

SENATE BILL REPORT

SB 6572

As Reported By Senate Committee On:
Government Operations, February 1, 1996

Title: An act relating to the competitive bidding system.

Brief Description: Revising the competitive bid system.

Sponsors: Senators McDonald, Haugen, Heavey and West.

Brief History:

Committee Activity: Government Operations: 1/31/96, 2/1/96 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Majority Report: That Substitute Senate Bill No. 6572 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Sheldon, Vice Chair; Goings, Hale, Heavey, McCaslin and Winsley.

Staff: Rod McAulay (786-7754)

Background: The procurement of goods and services by the state is performed primarily by the Division of Purchasing in the General Administration Department. Procurement activity is governed by established procedures including requirements for soliciting bids, publishing specifications, receiving and opening sealed bids, and awarding contracts. Whenever there is reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the Division of Purchasing may call for new bids or enter into direct negotiations to achieve the best possible price. There is concern that the procedures are too permissive in allowing the state to negotiate with individual bidders after sealed bids have been opened and the participants are aware of the proposals of their competitors. It is asserted that post-opening negotiations undermine the integrity of the bidding procedure and turn the process into a virtual auction.

There is also concern that when measuring the level of minority and women's business enterprise participation for minority and women's businesses, which are acting as brokers or packagers of goods or services provided to the state by some other party, that the measure should be based upon the commission or fee paid to the minority and women owned business and not the total value of the goods or services provided.

Summary of Substitute Bill: In a solicitation by the state for goods and services, after competitive bids are opened, the award must be made to that responsible bidder who submitted the lowest responsive bid unless there is a compelling reason to reject all bids and cancel the solicitation. The state must make every effort to anticipate changes in a requirement before the date of bid opening, and notify all prospective bidders to allow modifications of bids without unnecessary exposure of bid prices. A solicitation may not be

canceled because of an increased requirement. The increase must be solicited as a separate contract. The cancellation of a solicitation after bid opening but prior to award of a contract is permitted in specified circumstances which must be determined by the agency division or department head. The responsibility of the agency division or department head may not be delegated.

After the opening of sealed bids, an agency may not reject all bids and enter into direct negotiations to complete the planned acquisition, but an agency can enter into negotiations exclusively with the lowest responsible bidder in order to determine if the lowest responsible bid may be improved. This authority may not be used to permit a bidder to change a nonresponsive bid into a responsive bid.

When measuring the level of minority and women's business enterprise participation in a state procurement contract, if the minority and women's business enterprise is acting as a broker of goods or services, only the fee or commission received by the minority and women's business enterprise is counted. The term "broker" is defined.

Substitute Bill Compared to Original Bill: The substitute expands the authority granted to agency heads to include division and department heads. A specific finding of collusion as a basis for rejecting all bids is deleted. A definition of "broker" is added. References to "packagers" with regard to measuring minority and women's business enterprise participation are deleted.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: A flaw in the current sealed bid process is corrected. The integrity of the procurement process is maintained. It is modeled on the federal system. The state is still given needed flexibility.

Testimony Against: Minority and Women's Business Enterprise participation measurement may undercut current mentor program.

Testified: Lincoln Ferris, Richard Oehler, Pat Koehler, Office of State Procurement (pro); Duke Schaub, AGC (pro).