

2 **SHB 1093** - S COMM AMD

3 By Committee on Government Operations

4

5 Strike everything after the enacting clause and insert the
6 following:

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

9 Insofar as practicable, all purchases and (~~sales shall be based on~~
10 ~~competitive bids, and a formal sealed bid procedure shall be used as~~
11 ~~standard procedure for all purchases and contracts for purchases and~~
12 ~~sales executed by the state purchasing and material control director~~
13 ~~and 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,)) contracts for purchases
18 of materials, supplies, equipment, and services executed by the state
19 purchasing and material control director under the powers granted by
20 RCW 43.19.190 through 43.19.1939 shall be made by a competitive sealed
21 bidding process and a formal sealed invitation for bid procedure except
22 as otherwise provided in this section. This requirement also applies
23 to purchases and contracts for purchases and sales executed by agencies
24 under any delegated authority granted in accordance with RCW 43.19.190,
25 and to educational institutions under RCW 28B.10.029.~~

26 A formal sealed invitation for bid shall include the specifications
27 or purchase description for services or items to be procured and those
28 bid evaluation factors and criteria described in RCW 43.19.1911(1) that
29 will be used in determining the lowest responsible bidder. All
30 elements to be given consideration in determining the lowest
31 responsible bidder shall be specified in the invitation for bid
32 documents. When specifying objective measurable criteria under this
33 subsection, if the state has reason to believe that applying the life-
34 cycle cost technique to the bid evaluation would result in lowest total
35 cost to the state, consideration shall be given by the state to the bid
36 with the lowest life-cycle cost which complies with specifications.

1 The bid with the lowest total cost to the state shall be considered the
2 lowest price bid. "Life-cycle cost" means the total cost of an item to
3 the state over its estimated useful life, including costs of selection,
4 acquisition, operation, maintenance, and where applicable, disposal, as
5 far as these costs can reasonably be determined, minus the salvage
6 value at the end of its estimated useful life. The "estimated useful
7 life" of an item means the estimated time from the date of acquisition
8 to the date of replacement or disposal, determined in any reasonable
9 manner. Nothing in this section prohibits any state agency,
10 department, board, commission, committee, or other state-level entity
11 from allowing for preferential purchase of products made from recycled
12 materials or products that may be recycled or reused.

13 A formal ((sealed bidding)) competitive process is not necessary
14 for:

15 (1) When the purchasing director determines in writing that the use
16 of competitive sealed bidding is either not practicable or not
17 advantageous to the state and it may be necessary to make competitive
18 evaluations, including technical or performance evaluations among
19 acceptable proposals to complete the contract award, a contract may be
20 entered into by use of a competitive sealed proposals method, and a
21 formal request for proposals solicitation.

22 A formal request for proposals solicitation shall include a
23 functional description of the needs and requirements of the state and
24 the significant factors, including the relative importance of price to
25 other factors and criteria described in RCW 43.19.1911(1) that will be
26 considered in evaluating competitive sealed proposals. All elements to
27 be given consideration in evaluating proposals shall be specified in
28 the request for proposal documents. When specifying significant
29 factors under this subsection, if the state has reason to believe that
30 applying the life-cycle cost technique to the proposal would result in
31 the lowest total cost to the state, the request for proposal shall
32 state that consideration will be given by the state to the proposal
33 with the lowest life-cycle cost that meets the criteria specified in
34 the request for proposal. The life-cycle cost of a proposal shall be
35 given the same relative importance as the price element specified in
36 the request for proposal documents. "Life-cycle cost" means the total
37 cost of an item to the state over its estimated useful life, including
38 costs of selection, acquisition, operation, maintenance, and where
39 applicable, disposal, as far as these costs can reasonably be

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

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

19 ((+2)) (3) Purchases not exceeding the sealed bid limitation of
20 thirty-five thousand dollars((7)) or subsequent limits ((as calculated
21 by the office of financial management)) established pursuant to
22 subsection (9) of this section: PROVIDED, That the state director of
23 general administration shall establish procedures to assure that
24 purchases made by or on behalf of the various state agencies shall not
25 be made so as to avoid the ((thirty-five thousand dollar)) sealed bid
26 limitation((7, or subsequent bid limitations as calculated by the office
27 of financial management)): PROVIDED FURTHER, That the state purchasing
28 and material control director is authorized to reduce the ((formal))
29 sealed bid ((limits of thirty-five thousand dollars, or subsequent
30 limits as calculated by the office of financial management,7)) limit to
31 a lower dollar amount for purchases by individual state agencies if
32 considered necessary to maintain full disclosure of competitive
33 procurement or otherwise to achieve overall state efficiency and
34 economy in purchasing and material control. Quotations from ((four))
35 one thousand five hundred dollars to thirty-five thousand dollars, or
36 subsequent limits ((as calculated by the office of financial
37 management)) established pursuant to subsection (9) of this section,
38 shall be secured from at least three vendors to assure establishment of
39 a competitive price and may be obtained by telephone or written

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

19 (~~(+3)~~) (4) Purchases which are clearly and legitimately limited to
20 a single source of supply and purchases involving special facilities,
21 services, or market conditions, in which instances the purchase price
22 may be best established by direct negotiation;

23 (~~(+4)~~) (5) Purchases of insurance and bonds by the risk management
24 office under RCW 43.19.1935;

25 (~~(+5)~~) (6) Purchases and contracts for vocational rehabilitation
26 clients of the department of social and health services: PROVIDED,
27 That this exemption is effective only when the state purchasing and
28 material control director, after consultation with the director of the
29 division of vocational rehabilitation and appropriate department of
30 social and health services procurement personnel, declares that such
31 purchases may be best executed through direct negotiation with one or
32 more suppliers in order to expeditiously meet the special needs of the
33 state's vocational rehabilitation clients;

