
SUBSTITUTE SENATE BILL 6572

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators McDonald, Haugen, Heavey and West)

Read first time 02/02/96.

1 AN ACT Relating to the competitive bidding system; amending RCW
2 43.19.1911, 39.19.020, and 39.19.030; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
5 preserve the integrity of the competitive bidding system for state
6 contracts. This dictates that, after competitive bids have been
7 opened, the agency must award the contract to the responsible bidder
8 who submitted the lowest responsive bid and that only in limited
9 compelling circumstances may the agency reject all bids and cancel the
10 solicitation. Further, after opening the competitive bids, the agency
11 may not reject all bids and enter into direct negotiations with the
12 bidders to complete the acquisition.

13 **Sec. 2.** RCW 43.19.1911 and 1989 c 431 s 60 are each amended to
14 read as follows:

15 (~~When purchases are made through competitive bidding, the contract~~
16 ~~shall be let to~~) (1) Preservation of the integrity of the competitive
17 bid system dictates that after competitive bids have been opened, award
18 must be made to that responsible bidder who submitted the lowest

1 responsive bid pursuant to subsections (7) and (9) of this section,
2 unless there is a compelling reason to reject all bids and cancel the
3 solicitation.

4 (2) Every effort shall be made to anticipate changes in a
5 requirement before the date of opening and to provide reasonable notice
6 to all prospective bidders of any resulting modification or
7 cancellation. If, in the opinion of the purchasing agency, division,
8 or department head, it is not possible to provide reasonable notice,
9 the published date for receipt of bids may be postponed and all known
10 bidders notified. This will permit bidders to change their bids and
11 prevent unnecessary exposure of bid prices. In addition, every effort
12 shall be made to include realistic, achievable requirements in a
13 solicitation.

14 (3) After the opening of bids, a solicitation may not be canceled
15 and resolicited solely because of an increase in requirements for the
16 items being acquired. Award may be made on the initial solicitation
17 and an increase in requirements may be treated as a new acquisition.

18 (4) A solicitation may be canceled and all bids rejected before
19 award but after bid opening only when, consistent with subsection (1)
20 of this section, the purchasing agency, division, or department head
21 determines in writing that:

22 (a) Unavailable, inadequate, ambiguous specifications, terms,
23 conditions, or requirements were cited in the solicitation;

24 (b) Specifications, terms, conditions, or requirements have been
25 revised;

26 (c) The supplies or services being contracted for are no longer
27 required;

28 (d) The solicitation did not provide for consideration of all
29 factors of cost to the agency;

30 (e) Bids received indicate that the needs of the agency can be
31 satisfied by a less expensive article differing from that for which the
32 bids were invited;

33 (f) All otherwise acceptable bids received are at unreasonable
34 prices or only one bid is received and the agency cannot determine the
35 reasonableness of the bid price;

36 (g) No responsive bid has been received from a responsible bidder;
37 or

38 (h) The bid process was not fair or equitable.

1 (5) The agency, division, or department head may not delegate his
2 or her authority under this section.

3 (6) After the opening of bids, an agency may not reject all bids
4 and enter into direct negotiations to complete the planned acquisition.
5 However, the agency can enter into negotiations exclusively with the
6 lowest responsible bidder in order to determine if the lowest
7 responsible bid may be improved. An agency shall not use this
8 negotiation opportunity to permit a bidder to change a nonresponsive
9 bid into a responsive bid.

10 (7) In determining the lowest responsible bidder, ((subject to))
11 the agency shall consider any preferences provided by law to Washington
12 products and vendors and to RCW 43.19.704, ((taking)) and further, may
13 take into consideration the quality of the articles proposed to be
14 supplied, their conformity with specifications, the purposes for which
15 required, and the times of delivery((:—PROVIDED, That whenever there
16 is reason to believe that the lowest acceptable bid is not the best
17 price obtainable, all bids may be rejected and the division of
18 purchasing may call for new bids or enter into direct negotiations to
19 achieve the best possible price)).

