

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1439

Chapter 363, Laws of 2006

(partial veto)

59th Legislature
2006 Regular Session

GENERAL ADMINISTRATION--ELECTRONIC BIDDING

EFFECTIVE DATE: 6/7/06

Passed by the House March 6, 2006
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 3, 2006
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved March 31, 2006, with the
exception of sections 4, 5 and 6, which
are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk
of the House of Representatives of
the State of Washington, do hereby
certify that the attached is **HOUSE
BILL 1439** as passed by the House
of Representatives and the Senate
on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

March 31, 2006 - 9:09 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 1439

AS AMENDED BY THE SENATE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Representatives Green, Nixon, Haigh, Upthegrove, Chase and Dunn;
by request of Department of General Administration

Read first time 01/24/2005. Referred to Committee on State
Government Operations & Accountability.

1 AN ACT Relating to electronic and web-based bidding; amending RCW
2 43.19.1906, 43.19.1908, and 43.19.1911; adding a new section to chapter
3 39.04 RCW; adding a new section to chapter 39.29 RCW; and adding a new
4 section to chapter 43.105 RCW.

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

6 **Sec. 1.** RCW 43.19.1906 and 2002 c 332 s 4 are each amended to read
7 as follows:

8 Insofar as practicable, all purchases and sales shall be based on
9 competitive bids, and a formal sealed, electronic, or web-based bid
10 procedure, subject to RCW 43.19.1911, shall be used as standard
11 procedure for all purchases and contracts for purchases and sales
12 executed by the state purchasing and material control director and
13 under the powers granted by RCW 43.19.190 through 43.19.1939. This
14 requirement also applies to purchases and contracts for purchases and
15 sales executed by agencies, including educational institutions, under
16 delegated authority granted in accordance with provisions of RCW
17 43.19.190 or under RCW 28B.10.029. However, formal sealed, electronic,
18 or web-based competitive bidding is not necessary for:

1 (1) Emergency purchases made pursuant to RCW 43.19.200 if the
2 sealed bidding procedure would prevent or hinder the emergency from
3 being met appropriately;

4 (2) Purchases not exceeding thirty-five thousand dollars, or
5 subsequent limits as calculated by the office of financial management:
6 PROVIDED, That the state director of general administration shall
7 establish procedures to assure that purchases made by or on behalf of
8 the various state agencies shall not be made so as to avoid the thirty-
9 five thousand dollar bid limitation, or subsequent bid limitations as
10 calculated by the office of financial management: PROVIDED FURTHER,
11 That the state purchasing and material control director is authorized
12 to reduce the formal sealed bid limits of thirty-five thousand dollars,
13 or subsequent limits as calculated by the office of financial
14 management, to a lower dollar amount for purchases by individual state
15 agencies if considered necessary to maintain full disclosure of
16 competitive procurement or otherwise to achieve overall state
17 efficiency and economy in purchasing and material control. Quotations
18 from three thousand dollars to thirty-five thousand dollars, or
19 subsequent limits as calculated by the office of financial management,
20 shall be secured from at least three vendors to assure establishment of
21 a competitive price and may be obtained by telephone or written
22 quotations, or both. The agency shall invite at least one quotation
23 each from a certified minority and a certified women-owned vendor who
24 shall otherwise qualify to perform such work. Immediately after the
25 award is made, the bid quotations obtained shall be recorded and open
26 to public inspection and shall be available by telephone inquiry. A
27 record of competition for all such purchases from three thousand
28 dollars to thirty-five thousand dollars, or subsequent limits as
29 calculated by the office of financial management, shall be documented
30 for audit purposes. Purchases up to three thousand dollars may be made
31 without competitive bids based on buyer experience and knowledge of the
32 market in achieving maximum quality at minimum cost;

33 (3) Purchases which are clearly and legitimately limited to a
34 single source of supply and purchases involving special facilities,
35 services, or market conditions, in which instances the purchase price
36 may be best established by direct negotiation;

37 (4) Purchases of insurance and bonds by the risk management
38 division under RCW 43.41.310;

1 (5) Purchases and contracts for vocational rehabilitation clients
2 of the department of social and health services: PROVIDED, That this
3 exemption is effective only when the state purchasing and material
4 control director, after consultation with the director of the division
5 of vocational rehabilitation and appropriate department of social and
6 health services procurement personnel, declares that such purchases may
7 be best executed through direct negotiation with one or more suppliers
8 in order to expeditiously meet the special needs of the state's
9 vocational rehabilitation clients;

