section to chapter 39.04 RCW; adding a new section to chapter 39.29  
5 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that private sector  
8 businesses in this state are the foundation of the state's economy  
9 through their power to generate jobs for state citizens and revenues in  
10 support of state programs. The legislature further finds that the  
11 state's private sector is the best means for keeping the state's  
12 revenues working to enhance both state and global economic development.  
13 Therefore, when the state participates in the market through state  
14 purchasing, it is vital to the state and serves a public purpose to  
15 promote the fullest possible participation of the state's private  
16 sector businesses in that procurement process.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.19 RCW  
18 to read as follows:

1 (1) The state purchasing and material control director, under the  
2 powers granted by RCW 43.19.190 through 43.19.1939, and all state  
3 purchasing agencies, including educational institutions, operating  
4 under delegated authority granted under RCW 43.19.190 or 28B.10.029  
5 must, in the award of procurement contracts, apply a three percent  
6 bidding preference to the bids of in-state businesses as required in  
7 this section.

8 (2) The percent bidding preference provided for under this section:

9 (a) Applies to contracts that are:

10 (i) Awarded on or after January 1, 2012;

11 (ii) For less than one million dollars; and

12 (iii) For state purchases of goods or services or state public  
13 works projects;

14 (b) May not be awarded to a noncompliant bidder and may not be used  
15 to achieve any applicable minimum bidding requirement;

16 (c) Applies to the maximum extent consistent with international  
17 trade agreement commitments and with applicable requirements of federal  
18 law. If the state purchasing and material control director determines  
19 that compliance with this section may conflict with international trade  
20 agreement commitments or with federal requirements that are a  
21 prescribed condition to the allocation of federal funds to the state or  
22 if such compliance would otherwise conflict with federal law, the  
23 purchasing agency shall not apply the bidding preference granted under  
24 this section only to the extent necessary to eliminate the conflict.  
25 A finding by the director with regard to one purchasing agency does not  
26 affect the application of this section to purchases by another  
27 purchasing agency or in another circumstance; and

28 (d) As authorized by the state purchasing and material control  
29 director, may be determined to be inapplicable to purchases made  
30 through a multistate contracting consortium, but only if such action is  
31 not taken solely to avoid applying the bidding preference required  
32 under this section.

33 (3) The definitions in this subsection apply throughout this  
34 section unless the context clearly requires otherwise.

35 (a) "In-state business" means a business that has its principal  
36 office located in this state and the majority of its officers domiciled  
37 in this state.

1 (b) "Percent bidding preference" means the percent by which an  
2 in-state business's responsive bid may exceed the lowest responsive bid  
3 submitted by a responsible bidder who is not an in-state business and  
4 have the in-state business be awarded the contract.

5 (4) Any purchasing agency adopting rules to implement this section  
6 must consult with and coordinate the rules with other purchasing  
7 agencies' rules with the goal of harmonizing the adopted rules. Rules  
8 adopted under this section must meet federal requirements that are a  
9 necessary condition to the receipt of federal funds by the state.

10 (5)(a) Each July 31st, beginning July 31, 2013, the department of  
11 general administration shall publish on its web site information about  
12 the bidding preference program provided for under this section,  
13 including the number of businesses awarded state contracts under the  
14 bidding preference program, the number and amounts of contracts awarded  
15 under the bidding preference program and the percentage of awards this  
16 represents statewide, and the number of employment positions in  
17 Washington reported by the businesses that were awarded state contracts  
18 under the bidding preference program.

19 (b) Subject to the availability of amounts appropriated for this  
20 specific purpose, the office of financial management must, by December  
21 1, 2012, submit a report to the legislature and the governor with an  
22 analysis and recommendations for reducing barriers to participation in  
23 state procurement by in-state businesses with fifty or fewer employees.  
24 At a minimum, the analysis and recommendations must address:

25 (i) The technical assistance needed by small businesses, including  
26 assistance with addressing barriers that result from experience  
27 requirements related to a contract;

28 (ii) Alternative methods for meeting any inventory level  
29 requirements related to a contract; and

30 (iii) Other qualifications for bidders that in-state small  
31 businesses identify as imposing barriers to participation in state  
32 procurement.

33 **Sec. 3.** RCW 28B.10.029 and 2010 c 61 s 1 are each amended to read  
34 as follows:

35 (1)(a) An institution of higher education may exercise  
36 independently those powers otherwise granted to the director of general  
37 administration in chapter 43.19 RCW in connection with the purchase and

1 disposition of all material, supplies, services, and equipment needed  
2 for the support, maintenance, and use of the respective institution of  
3 higher education.

4 (b) Property disposition policies followed by institutions of  
5 higher education shall be consistent with policies followed by the  
6 department of general administration.

7 (c) Purchasing policies and procedures followed by institutions of  
8 higher education shall be in compliance with chapters 39.19, 39.29, and  
9 43.03 RCW, and RCW 43.19.1901, section 2 of this act, 43.19.1906,  
10 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700  
11 through 43.19.704, and 43.19.560 through 43.19.637.

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

16 (e) The community and technical colleges shall comply with RCW  
17 43.19.450.

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

20 (g) If an institution of higher education can satisfactorily  
21 demonstrate to the director of the office of financial management that  
22 the cost of compliance is greater than the value of benefits from any  
23 of the following statutes, then it shall be exempt from them: RCW  
24 43.19.685, 43.19.534, and 43.19.637.