20 (8) Each bid with the name of the bidder shall be entered of record
21 and each record, with the successful bid indicated, shall, after
22 letting of the contract, be open to public inspection.

23 (9) In determining "lowest responsible bidder", in addition to
24 price, the following elements shall be given consideration:

25 ((+1)) (a) The ability, capacity, and skill of the bidder to
26 perform the contract or provide the service required;

27 ((+2)) (b) The character, integrity, reputation, judgment,
28 experience, and efficiency of the bidder;

29 ((+3)) (c) Whether the bidder can perform the contract within the
30 time specified;

31 ((+4)) (d) The quality of performance of previous contracts or
32 services;

33 ((+5)) (e) The previous and existing compliance by the bidder with
34 laws relating to the contract or services;

35 ((+6)) (f) Such other information as may be secured having a
36 bearing on the decision to award the contract: PROVIDED, That in
37 considering bids for purchase, manufacture, or lease, and in
38 determining the "lowest responsible bidder," whenever there is reason
39 to believe that applying the "life cycle costing" technique to bid

1 evaluation would result in lowest total cost to the state, first
2 consideration shall be given by state purchasing activities to the bid
3 with the lowest life cycle cost which complies with specifications.
4 "Life cycle cost" means the total cost of an item to the state over its
5 estimated useful life, including costs of selection, acquisition,
6 operation, maintenance, and where applicable, disposal, as far as these
7 costs can reasonably be determined, minus the salvage value at the end
8 of its estimated useful life. The "estimated useful life" of an item
9 means the estimated time from the date of acquisition to the date of
10 replacement or disposal, determined in any reasonable manner. Nothing
11 in this section shall prohibit any state agency, department, board,
12 commission, committee, or other state-level entity from allowing for
13 preferential purchase of products made from recycled materials or
14 products that may be recycled or reused.

15 NEW SECTION. **Sec. 3.** It is the intent of the legislature to
16 ensure that the counting of the dollar value of an agency's or
17 educational institution's expenditures to certified minority and
18 women's business enterprises meaningfully reflects the actual financial
19 participation of the certified businesses.

20 **Sec. 4.** RCW 39.19.020 and 1987 c 328 s 2 are each amended to read
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1) "Advisory committee" means the advisory committee on minority
25 and women's business enterprises.

26 (2) "Broker" means a person that provides a bona fide service, such
27 as professional, technical, consultant, brokerage, or managerial
28 services and assistance in the procurement of essential personnel,
29 facilities, equipment, materials, or supplies required for performance
30 of a contract.

31 (3) "Director" means the director of the office of minority and
32 women's business enterprises.

33 (~~(3)~~) (4) "Educational institutions" means the state
34 universities, the regional universities, The Evergreen State College,
35 and the community colleges.

36 (~~(4)~~) (5) "Goals" means annual overall agency goals, expressed as
37 a percentage of dollar volume, for participation by minority and women-

1 owned and controlled businesses and shall not be construed as a minimum
2 goal for any particular contract or for any particular geographical
3 area. It is the intent of this chapter that such overall agency goals
4 shall be achievable and shall be met on a contract-by-contract or
5 class-of-contract basis.

6 ~~((+5))~~ (6) "Goods and/or services" includes professional services
7 and all other goods and services.

8 ~~((+6))~~ (7) "Office" means the office of minority and women's
9 business enterprises.

10 ~~((+7))~~ (8) "Person" includes one or more individuals,
11 partnerships, associations, organizations, corporations, cooperatives,
12 legal representatives, trustees and receivers, or any group of persons.

13 ~~((+8))~~ (9) "Procurement" means the purchase, lease, or rental of
14 any goods or services.

15 ~~((+9))~~ (10) "Public works" means all work, construction, highway
16 and ferry construction, alteration, repair, or improvement other than
17 ordinary maintenance, which a state agency or educational institution
18 is authorized or required by law to undertake.

