
HOUSE BILL 3187

State of Washington

58th Legislature

2004 Regular Session

By Representatives Romero, Hudgins, Conway, Hunt, McDermott, Morrell and Chase

Read first time 02/05/2004. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to prohibiting work under state contracts from
2 being performed at locations outside the United States; amending RCW
3 39.29.008, 41.06.142, 43.19.1911, and 43.19.1932; adding a new section
4 to chapter 28B.10 RCW; adding a new section to chapter 39.04 RCW;
5 adding a new section to chapter 47.28 RCW; creating new sections;
6 providing an effective date; and declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. It is essential that
9 the legislature and state agencies spend tax dollars in a manner that
10 is both responsible and consistent with the economic interests of the
11 state and the nation. The legislature and state agencies should,
12 therefore, consider indirect benefits that may be achieved when
13 entering into contracts for public works, personal services, purchased
14 services, information services, and highway design and construction.
15 Such benefits include, but are not limited to, job creation, capital
16 investment, and economic stimulus.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.10 RCW
18 to read as follows:

1 HIGHER EDUCATION. Work under a public works, personal services,
2 purchased services, or information services contract that is entered
3 into by the state under this chapter, or under any subcontract awarded
4 under such a contract, may not be performed at a location outside the
5 United States.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 39.04 RCW
7 to read as follows:

8 PUBLIC WORKS. Work under a public works contract that is entered
9 into by the state under this chapter, or under any subcontract awarded
10 under such a contract, may not be performed at a location outside the
11 United States.

12 **Sec. 4.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to read
13 as follows:

14 PERSONAL SERVICES. Personal services may be procured only to
15 resolve a particular agency problem or issue or to expedite a specific
16 project that is temporary in nature. An agency may procure personal
17 services only if it documents that: (1) The service is critical to
18 agency responsibilities or operations, or is mandated or authorized by
19 the legislature; (2) sufficient staffing or expertise is not available
20 within the agency to perform the service; and (3) other qualified
21 public resources are not available to perform the service. Work under
22 a personal services contract, or under any subcontract awarded under
23 the personal services contract, may not be performed at a location
24 outside the United States.

25 **Sec. 5.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
26 read as follows:

27 CIVIL SERVICE CONTRACTS. (1) Any department, agency, or
28 institution of higher education may purchase services, including
29 services that have been customarily and historically provided by
30 employees in the classified service under this chapter, by contracting
31 with individuals, nonprofit organizations, businesses, employee
32 business units, or other entities if the following criteria are met:
33 (a) The invitation for bid or request for proposal contains
34 measurable standards for the performance of the contract;

1 (b) Employees in the classified service whose positions or work
2 would be displaced by the contract are provided an opportunity to offer
3 alternatives to purchasing services by contract and, if these
4 alternatives are not accepted, compete for the contract under
5 competitive contracting procedures in subsection (4) of this section;

6 (c) The contract with an entity other than an employee business
7 unit includes a provision requiring the entity to consider employment
8 of state employees who may be displaced by the contract;

9 (d) Work under the contract, or under any subcontract awarded under
10 the contract, may not be performed at a location outside the United
11 States;

12 (e) The department, agency, or institution of higher education has
13 established a contract monitoring process to measure contract
14 performance, costs, service delivery quality, and other contract
15 standards, and to cancel contracts that do not meet those standards;
16 and

17 ((+e)) (f) The department, agency, or institution of higher
18 education has determined that the contract results in savings or
19 efficiency improvements. The contracting agency must consider the
20 consequences and potential mitigation of improper or failed performance
21 by the contractor.

22 (2) Any provision contrary to or in conflict with this section in
23 any collective bargaining agreement in effect on July 1, 2005, is not
24 effective beyond the expiration date of the agreement.

25 (3) Contracting for services that is expressly mandated by the
26 legislature or was authorized by law prior to July 1, 2005, including
27 contracts and agreements between public entities, shall not be subject
28 to the processes set forth in subsections (1) and (4) through (6) of
29 this section.

