
SENATE BILL 6572

State of Washington

54th Legislature

1996 Regular Session

By Senators McDonald, Haugen, Heavey and West

Read first time 01/18/96. Referred to Committee on Government Operations.

1 AN ACT Relating to the competitive bidding system; amending RCW
2 43.19.1911 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 subsection (4)(e) and (g) 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 notify all prospective
6 bidders of any resulting modification or cancellation. This will
7 permit bidders to change their bids and prevent unnecessary exposure of
8 bid prices. In addition, every effort shall be made to include
9 realistic, achievable requirements in a solicitation.

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

14 (4) A solicitation may be canceled and all bids rejected before
15 award but after bid opening only when, consistent with subsection (1)
16 of this section, the agency head determines in writing that:

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

19 (b) Specifications, terms, conditions, or requirements have been
20 revised;

21 (c) The supplies or services being contracted for are no longer
22 required;

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

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

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

31 (g) The bids were not independently arrived at in open competition,
32 were collusive, or were submitted in bad faith;

33 (h) No responsive bid has been received from a responsible bidder;
34 or

35 (i) The bid process was not fair or equitable.

36 (5) The agency head may not delegate his or her authority under
37 this section.

38 (6) After the opening of bids, an agency may not reject all bids
39 and enter into direct negotiations to complete the planned acquisition.

1 However, the agency can enter into negotiations exclusively with the
2 lowest responsible bidder in order to determine if the lowest
3 responsible bid may be improved. An agency shall not use this
4 negotiation opportunity to permit a bidder to change a nonresponsive
5 bid into a responsive bid.

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

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

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

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

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

25 ((+3)) (c) Whether the bidder can perform the contract within the
26 time specified;

27 ((+4)) (d) The quality of performance of previous contracts or
28 services;

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

31 ((+6)) (f) Such other information as may be secured having a
32 bearing on the decision to award the contract: PROVIDED, That in
33 considering bids for purchase, manufacture, or lease, and in
34 determining the "lowest responsible bidder," whenever there is reason
35 to believe that applying the "life cycle costing" technique to bid
36 evaluation would result in lowest total cost to the state, first
37 consideration shall be given by state purchasing activities to the bid
38 with the lowest life cycle cost which complies with specifications.
39 "Life cycle cost" means the total cost of an item to the state over its

1 estimated useful life, including costs of selection, acquisition,
2 operation, maintenance, and where applicable, disposal, as far as these
3 costs can reasonably be determined, minus the salvage value at the end
4 of its estimated useful life. The "estimated useful life" of an item
5 means the estimated time from the date of acquisition to the date of
6 replacement or disposal, determined in any reasonable manner. Nothing
7 in this section shall prohibit any state agency, department, board,
8 commission, committee, or other state-level entity from allowing for
9 preferential purchase of products made from recycled materials or
10 products that may be recycled or reused.

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

16 **Sec. 4.** RCW 39.19.030 and 1989 c 175 s 85 are each amended to read
17 as follows:

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

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

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

31 (2) Develop a comprehensive plan insuring that qualified minority
32 and women-owned and controlled businesses are provided an opportunity
33 to participate in public contracts for public works and goods and
34 services;

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

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

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

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

13 (7) Adopt rules under chapter 34.05 RCW, the Administrative
14 Procedure Act, governing: (a) Establishment of agency goals; (b)
15 development and maintenance of a central minority and women's business
16 enterprise certification program, including a definition of "small
17 business concern" which shall be consistent with the small business
18 requirements defined under section 3 of the Small Business Act, 15
19 U.S.C. Sec. 632, and its implementing regulations as guidance; (c)
20 procedures for monitoring and enforcing compliance with goals,
21 regulations, contract provisions, and this chapter; ((and)) (d)
22 utilization of standard clauses by state agencies and educational
23 institutions, as specified in RCW 39.19.050; and (e) determination of
24 an agency's or educational institution's goal attainment, the
25 implementing regulations shall provide that, where a certified minority
26 and women's business enterprise is a broker or a packager of goods or
27 materials required under a contract, only the dollar value of the fee
28 or commission charged by the certified business to broker or package
29 the goods or materials will be counted towards the agency's or
30 educational institution's goal attainment;

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.

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