25 (h) Any institution of higher education that chooses to exercise  
26 independent purchasing authority for a commodity or group of  
27 commodities shall notify the director of general administration.  
28 Thereafter the director of general administration shall not be required  
29 to provide those services for that institution for the duration of the  
30 general administration contract term for that commodity or group of  
31 commodities.

32 (2) The council of presidents and the state board for community and  
33 technical colleges shall convene its correctional industries business  
34 development advisory committee, and work collaboratively with  
35 correctional industries, to:

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

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

3 (c) Develop recommendations on ways to continue to build  
4 correctional industries' business with institutions of higher  
5 education.

6 (3) Higher education and correctional industries shall develop a  
7 plan to build higher education business with correctional industries to  
8 increase higher education purchases of correctional industries  
9 products, based upon the criteria established in subsection (2) of this  
10 section. The plan shall include the correctional industries'  
11 production and sales goals for higher education and an approved list of  
12 products from which higher education institutions shall purchase, based  
13 on the criteria established in subsection (2) of this section. Higher  
14 education and correctional industries shall report to the legislature  
15 regarding the plan and its implementation no later than January 30,  
16 2005.

17 (4) Institutions of higher education shall set as a target to  
18 contract, beginning not later than June 30, 2006, to purchase one  
19 percent of the total goods and services required by the institutions  
20 each year produced or provided in whole or in part from class II inmate  
21 work programs operated by the department of corrections. Institutions  
22 of higher education shall set as a target to contract, beginning not  
23 later than June 30, 2008, to purchase two percent of the total goods  
24 and services required by the institutions each year produced or  
25 provided in whole or in part from class II inmate work programs  
26 operated by the department of corrections.

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

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 39.04 RCW  
2 to read as follows:

3        All contracts awarded under this chapter by the state are subject  
4 to the requirements established under section 2 of this act.

5        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 39.29 RCW  
6 to read as follows:

7        All contracts awarded under this chapter are subject to the  
8 requirements established under section 2 of this act.

9        **Sec. 6.**    RCW 43.19.1901 and 1987 c 434 s 23 are each amended to  
10 read as follows:

11        The term "purchase" as used in RCW 43.19.190 through 43.19.200, and  
12 as they may hereafter be amended, shall include leasing or renting(~~(+~~  
13 ~~PROVIDED, That~~)).    However, the purchasing, leasing, or renting of  
14 electronic data processing equipment shall not be included in the term  
15 "purchasing" if and when such transactions are otherwise expressly  
16 provided for by law, except that such purchasing, leasing, or renting  
17 is subject to section 2 of this act.

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

21        **Sec. 7.**    RCW 43.19.1905 and 2009 c 486 s 10 are each amended to  
22 read as follows:

23        (1) The director of general administration shall establish overall  
24 state policy for compliance by all state agencies, including  
25 educational institutions, regarding the following purchasing and  
26 material control functions:

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

29        (b) Determination where consolidations, closures, or additions of  
30 stores operated by state agencies and educational institutions should  
31 be initiated;

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

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

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

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

7 (g) Standardization of records and forms used statewide for supply  
8 system activities involving purchasing, receiving, inspecting, storing,  
9 requisitioning, and issuing functions, including a standard  
10 notification form for state agencies to report cost-effective direct  
11 purchases, which shall at least identify the price of the goods as  
12 available through the division of purchasing, the price of the goods as  
13 available from the alternative source, the total savings, and the  
14 signature of the notifying agency's director or the director's  
15 designee;

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

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

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

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

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

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

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

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

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

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

8 (r) Development of procedures for mutual and voluntary cooperation  
9 between state agencies, including educational institutions, and  
10 political subdivisions for exchange of purchasing and material control  
11 services;

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

15 (t) Development of guidelines and criteria for the purchase of  
16 vehicles, high gas mileage vehicles, alternate vehicle fuels and  
17 systems, equipment, and materials that reduce overall energy-related  
18 costs and energy use by the state, including investigations into all  
19 opportunities to aggregate the purchasing of clean technologies by  
20 state and local governments, and including the requirement that new  
21 passenger vehicles purchased by the state meet the minimum standards  
22 for passenger automobile fuel economy established by the United States  
23 secretary of transportation pursuant to the energy policy and  
24 conservation act (15 U.S.C. Sec. 2002);

25 (u) Development of goals for state use of recycled or  
26 environmentally preferable products through specifications for products  
27 and services, processes for requests for proposals and requests for  
28 qualifications, contractor selection, and contract negotiations;

29 (v) Development of procedures and policies implementing the bidding  
30 preference program provided for in section 2 of this act, with model  
31 bidding application documents that include, at a minimum, a request  
32 that bidders provide the location of the bidder's principal place of  
33 business, the residential addresses of its officers, and the number of  
34 its employment positions in Washington;

35 (w) Development of procurement policies and procedures, such as  
36 unbundled contracting and subcontracting, that encourage and facilitate  
37 the purchase of products and services by state agencies and



1 institutions from Washington small businesses to the maximum extent  
2 practicable and consistent with international trade agreement  
3 commitments;

4 ~~((w))~~ (x) Development of food procurement procedures and  
5 materials that encourage and facilitate the purchase of Washington  
6 grown food by state agencies and institutions to the maximum extent  
7 practicable and consistent with international trade agreement  
8 commitments; and

9 ~~((x))~~ (y) Development of policies requiring all food contracts to  
10 include a plan to maximize to the extent practicable and consistent  
11 with international trade agreement commitments the availability of  
12 Washington grown food purchased through the contract.

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

24 (3) The definitions in this subsection apply throughout this  
25 section and RCW 43.19.1908.

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

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

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

30 NEW SECTION. **Sec. 8.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

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