30 (4) Competitive contracting shall be implemented as follows:

31 (a) At least ninety days prior to the date the contracting agency
32 requests bids from private entities for a contract for services
33 provided by classified employees, the contracting agency shall notify
34 the classified employees whose positions or work would be displaced by
35 the contract. The employees shall have sixty days from the date of
36 notification to offer alternatives to purchasing services by contract,
37 and the agency shall consider the alternatives before requesting bids.

1 (b) If the employees decide to compete for the contract, they shall
2 notify the contracting agency of their decision. Employees must form
3 one or more employee business units for the purpose of submitting a bid
4 or bids to perform the services.

5 (c) The director of personnel, with the advice and assistance of
6 the department of general administration, shall develop and make
7 available to employee business units training in the bidding process
8 and general bid preparation.

9 (d) The director of general administration, with the advice and
10 assistance of the department of personnel, shall, by rule, establish
11 procedures to ensure that bids are submitted and evaluated in a fair
12 and objective manner and that there exists a competitive market for the
13 service. Such rules shall include, but not be limited to: (i)
14 Prohibitions against participation in the bid evaluation process by
15 employees who prepared the business unit's bid or who perform any of
16 the services to be contracted; (ii) provisions to ensure no bidder
17 receives an advantage over other bidders and that bid requirements are
18 applied equitably to all parties; and (iii) procedures that require the
19 contracting agency to receive complaints regarding the bidding process
20 and to consider them before awarding the contract. Appeal of an
21 agency's actions under this subsection is an adjudicative proceeding
22 and subject to the applicable provisions of chapter 34.05 RCW, the
23 administrative procedure act, with the final decision to be rendered by
24 an administrative law judge assigned under chapter 34.12 RCW.

25 (e) An employee business unit's bid must include the fully
26 allocated costs of the service, including the cost of the employees'
27 salaries and benefits, space, equipment, materials, and other costs
28 necessary to perform the function. An employee business unit's cost
29 shall not include the state's indirect overhead costs unless those
30 costs can be attributed directly to the function in question and would
31 not exist if that function were not performed in state service.

32 (f) A department, agency, or institution of higher education may
33 contract with the department of general administration to conduct the
34 bidding process.

35 (5) As used in this section:

36 (a) "Employee business unit" means a group of employees who perform
37 services to be contracted under this section and who submit a bid for
38 the performance of those services under subsection (4) of this section.

1 (b) "Indirect overhead costs" means the pro rata share of existing
2 agency administrative salaries and benefits, and rent, equipment costs,
3 utilities, and materials associated with those administrative
4 functions.

5 (c) "Competitive contracting" means the process by which classified
6 employees of a department, agency, or institution of higher education
7 compete with businesses, individuals, nonprofit organizations, or other
8 entities for contracts authorized by subsection (1) of this section.

9 (6) The joint legislative audit and review committee shall conduct
10 a performance audit of the implementation of this section, including
11 the adequacy of the appeals process in subsection (4)(d) of this
12 section, and report to the legislature by January 1, 2007, on the
13 results of the audit.

14 **Sec. 6.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read
15 as follows:

16 PURCHASED SERVICES. (1) Preservation of the integrity of the
17 competitive bid system dictates that after competitive bids have been
18 opened, award must be made to that responsible bidder who submitted the
19 lowest responsive bid pursuant to subsections (7) and (9) of this
20 section, unless there is a compelling reason to reject all bids and
21 cancel the solicitation.

22 (2) Every effort shall be made to anticipate changes in a
23 requirement before the date of opening and to provide reasonable notice
24 to all prospective bidders of any resulting modification or
25 cancellation. If, in the opinion of the purchasing agency, division,
26 or department head, it is not possible to provide reasonable notice,
27 the published date for receipt of bids may be postponed and all known
28 bidders notified. This will permit bidders to change their bids and
29 prevent unnecessary exposure of bid prices. In addition, every effort
30 shall be made to include realistic, achievable requirements in a
31 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 purchasing agency, division, or department head
3 determines in writing 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 agency;

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

15 (f) All otherwise acceptable bids received are at unreasonable
16 prices or only one bid is received and the agency cannot determine the
17 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, division, or department head may not delegate his
22 or her authority under this section.

