

SENATE BILL REPORT

E2SHB 1096

As of February 19, 2010

Title: An act relating to enhancing small business participation in state purchasing.

Brief Description: Enhancing small business participation in state purchasing.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins and Moeller).

Brief History: Passed House: 2/13/10, 84-10.

Committee Activity: Economic Development, Trade & Innovation:

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

Staff: Jack Brummel (786-7428)

Background: The Department of General Administration (GA) establishes overall state policy for state purchasing, and contracts with individuals and companies outside of state government to provide goods and services to the state. Under delegated authority, other state agencies and the institutions of higher education also contract for goods and services. The state's purchasing authority is generally organized into categories based on the type of service. Among these categories are:

- Purchased Goods and Services. These goods and services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- Personal Services. This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- Information Services. These services include data processing, telecommunications, office automation, and computerized information systems.
- Printing Services. This term refers to the production of the state's printed materials.

Except in specific circumstances, Washington law does not provide preferences to bidders who are in-state. The statutory exceptions include:

- Ferries. In Washington, the Department of Transportation's bid documents for jumbo ferries must include a requirement that the vessels be constructed within Washington, with exceptions for certain equipment and systems.
- Washington-grown Food for Schools. School districts are authorized to implement policies to maximize the purchases of Washington-grown food. Such policies may include permitting a percentage price preference for Washington-grown food.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- In-state Printing. Printing for state agencies must be done within Washington, unless the work cannot be executed in state or the lowest in-state bid exceeds the customary charges in the private sector.

In addition to these in-state preferences, GA is required to identify other states that provide in-state preferences to their own bidders. If a bidder from one of those states submits a bid for a state contract in Washington, GA may add a percentage increase to that bidder's proposal. This increase is used only to evaluate the bid and is not paid to any supplier whose bid is accepted.

State procurement laws that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are (1) invalid exercises of state power under the federal Commerce Clause; (2) preempted by federal statute or in violation of international agreements on government procurement; or (3) in violation of Equal Protection/Privileges and Immunities clauses.

Summary of Bill: To the extent consistent with international trade agreement commitments and federal law, GA and the departments of Information Services and Transportation, must, between October 31, 2010, and July 1, 2014, give a 5 percent preference for small business bidders and a preference of up to 5 percent to other Washington bidders that provide for small business participation in the contract. The agencies are required to assist small businesses by:

- providing technical assistance to mitigate experience barriers related to a contract;
- allowing alternative methods to meet any inventory level requirements related to a contract; and
- assisting with qualification applications required for bidding.

Small business is defined as an in-state business that is either: (1) certified by the Office of Minority and Women's Business Enterprises, or (2) has fewer than 51 employees or less than \$7 million in annual gross revenues.

Businesses that obtain a bidding preference based on false information are subject to penalties. The Small Business Bidding Preference Account is created and funded with receipts from civil penalties. The account is a nonappropriated account from which the purchasing agencies may request funding to be used to defray the costs of adjudications under the small business bidding preference program.

The purchasing agencies, in consultation with each other, must adopt rules to implement the bidding preference requirements. GA is to report each December on the small business bidding preference program. The program expires December 31, 2014.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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