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HOUSE BILL 1093

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State of Washington

54th Legislature

1995 Regular Session

By Representatives K. Schmidt, Johnson, Romero and Wolfe; by request of Department of General Administration

Read first time 01/12/95. Referred to Committee on Transportation.

1 AN ACT Relating to streamlining purchasing provisions for state  
2 agencies including Washington state ferries; amending RCW 43.19.1906,  
3 43.19.1911, and 47.60.140; and repealing RCW 47.60.651, 47.60.653,  
4 47.60.655, 47.60.657, 47.60.659, and 47.60.661.

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

6 **Sec. 1.** RCW 43.19.1906 and 1994 c 300 s 1 are each amended to read  
7 as follows:

8 Insofar as practicable, all purchases ~~((and sales))~~ of materials,  
9 supplies, equipment, and services shall be based on a competitive  
10 ~~((bids))~~ process, and a formal sealed invitation for bid procedure  
11 ~~((shall)), or a request for proposal process may be used ((as standard~~  
12 ~~procedure))~~ for all purchases and contracts ~~((for purchases and sales))~~  
13 executed by the state purchasing and material control director ~~((and))~~  
14 under the powers granted by RCW 43.19.190 through 43.19.1939. This  
15 requirement also applies to purchases and contracts ~~((for purchases and~~  
16 ~~sales))~~ executed by agencies ~~((including educational institutions,))~~  
17 under any delegated authority granted in accordance with provisions of  
18 RCW 43.19.190 ~~((or)), and to educational institutions~~ under RCW  
19 28B.10.029. ~~((However,))~~

1 A formal sealed invitation for bid shall include the specifications  
2 or purchase description for the services or items to be procured and  
3 the bid evaluation factors and criteria as described in RCW  
4 43.19.1911(1).

5 A request for proposal solicitation shall include a functional  
6 description of the needs and requirements of the state and the  
7 significant proposal evaluation factors and criteria as described in  
8 RCW 43.19.1911(1).

9 A formal (~~sealed bidding~~) competitive process is not necessary  
10 for:

11 (1) Emergency purchases made (~~pursuant to RCW 43.19.200 if the~~  
12 ~~sealed bidding procedure would prevent or hinder the emergency from~~  
13 ~~being met appropriately~~) in response to unforeseen circumstances  
14 beyond the control of the agency that present a real, immediate, and  
15 extreme threat to the proper performance of essential functions or that  
16 may reasonably be expected to result in excessive loss or damage to  
17 property, bodily injury, or loss of life. The purchase file shall  
18 contain a written description of the emergency and the circumstances  
19 leading up to the emergency and an explanation of why the circumstances  
20 required an emergency purchase;

21 (2) Purchases not exceeding (~~thirty-five thousand dollars,~~) the  
22 sealed bid limitation or subsequent limits (~~as calculated by the~~  
23 ~~office of financial management~~) established pursuant to subsection (8)  
24 of this section: PROVIDED, That the state director of general  
25 administration shall establish procedures to assure that purchases made  
26 by or on behalf of the various state agencies shall not be made so as  
27 to avoid the (~~thirty-five thousand dollar~~) sealed bid limitation(~~,~~  
28 ~~or subsequent bid limitations as calculated by the office of financial~~  
29 ~~management~~): PROVIDED FURTHER, That the state purchasing and material  
30 control director is authorized to reduce the (~~formal~~) sealed bid  
31 (~~limits of thirty five thousand dollars, or subsequent limits as~~  
32 ~~calculated by the office of financial management,~~) limit to a lower  
33 dollar amount for purchases by individual state agencies if considered  
34 necessary to maintain full disclosure of competitive procurement or  
35 otherwise to achieve overall state efficiency and economy in purchasing  
36 and material control. Quotations from (~~four~~) two thousand five  
37 hundred dollars to thirty-five thousand dollars, or subsequent limits  
38 (~~as calculated by the office of financial management~~) established  
39 pursuant to subsection (8) of this section, shall be secured from at

1 least three vendors to assure establishment of a competitive price and  
2 may be obtained by telephone or written quotations, or both. The  
3 agency shall invite at least one quotation each from a certified  
4 minority and a certified women-owned vendor who shall otherwise qualify  
5 to perform such work. Immediately after the award is made, the bid  
6 quotations obtained shall be recorded and open to public inspection and  
7 shall be available by telephone inquiry. A record of competition for  
8 all such purchases from ~~((four))~~ two thousand five hundred dollars to  
9 thirty-five thousand dollars, or subsequent limits ~~((as calculated by~~  
10 ~~the office of financial management))~~ established pursuant to subsection  
11 (8) of this section, shall be documented for audit purposes. Purchases  
12 up to ~~((four))~~ two thousand five hundred dollars may be made without  
13 competitive bids based on buyer experience and knowledge of the market  
14 in achieving maximum quality at minimum cost ~~((: PROVIDED, That this~~  
15 ~~four hundred dollar direct buy limit without competitive bids may be~~  
16 ~~increased incrementally as required to a maximum of eight hundred~~  
17 ~~dollars with the approval of at least ten of the members of the state~~  
18 ~~supply management advisory board, if warranted by increases in~~  
19 ~~purchasing costs due to inflationary trends))~~;