34 (~~(+6)~~) (7) Purchases by universities for hospital operation or
35 biomedical teaching or research purposes and by the state purchasing
36 and material control director, as the agent for state hospitals as
37 defined in RCW 72.23.010, and for health care programs provided in
38 state correctional institutions as defined in RCW 72.65.010(3) and
39 veterans' institutions as defined in RCW 72.36.010 and 72.36.070, made

1 by participating in contracts for materials, supplies, and equipment
2 entered into by nonprofit cooperative hospital group purchasing
3 organizations;

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

21 ~~((+8))~~ (9) Beginning on July 1, 1995, and on July 1 of each
22 succeeding odd-numbered year, the dollar limits specified in this
23 section shall be adjusted as follows: The office of financial
24 management shall calculate such limits by adjusting the previous
25 biennium's limits by the appropriate federal inflationary index
26 reflecting the rate of inflation for the previous biennium. Such
27 amounts shall be rounded to 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 bidder, subject to any
33 preferences provided by law to and for Washington products and vendors
34 ~~((and))~~ pursuant to RCW 43.19.704 or for recycled materials or products
35 pursuant to chapter 43.19A RCW, and taking into consideration lowest
36 total cost, the quality of the articles proposed to be supplied, their
37 conformity with specifications, the purposes for which required, and
38 the times of delivery: PROVIDED, That the state may reject any and all

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

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. These criteria may include but are not limited to
24 items such as discounts, delivery costs, maintenance services costs,
25 installation costs, and transportation costs; and

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

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

6 (2) When purchases are made through a formal request for proposals
7 solicitation the contract shall be awarded to the responsible offeror
8 whose competitive sealed proposal is determined in writing to be the
9 most advantageous to the state taking into consideration price and
10 evaluation factors set forth in the request for proposals. No
11 significant factors may be used in evaluating a proposal that are not
12 specified in the request for proposals. Factors that may be considered
13 in evaluating proposals include but are not limited to:
14 Maintainability, reliability, commonality, performance levels, life
15 cycle cost if applicable under this section, public/private
16 partnerships, research and development capability, technological
17 superiority, cost of transportation or delivery, delivery schedule
18 offered, installation cost, cost of spare parts, availability of parts
19 and service offered, and the criteria listed in subsection (1) (a)
20 through (g) of this section. When purchases are made through a request
21 for proposal process, proposals received shall be evaluated based on
22 the evaluation factors set forth in the request for proposal. The
23 purchaser may reject any and all proposals received. If the proposals
24 are not rejected, the award shall be made to the proposer whose
25 proposal is most advantageous to the purchaser, considering the
26 evaluation factors set forth in the request for proposal.

27 NEW SECTION. Sec. 3. A new section is added to chapter 43.19 RCW
28 to read as follows:

29 The director of general administration may recover costs of
30 purchasing and material control operations by charging an amount
31 sufficient to cover the cost of purchasing and contracts
32 administration. Funds collected may not be used for any purpose other
33 than cost recovery, and must be treated as a separate operating entity
34 within the central stores revolving fund under RCW 43.19.1923.

35 **Sec. 4.** RCW 47.60.140 and 1987 c 69 s 1 are each amended to read
36 as follows:

37 (1) The department is empowered to operate such ferry system,

1 including all operations, whether intrastate or international, upon any
2 route or routes, and toll bridges as a revenue-producing and self-
3 liquidating undertaking. The department has full charge of the
4 construction, rehabilitation, rebuilding, enlarging, improving,
5 operation, and maintenance of the ferry system, including toll bridges,
6 approaches, and roadways incidental thereto that may be authorized by
7 the department, including the collection of tolls and other charges for
8 the services and facilities of the undertaking. The department has the
9 exclusive right to enter into leases and contracts for use and
10 occupancy by other parties of the concessions and space located on the
11 ferries, wharves, docks, approaches, and landings, but, except as
12 provided in subsection (2) of this section, no such leases or contracts
13 may be entered into for more than ~~((five years, nor without public~~
14 ~~advertisement for bids as may be prescribed by the department.~~
15 ~~However, except as provided in subsection (2) of this section, the~~
16 ~~Colman Dock facilities may be leased for a period not to exceed))~~ ten
17 years, nor without a competitive contract process, except as otherwise
18 provided in this section. The competitive process shall be either an
19 invitation for bids (IFB) or a request for proposals (RFP) process.
20 The department has the sole discretion to select the actual contract
21 process used for any such contract.

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

36 NEW SECTION. Sec. 5. The following acts or parts of acts are each
37 repealed:

38 (1) RCW 47.60.651 and 1987 c 183 s 1;

- 1 (2) RCW 47.60.653 and 1987 c 183 s 2;
- 2 (3) RCW 47.60.655 and 1987 c 183 s 3;
- 3 (4) RCW 47.60.657 and 1987 c 183 s 4;
- 4 (5) RCW 47.60.659 and 1987 c 183 s 5; and
- 5 (6) RCW 47.60.661 and 1987 c 183 s 6."

6 **SHB 1093** - S COMM AMD
7 By Committee on Government Operations

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9 On page 1, line 2 of the title, after "ferries;" strike the
10 remainder of the title and insert "amending RCW 43.19.1906, 43.19.1911,
11 and 47.60.140; adding a new section to chapter 43.19 RCW; and repealing
12 RCW 47.60.651, 47.60.653, 47.60.655, 47.60.657, 47.60.659, and
13 47.60.661."

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