10 (6) Purchases by universities for hospital operation or biomedical
11 teaching or research purposes and by the state purchasing and material
12 control director, as the agent for state hospitals as defined in RCW
13 72.23.010, and for health care programs provided in state correctional
14 institutions as defined in RCW 72.65.010(3) and veterans' institutions
15 as defined in RCW 72.36.010 and 72.36.070, made by participating in
16 contracts for materials, supplies, and equipment entered into by
17 nonprofit cooperative hospital group purchasing organizations;

18 (7) Purchases for resale by institutions of higher education to
19 other than public agencies when such purchases are for the express
20 purpose of supporting instructional programs and may best be executed
21 through direct negotiation with one or more suppliers in order to meet
22 the special needs of the institution;

23 (8) Purchases by institutions of higher education not exceeding
24 thirty-five thousand dollars: PROVIDED, That for purchases between
25 three thousand dollars and thirty-five thousand dollars quotations
26 shall be secured from at least three vendors to assure establishment of
27 a competitive price and may be obtained by telephone or written
28 quotations, or both. For purchases between three thousand dollars and
29 thirty-five thousand dollars, each institution of higher education
30 shall invite at least one quotation each from a certified minority and
31 a certified women-owned vendor who shall otherwise qualify to perform
32 such work. A record of competition for all such purchases made from
33 three thousand to thirty-five thousand dollars shall be documented for
34 audit purposes; and

35 (9) Negotiation of a contract by the department of transportation,
36 valid until June 30, 2001, with registered tow truck operators to
37 provide roving service patrols in one or more Washington state patrol
38 tow zones whereby those registered tow truck operators wishing to

1 participate would cooperatively, with the department of transportation,
2 develop a demonstration project upon terms and conditions negotiated by
3 the parties.

4 Beginning on July 1, 1995, and on July 1 of each succeeding odd-
5 numbered year, the dollar limits specified in this section shall be
6 adjusted as follows: The office of financial management shall
7 calculate such limits by adjusting the previous biennium's limits by
8 the appropriate federal inflationary index reflecting the rate of
9 inflation for the previous biennium. Such amounts shall be rounded to
10 the nearest one hundred dollars. However, the three thousand dollar
11 figure in subsections (2) and (8) of this section may not be adjusted
12 to exceed five thousand dollars.

13 **Sec. 2.** RCW 43.19.1908 and 1994 c 300 s 2 are each amended to read
14 as follows:

15 Competitive bidding required by RCW 43.19.190 through 43.19.1939
16 shall be solicited by public notice, and through the sending of notices
17 by mail, electronic transmission, or other means to bidders on the
18 appropriate list of bidders who shall have qualified by application to
19 the division of purchasing. Bids may be solicited by the purchasing
20 division from any source thought to be of advantage to the state. All
21 bids shall be in (~~writing~~) written or electronic form and conform to
22 rules of the division of purchasing.

23 **Sec. 3.** RCW 43.19.1911 and 2005 c 204 s 5 are each amended to read
24 as follows:

25 (1) Preservation of the integrity of the competitive bid system
26 dictates that after competitive bids have been opened, award must be
27 made to that responsible bidder who submitted the lowest responsive bid
28 pursuant to subsections (7) and (9) of this section, unless there is a
29 compelling reason to reject all bids and cancel the solicitation.

30 (2) Every effort shall be made to anticipate changes in a
31 requirement before the date of opening and to provide reasonable notice
32 to all prospective bidders of any resulting modification or
33 cancellation. If, in the opinion of the purchasing agency, division,
34 or department head, it is not possible to provide reasonable notice,
35 the published date for receipt of bids may be postponed and all known
36 bidders notified. This will permit bidders to change their bids and

1 prevent unnecessary exposure of bid prices. In addition, every effort
2 shall be made to include realistic, achievable requirements in a
3 solicitation.

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

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

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

14 (b) Specifications, terms, conditions, or requirements have been
15 revised;

16 (c) The supplies or services being contracted for are no longer
17 required;

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

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

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

26 (g) No responsive bid has been received from a responsible bidder;
27 or

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

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

31 (6) After the opening of bids, an agency may not reject all bids
32 and enter into direct negotiations to complete the planned acquisition.
33 However, the agency can enter into negotiations exclusively with the
34 lowest responsible bidder in order to determine if the lowest
35 responsible bid may be improved. Until December 31, 2009, for
36 purchases requiring a formal bid process the agency shall also enter
37 into negotiations with and may consider for award the lowest

1 responsible bidder that is a vendor in good standing, as defined in RCW
2 43.19.525. An agency shall not use this negotiation opportunity to
3 permit a bidder to change a nonresponsive bid into a responsive bid.

4 (7) In determining the lowest responsible bidder, the agency shall
5 consider any preferences provided by law to Washington products and
6 vendors and to RCW 43.19.704, and further, may take into consideration
7 the quality of the articles proposed to be supplied, their conformity
8 with specifications, the purposes for which required, and the times of
9 delivery.