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

24 (4) Purchases of insurance and bonds by the risk management office  
25 under RCW 43.19.1935;

26 (5) Purchases and contracts for vocational rehabilitation clients  
27 of the department of social and health services: PROVIDED, That this  
28 exemption is effective only when the state purchasing and material  
29 control director, after consultation with the director of the division  
30 of vocational rehabilitation and appropriate department of social and  
31 health services procurement personnel, declares that such purchases may  
32 be best executed through direct negotiation with one or more suppliers  
33 in order to expeditiously meet the special needs of the state's  
34 vocational rehabilitation clients;

35 (6) Purchases by universities for hospital operation or biomedical  
36 teaching or research purposes and by the state purchasing and material  
37 control director, as the agent for state hospitals as defined in RCW  
38 72.23.010, and for health care programs provided in state correctional  
39 institutions as defined in RCW 72.65.010(3) and veterans' institutions

1 as defined in RCW 72.36.010 and 72.36.070, made by participating in  
2 contracts for materials, supplies, and equipment entered into by  
3 nonprofit cooperative hospital group purchasing organizations;

4 (7) Purchases by institutions of higher education not exceeding  
5 thirty-five thousand dollars or subsequent limits established pursuant  
6 to subsection (8) of this section: PROVIDED, That for purchases  
7 between two thousand five hundred dollars and thirty-five thousand  
8 dollars or subsequent limits established pursuant to subsection (8) of  
9 this section quotations shall be secured from at least three vendors to  
10 assure establishment of a competitive price and may be obtained by  
11 telephone or written quotations, or both. For purchases between two  
12 thousand five hundred dollars and thirty-five thousand dollars or  
13 subsequent limits established pursuant to subsection (8) of this  
14 section, each institution of higher education shall invite at least one  
15 quotation each from a certified minority and a certified women-owned  
16 vendor who shall otherwise qualify to perform such work. A record of  
17 competition for all such purchases made from two thousand five hundred  
18 to thirty-five thousand dollars or subsequent limits established  
19 pursuant to subsection (8) of this section shall be documented for  
20 audit purposes; and

21 (8) Beginning on July 1, 1995, and on July 1 of each succeeding  
22 odd-numbered year, the dollar limits specified in this section shall be  
23 adjusted as follows: The office of financial management shall  
24 calculate such limits by adjusting the previous biennium's limits by  
25 the appropriate federal inflationary index reflecting the rate of  
26 inflation for the previous biennium. Such amounts shall be rounded to  
27 the nearest one hundred dollars.

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

30 (1) When purchases are made through (~~competitive bidding~~) a  
31 formal sealed invitation for bid procedure, the contract shall be  
32 (~~let~~) awarded to the lowest responsible and responsive bidder,  
33 subject to any preferences provided by law to and for Washington  
34 products and vendors (~~and~~) pursuant to RCW 43.19.704 or for recycled  
35 materials or products pursuant to chapter 43.19A RCW, and taking into  
36 consideration the quality of the articles proposed to be supplied,  
37 their conformity with specifications, the purposes for which required,  
38 and the times of delivery: PROVIDED, That the state may reject any and

1 all bids. ~~Whenever ((there is reason to))~~ the state believes that the  
2 lowest ((acceptable)) responsible and responsive bid is not the best  
3 price obtainable, ((all bids may be rejected and)) the division of  
4 purchasing may call for new bids or enter into direct negotiations to  
5 achieve the best possible price. Each bid with the name of the bidder  
6 shall be entered of record and each record, with the successful bid  
7 indicated, shall, after ~~((letting))~~ notice of ((the)) contract award,  
8 be open to public inspection. In determining "lowest responsible and  
9 responsive bidder", in addition to price, the following elements  
10 ~~((shall))~~ may be given consideration, at the discretion of the  
11 purchaser:

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

14 ~~((+2))~~ (b) The character, integrity, reputation, judgment,  
15 experience, and efficiency of the bidder;

16 ~~((+3))~~ (c) Whether the bidder can perform the contract within the  
17 time specified;