23 (6) After the opening of bids, an agency may not reject all bids
24 and enter into direct negotiations to complete the planned acquisition.
25 However, the agency can enter into negotiations exclusively with the
26 lowest responsible bidder in order to determine if the lowest
27 responsible bid may be improved. Until December 31, 2007, for
28 purchases requiring a formal bid process the agency shall also enter
29 into negotiations with and may consider for award the lowest
30 responsible bidder that is a vendor in good standing, as defined in RCW
31 43.19.525. An agency shall not use this negotiation opportunity to
32 permit a bidder to change a nonresponsive bid into a responsive bid.

33 (7) In determining the lowest responsible bidder, the agency shall
34 consider any preferences provided by law to Washington products and
35 vendors and to RCW 43.19.704, and further, may take into consideration
36 the quality of the articles proposed to be supplied, their conformity
37 with specifications, the purposes for which required, and the times of

1 delivery. Work under a contract for services, or under any subcontract
2 awarded under a contract for services, may not be performed at a
3 location outside the United States.

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

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

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

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

13 (c) Whether the bidder can perform the contract within the time
14 specified;

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

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

18 (f) Such other information as may be secured having a bearing on
19 the decision to award the contract: PROVIDED, That in considering bids
20 for purchase, manufacture, or lease, and in determining the "lowest
21 responsible bidder," whenever there is reason to believe that applying
22 the "life cycle costing" technique to bid evaluation would result in
23 lowest total cost to the state, first consideration shall be given by
24 state purchasing activities to the bid with the lowest life cycle cost
25 which complies with specifications. "Life cycle cost" means the total
26 cost of an item to the state over its estimated useful life, including
27 costs of selection, acquisition, operation, maintenance, and where
28 applicable, disposal, as far as these costs can reasonably be
29 determined, minus the salvage value at the end of its estimated useful
30 life. The "estimated useful life" of an item means the estimated time
31 from the date of acquisition to the date of replacement or disposal,
32 determined in any reasonable manner. Nothing in this section shall
33 prohibit any state agency, department, board, commission, committee, or
34 other state-level entity from allowing for preferential purchase of
35 products made from recycled materials or products that may be recycled
36 or reused.

1 **Sec. 7.** RCW 43.19.1932 and 1989 c 185 s 2 are each amended to read
2 as follows:

3 DEPARTMENT OF CORRECTIONS. (1) Except as provided in subsection
4 (2) of this section, the department of corrections shall be exempt from
5 the following provisions of this chapter in respect to goods or
6 services purchased or sold pursuant to the operation of correctional
7 industries: RCW 43.19.180, 43.19.190, 43.19.1901, 43.19.1905,
8 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1915, 43.19.1917,
9 43.19.1919, 43.19.1921, 43.19.1925, and 43.19.200.

10 (2) The department of corrections is subject to the requirement in
11 RCW 43.19.1911(7) that work under a contract for services, or under any
12 subcontract awarded under such a contract, not be performed at a
13 location outside the United States.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 47.28 RCW
15 to read as follows:

16 DEPARTMENT OF TRANSPORTATION. Work under a public works, personal
17 services, purchased services, information services, or highway design
18 and construction contract that is entered into by the state under this
19 chapter, or under any subcontract awarded under such a contract, may
20 not be performed at a location outside the United States.

21 NEW SECTION. **Sec. 9.** SEVERABILITY. If any provision of this act
22 or its application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 10.** FEDERAL SEVERABILITY. If any part of this
26 act is found to be in conflict with federal requirements that are a
27 prescribed condition to the allocation of federal funds to the state,
28 the conflicting part of this act is inoperative solely to the extent of
29 the conflict and with respect to the agencies directly affected, and
30 this finding does not affect the operation of the remainder of this act
31 in its application to the agencies concerned. Rules adopted under this
32 act must meet federal requirements that are a necessary condition to
33 the receipt of federal funds by the state.

1 NEW SECTION. **Sec. 11.** CAPTIONS NOT LAW. Captions used in this
2 act are not any part of the law.

3 NEW SECTION. **Sec. 12.** APPLICABILITY. This act does not apply to
4 contracts entered into before July 1, 2005.

5 NEW SECTION. **Sec. 13.** EFFECTIVE DATE. This act is necessary for
6 the immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and takes effect immediately, except for section 5 of this act which
9 takes effect July 1, 2005.

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