
SECOND SUBSTITUTE HOUSE BILL 1096

State of Washington

61st Legislature

2010 Regular Session

By House General Government Appropriations (originally sponsored by Representatives Hasegawa, Green, Kenney, Chase, Hudgins, and Moeller)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 39.29.050 and 43.19.1901; adding a new section
3 to chapter 43.19 RCW; creating a new section; prescribing penalties;
4 and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
7 state's economic interest and serves a public purpose to promote and
8 facilitate the fullest possible participation by Washington businesses
9 of all sizes in the process by which goods and services are purchased
10 by the state. The legislature further finds that large businesses have
11 the resources to participate fully and effectively in the state's
12 purchasing system, and because of many factors, including economies of
13 scale, the purchasing system tends to create a preference in favor of
14 large businesses and to disadvantage small businesses. The legislature
15 intends, therefore, to assist, to the maximum extent possible, small
16 businesses to participate in order to enhance and preserve competitive
17 enterprise and to ensure that small businesses have a fair opportunity
18 to be awarded contracts or subcontracts for goods and services
19 purchased by the state.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.19 RCW
2 to read as follows:

3 (1) To facilitate the participation of small business in the
4 provision of goods and services purchased by the department of general
5 administration, the department of information services, and the
6 department of transportation, for the use of the respective purchasing
7 agency, including purchases under chapters 39.29 and 43.105 RCW, the
8 state purchasing and material control director, under the powers
9 granted by RCW 43.19.190 through 43.19.1939, and the departments of
10 information services and transportation, as applicable, must:

11 (a) Apply a preference in the award of contracts for goods and
12 services as follows:

13 (i) A preference to small business bidders that is seven percent of
14 the lowest responsible bidder meeting specifications; and

15 (ii) A preference to in-state business bidders that are not small
16 businesses but who provide for small business subcontractor
17 participation in the contract that may be up to seven percent of the
18 lowest responsible bidder meeting specifications, determined according
19 to rules adopted by the department of general administration;

20 (b) Give assistance to small businesses by:

21 (i) Providing technical assistance that would be reasonably
22 expected to mitigate barriers that result from experience requirements
23 related to the contract;

24 (ii) Allowing for alternative methods for meeting any inventory
25 level requirements related to the contract; and

26 (iii) Assisting small businesses with the qualification application
27 required under RCW 43.19.1908.

28 (2) Small business bidders qualified under this chapter shall have
29 precedence over other business bidders so that the application of any
30 bidder preference for which another business bidder may be eligible by
31 law does not result in the denial of the contract award to a small
32 business bidder. This subsection applies if the small business bidder
33 is the lowest responsible bidder, as well as if the small business is
34 eligible for the contract award as the result of the small business
35 bidder preference applied under this section.

36 (3) The preferences under subsection (1)(a) of this section may not
37 be awarded to a noncompliant bidder and may not be used to achieve any

1 applicable minimum bidding requirements. The preferences may be used
2 only in evaluating bids or proposals for awards. In no instance may
3 the increase be paid to a bidder whose bid is accepted.

4 (4) This section applies to the department of general
5 administration's purchases of goods and services to the maximum extent
6 consistent with international trade agreement commitments.

7 (5)(a) A business that is given the preference provided for in this
8 section based on false information, including false information
9 provided or other information withheld, and which by reason of the
10 information has been awarded a contract to which it would not otherwise
11 have been entitled:

12 (i) Must pay the state an assessment equal to the difference
13 between the contract amount and what the state's cost would have been
14 if the contract had been properly awarded;

15 (ii) In addition to the amount specified in this subsection (5)(a)
16 and except as provided in (b) of this subsection, must pay a civil
17 penalty of ten percent of the amount of the contract involved or one
18 thousand dollars, whichever is less; and

19 (iii) Is ineligible to directly or indirectly transact any business
20 with the state for a period of not less than six months and not more
21 than three years, as determined by the director of general
22 administration. This ineligibility shall apply to the principals of
23 the business and any subsequent businesses formed by those principals.

24 (b) In addition to being subject to the penalties under (a)(i) and
25 (iii) of this subsection, a business that knowingly and with intent to
26 defraud makes a false statement or fails to provide or conceals, or
27 attempts to conceal, material information for the purpose of obtaining,
28 or aiding another in obtaining, a preference under this section is
29 subject to a civil penalty of ten percent of the amount of the contract
30 involved or ten thousand dollars, whichever is greater.

31 (c)(i) A business subject to sanction under this subsection may
32 request, within thirty days of the date of issuance of the notice of
33 sanction, a hearing conducted pursuant to chapter 34.05 RCW.

34 (ii) If a business fails to pay an assessment or civil penalty
35 after it has become final and not subject to further appeal, or after
36 the court has entered final judgment in favor of the state, the
37 attorney general may recover the assessment or penalty by action in the

1 appropriate superior court. In such action, the validity and
2 appropriateness of the final order imposing the assessment or penalty
3 shall not be subject to review.

4 (6) As used in this section:

5 (a) "In-state business" means a business that has its principal
6 office located in Washington and its officers domiciled in Washington.

7 (b) "Small business" means an in-state business, including a sole
8 proprietorship, corporation, partnership, or other legal entity, that
9 certifies, under penalty of perjury, that it is owned and operated
10 independently from all other businesses and has either (i) fifty or
11 fewer employees, or (ii) a gross revenue of less than seven million
12 dollars annually as reported on its federal income tax return or its
13 return filed with the department of revenue over the previous three
14 consecutive years. As used in this subsection, "in-state business"
15 means a business that has its principal office located in Washington
16 and its officers domiciled in Washington.

17 (7) The department of general administration shall adopt rules
18 necessary to implement this section.

19 (8) Each December 1st, beginning with a preliminary report on
20 December 1, 2010, the department of general administration shall report
21 to the governor and the appropriate committees of the legislature on
22 the preference program under this section. Annual reports must include
23 information about the program's progress in increasing the number of
24 small businesses participating in state contracts, the number of
25 contracts under which preferences were given, and the characteristics
26 of small businesses that participated in the program.

27 (9) This section applies to contracts awarded on or after November
28 1, 2010, but before July 1, 2014.

29 (10) This section expires December 31, 2014.

30 **Sec. 3.** RCW 39.29.050 and 1983 c 120 s 12 are each amended to read
31 as follows:

32 All contracts entered into under this chapter (~~on or after~~
33 ~~September 1, 1983,~~) are subject to the requirements established under:

34 (1) Section 2 of this act, with respect to the department of
35 general administration; and

36 (2) On or after September 1, 1983, chapter 39.19 RCW.

1 **Sec. 4.** RCW 43.19.1901 and 1987 c 434 s 23 are each amended to
2 read as follows:

3 The term "purchase" as used in RCW 43.19.190 through 43.19.200, and
4 as they may hereafter be amended, shall include leasing or renting(~~(+~~
5 ~~PROVIDED, That~~)). However, the purchasing, leasing, or renting of
6 electronic data processing equipment shall not be included in the term
7 "purchasing" if and when such transactions are otherwise expressly
8 provided for by law, except that such purchasing, leasing, or renting
9 by the department of general administration is subject to section 2 of
10 this act.

11 (~~The acquisition of job services and all other services for the~~
12 ~~family independence program under chapter 74.21 RCW shall not be~~
13 ~~included in the term "purchasing" under this chapter.~~)

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