18 ~~((+4))~~ (d) The quality of performance of previous contracts or  
19 services;

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

22 ~~((+6))~~ (f) Objective, measurable criteria defined in the  
23 invitation for bid to be used at the discretion of the purchaser.  
24 These criteria may include but are not limited to items such as  
25 discounts, delivery costs, maintenance services costs, installation  
26 costs, transportation costs, life cycle cost, and any other factors  
27 that may affect the bid price; and

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

1 life. The "estimated useful life" of an item means the estimated time  
2 from the date of acquisition to the date of replacement or disposal,  
3 determined in any reasonable manner. Nothing in this section shall  
4 prohibit any state agency, department, board, commission, committee, or  
5 other state level entity from allowing for preferential purchase of  
6 products made from recycled materials or products that may be recycled  
7 or reused)), at the discretion of the purchaser.

8 (2) The request for proposal shall contain the significant factors,  
9 including price, to be considered in evaluating the proposals received  
10 and the relative weight to be given such factors. Factors that may be  
11 considered in evaluating proposals include but are not limited to:  
12 Maintainability, reliability, commonality, performance levels, life  
13 cycle cost, public/private partnerships, research and development  
14 capability, technological superiority, and the criteria listed in  
15 subsection (1) (a) through (g) of this section. When purchases are  
16 made through a request for proposal process, proposals received shall  
17 be evaluated based on the evaluation factors set forth in the request  
18 for proposal. No criteria may be used in evaluating a proposal that is  
19 not listed in the request for proposal. The purchaser may reject any  
20 and all proposals received. If the proposals are not rejected, the  
21 award shall be made to the proposer whose proposal is most advantageous  
22 to the purchaser, considering the evaluation factors set forth in the  
23 request for proposal.

24 (3) A life cycle cost analysis may, in the sole discretion of the  
25 purchaser, be used in evaluating the factors in responses to an  
26 invitation for bid or a request for proposal process.

27 **Sec. 3.** RCW 47.60.140 and 1987 c 69 s 1 are each amended to read  
28 as follows:

29 (1) The department is empowered to operate such ferry system,  
30 including all operations, whether intrastate or international, upon any  
31 route or routes, and toll bridges as a revenue-producing and self-  
32 liquidating undertaking. The department has full charge of the  
33 construction, rehabilitation, rebuilding, enlarging, improving,  
34 operation, and maintenance of the ferry system, including toll bridges,  
35 approaches, and roadways incidental thereto that may be authorized by  
36 the department, including the collection of tolls and other charges for  
37 the services and facilities of the undertaking. The department has the  
38 exclusive right to enter into leases and contracts for use and

1 occupancy by other parties of the concessions and space located on the  
2 ferries, wharves, docks, approaches, and landings, but, except as  
3 provided in subsection (2) of this section, no such leases or contracts  
4 may be entered into for more than ~~((five years, nor without public  
5 advertisement for bids as may be prescribed by the department.  
6 However, except as provided in subsection (2) of this section, the  
7 Colman Dock facilities may be leased for a period not to exceed))~~ ten  
8 years, nor without a competitive contract process, except as otherwise  
9 provided in this section. The competitive process shall be either an  
10 invitation for bids (IFB) or a request for proposals (RFP) process.  
11 The department has the sole discretion to select the actual contract  
12 process used for any such contract.

13 (2) As part of a joint development agreement under which a public  
14 or private developer constructs or installs improvements on ferry  
15 system property, the department may lease all or part of such property  
16 and improvements to such developers for that period of time, not to  
17 exceed fifty-five years, or not to exceed thirty years for those areas  
18 located within harbor areas, which the department determines is  
19 necessary to allow the developer to make reasonable recovery on its  
20 initial investment. Any lease entered into as provided for in this  
21 subsection that involves state aquatic lands shall conform with the  
22 Washington state Constitution and applicable statutory requirements as  
23 determined by the department of natural resources. That portion of the  
24 lease rate attributable to the state aquatic lands shall be distributed  
25 in the same manner as other lease revenues derived from state aquatic  
26 lands as provided in RCW 79.24.580.

27 NEW SECTION. Sec. 4. The following acts or parts of acts are each  
28 repealed:

- 29 (1) RCW 47.60.651 and 1987 c 183 s 1;  
30 (2) RCW 47.60.653 and 1987 c 183 s 2;  
31 (3) RCW 47.60.655 and 1987 c 183 s 3;  
32 (4) RCW 47.60.657 and 1987 c 183 s 4;  
33 (5) RCW 47.60.659 and 1987 c 183 s 5; and  
34 (6) RCW 47.60.661 and 1987 c 183 s 6.

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