10 (8) Each bid with the name of the bidder shall be entered of record
11 and each record, with the successful bid indicated, shall, after
12 letting of the contract, be open to public inspection. Bid prices
13 shall not be disclosed during electronic or web-based bidding before
14 the letting of the contract.

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

17 (a) The ability, capacity, and skill of the bidder to perform the
18 contract or provide the service required;

19 (b) The character, integrity, reputation, judgment, experience, and
20 efficiency of the bidder;

21 (c) Whether the bidder can perform the contract within the time
22 specified;

23 (d) The quality of performance of previous contracts or services;

24 (e) The previous and existing compliance by the bidder with laws
25 relating to the contract or services;

26 (f) Such other information as may be secured having a bearing on
27 the decision to award the contract: PROVIDED, That in considering bids
28 for purchase, manufacture, or lease, and in determining the "lowest
29 responsible bidder," whenever there is reason to believe that applying
30 the "life cycle costing" technique to bid evaluation would result in
31 lowest total cost to the state, first consideration shall be given by
32 state purchasing activities to the bid with the lowest life cycle cost
33 which complies with specifications. "Life cycle cost" means the total
34 cost of an item to the state over its estimated useful life, including
35 costs of selection, acquisition, operation, maintenance, and where
36 applicable, disposal, as far as these costs can reasonably be
37 determined, minus the salvage value at the end of its estimated useful
38 life. The "estimated useful life" of an item means the estimated time

1 from the date of acquisition to the date of replacement or disposal,
2 determined in any reasonable manner. Nothing in this section shall
3 prohibit any state agency, department, board, commission, committee, or
4 other state-level entity from allowing for preferential purchase of
5 products made from recycled materials or products that may be recycled
6 or reused.

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

9 (1) *Any state agency, city with a population greater than one*
10 *hundred thousand, or counties with a population greater than five*
11 *hundred thousand executing public works using a competitive bidding*
12 *process cannot reject all bids after opening unless there is a*
13 *compelling reason.*

14 (2) *Every effort shall be made to anticipate changes in a*
15 *requirement before the date of opening and to provide reasonable notice*
16 *to all prospective bidders of any resulting modification or*
17 *cancellation. If, in the opinion of the director or agency head or the*
18 *appropriate city or county contract authority, it is not possible to*
19 *provide reasonable notice, the published date for receipt of bids may*
20 *be postponed and all known bidders notified. This will permit bidders*
21 *to change their bids and prevent unnecessary exposure of bid prices.*
22 *In addition, every effort shall be made to include realistic,*
23 *achievable requirements in a bid solicitation.*

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

28 (4) *A solicitation may be canceled and all bids rejected before*
29 *award but after bid opening only when, consistent with subsection (1)*
30 *of this section, the state, city, or county determines in writing that:*

31 (a) *Unavailable, inadequate, ambiguous specifications, terms,*
32 *conditions, or requirements were cited in the solicitation;*

33 (b) *Specifications, terms, conditions, or requirements have been*
34 *revised;*

35 (c) *The services being contracted for are no longer required;*

36 (d) *The solicitation did not provide for consideration of all*
37 *factors of cost to the agency, city, or county;*

1 (e) Bids received indicate that the needs of the state, city, or
2 county can be satisfied by a less expensive article differing from that
3 for which the bids were invited;

4 (f) All otherwise acceptable bids received are at unreasonable
5 prices or only one bid is received and the agency, city, or county
6 cannot determine the reasonableness of the bid price;

7 (g) No responsive bid has been received from a responsible bidder;
8 or

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

10 (5) The state agency head or city or county contract authority may
11 not delegate his or her authority under this section.

*Sec. 4 was vetoed. See message at end of chapter.

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

14 (1) Any agency or institution of state government procuring
15 personal services using a competitive solicitation process cannot
16 reject all solicitations after opening unless there is a compelling
17 reason.

18 (2) Every effort shall be made to anticipate changes in a
19 requirement before the date of opening and to provide reasonable notice
20 to all prospective bidders of any resulting modification or
21 cancellation. If, in the opinion of the director or agency head, it is
22 not possible to provide reasonable notice, the published date for
23 receipt of bids may be postponed and all known bidders notified. This
24 will permit bidders to change their bids and prevent unnecessary
25 exposure of bid prices. In addition, every effort shall be made to
26 include realistic, achievable requirements in a solicitation.