19 ~~((+10))~~ (11) "State agency" includes the state of Washington and
20 all agencies, departments, offices, divisions, boards, commissions, and
21 correctional and other types of institutions.

22 **Sec. 5.** RCW 39.19.030 and 1989 c 175 s 85 are each amended to read
23 as follows:

24 There is hereby created the office of minority and women's business
25 enterprises. The governor shall appoint a director for the office,
26 subject to confirmation by the senate. The director may employ a
27 deputy director and a confidential secretary, both of which shall be
28 exempt under chapter 41.06 RCW, and such staff as are necessary to
29 carry out the purposes of this chapter.

30 The office shall consult with the minority and women's business
31 enterprises advisory committee to:

32 (1) Develop, plan, and implement programs to provide an opportunity
33 for participation by qualified minority and women-owned and controlled
34 businesses in public works and the process by which goods and services
35 are procured by state agencies and educational institutions from the
36 private sector;

37 (2) Develop a comprehensive plan insuring that qualified minority
38 and women-owned and controlled businesses are provided an opportunity

1 to participate in public contracts for public works and goods and
2 services;

3 (3) Identify barriers to equal participation by qualified minority
4 and women-owned and controlled businesses in all state agency and
5 educational institution contracts;

6 (4) Establish annual overall goals for participation by qualified
7 minority and women-owned and controlled businesses for each state
8 agency and educational institution to be administered on a contract-by-
9 contract basis or on a class-of-contracts basis;

10 (5) Develop and maintain a central minority and women's business
11 enterprise certification list for all state agencies and educational
12 institutions. No business is entitled to certification under this
13 chapter unless it meets the definition of small business concern as
14 established by the office. All applications for certification under
15 this chapter shall be sworn under oath;

16 (6) Develop, implement, and operate a system of monitoring
17 compliance with this chapter;

18 (7) Adopt rules under chapter 34.05 RCW, the Administrative
19 Procedure Act, governing: (a) Establishment of agency goals; (b)
20 development and maintenance of a central minority and women's business
21 enterprise certification program, including a definition of "small
22 business concern" which shall be consistent with the small business
23 requirements defined under section 3 of the Small Business Act, 15
24 U.S.C. Sec. 632, and its implementing regulations as guidance; (c)
25 procedures for monitoring and enforcing compliance with goals,
26 regulations, contract provisions, and this chapter; ~~((and))~~ (d)
27 utilization of standard clauses by state agencies and educational
28 institutions, as specified in RCW 39.19.050; and (e) determination of
29 an agency's or educational institution's goal attainment consistent
30 with the limitations of section 6 of this act;

31 (8) Submit an annual report to the governor and the legislature
32 outlining the progress in implementing this chapter;

33 (9) Investigate complaints of violations of this chapter with the
34 assistance of the involved agency or educational institution; and

35 (10) Cooperate and act jointly or by division of labor with the
36 United States or other states, and with political subdivisions of the
37 state of Washington and their respective minority, socially and
38 economically disadvantaged and women business enterprise programs to
39 carry out the purposes of this chapter. However, the power which may

1 be exercised by the office under this subsection permits investigation
2 and imposition of sanctions only if the investigation relates to a
3 possible violation of chapter 39.19 RCW, and not to violation of local
4 ordinances, rules, regulations, however denominated, adopted by
5 political subdivisions of the state.

6 NEW SECTION. **Sec. 6.** For purposes of measuring an agency's or
7 educational institution's goal attainment, any regulations adopted
8 under RCW 39.19.030(7)(e) must provide that if a certified minority and
9 women's business enterprise is a broker of goods or materials required
10 under a contract, the contracting agency or educational institution may
11 count only the dollar value of the fee or commission charged and not
12 the value of goods or materials provided. The contracting agency or
13 educational institution may, at its discretion, fix the dollar value of
14 the fee or commission charged at either the actual dollar value of the
15 fee or commission charged or at a standard percentage of the total
16 value of the brokered goods, which percentage must reflect the fees or
17 commissions generally paid to brokers for providing such services.

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