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

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

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

36 (b) Specifications, terms, conditions, or requirements have been
37 revised;

- 1 (c) The services being contracted for are no longer required;
- 2 (d) The solicitation did not provide for consideration of all
- 3 factors of cost to the agency;
- 4 (e) Bids received indicate that the needs of the agency can be
- 5 satisfied by a less expensive article differing from that for which the
- 6 bids were invited;
- 7 (f) All otherwise acceptable bids received are at unreasonable
- 8 prices or only one bid is received and the agency cannot determine the
- 9 reasonableness of the bid price;
- 10 (g) No responsive bid has been received from a responsible bidder;
- 11 or
- 12 (h) The bid process was not fair or equitable.
- 13 (5) The agency head may not delegate his or her authority under
- 14 this section.

*Sec. 5 was vetoed. See message at end of chapter.

15 *NEW SECTION. Sec. 6. A new section is added to chapter 43.105 RCW

16 to read as follows:

17 (1) The board, or other agencies and institutions of state

18 government the board delegates authority to, when purchasing, leasing,

19 renting, or otherwise acquiring, disposing of, or maintaining

20 equipment, proprietary software, or purchased services using a

21 competitive bidding process cannot reject all bids and cancel the

22 solicitation after the bid opening unless there is a compelling reason.

23 (2) Every effort shall be made to anticipate changes in a

24 requirement before the date of opening and to provide reasonable notice

25 to all prospective bidders of any resulting modification or

26 cancellation. If, in the opinion of the director or purchasing agency

27 head, it is not possible to provide reasonable notice, the published

28 date for receipt of bids may be postponed and all known bidders

29 notified. This will permit bidders to change their bids and prevent

30 unnecessary exposure of bid prices. In addition, every effort shall be

31 made to include realistic, achievable requirements in a solicitation.

32 (3) After the opening of bids, a solicitation may not be canceled

33 and resolicited solely because of an increase in requirements for the

34 items being acquired. Award may be made on the initial solicitation

35 and an increase in requirements may be treated as a new acquisition.

36 (4) A solicitation may be canceled and all bids rejected before

1 *award but after bid opening only when, consistent with subsection (1)*
2 *of this section, the board or purchasing agency, determines in writing*
3 *that:*

4 *(a) Unavailable, inadequate, ambiguous specifications, terms,*
5 *conditions, or requirements were cited in the solicitation;*

6 *(b) Specifications, terms, conditions, or requirements have been*
7 *revised;*

8 *(c) The supplies or services being contracted for are no longer*
9 *required;*

10 *(d) The solicitation did not provide for consideration of all*
11 *factors of cost to the board or agency;*

12 *(e) Bids received indicate that the needs of the board or agency*
13 *can be satisfied by a less expensive article differing from that for*
14 *which the bids were invited;*

15 *(f) All otherwise acceptable bids received are at unreasonable*
16 *prices or only one bid is received and the board or agency cannot*
17 *determine the reasonableness of the bid price;*

18 *(g) No responsive bid has been received from a responsible bidder;*
19 *or*

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

21 *(5) The agency head may not delegate his or her authority under*
22 *this section.*

**Sec. 6 was vetoed. See message at end of chapter.*

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 31, 2006, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 31, 2006.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Sections 4, 5 and 6,
House Bill No. 1439 entitled:

"AN ACT Relating to electronic and web-based bidding."

The Department of General Administration (Department) generally
awards contracts through a competitive, formal, sealed bid process.
Under House Bill No. 1439 the Department would be allowed to receive
bids electronically or through the web. This is a step in the right
direction. I support changes that will make the existing,
complicated procurement process easier to manage and use.

However, Sections 4, 5, and 6 of the bill restrict cancellation
of the bidding process and re-bidding on public works, personal
service, and information technology related contracts. This bill
takes cancellation language related to purchased goods and services
contract bidding procedures and tries to apply it to other types of
contracts, like public works contracts. Yet, there are significant
differences between these contracting procedures. While the sealed
bid process for purchased goods and services contracts focuses

primarily on price, public works and personal service contracts address several factors including price, ability to do the work, vendor qualifications, and prior vendor experience. I am therefore concerned about the impact of Sections 4, 5 and 6.

I do not look favorably on agencies irresponsibly canceling all bids after bid opening and commencing a re-bidding process. Contractors spend too much time and effort on preparing bids to have them cancelled simply because an agency is trying to "price" a project. This is too important an issue to be addressed through language that does not comprehensively address the complex differences between our contracting processes.

As such, I am vetoing Sections 4, 5, and 6. I urge the Legislature to revisit this issue with input from all stakeholders, cities, counties, and the business community, and to propose cancellation language appropriate for our state's contracting system.

For these reasons, I have vetoed Sections 4, 5 and 6 of House Bill No. 1439.

With the exception of Sections 4, 5 and 6 of House Bill No. 1439 is approved."