
SENATE BILL 5906

State of Washington

56th Legislature

1999 Regular Session

By Senators West and Oke

Read first time 02/16/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to managed competition; adding new sections to
2 chapter 41.06 RCW; creating new sections; and repealing RCW 41.06.380
3 and 41.06.382.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature that
6 managed competition be implemented at the discretion of a state agency
7 as an additional management strategy or tool to maximize the
8 effectiveness and efficiency of government services. The state
9 director of personnel shall provide assistance with implementation and
10 coordination of managed competition by a state agency and shall ensure
11 that managed competition is administered in adherence to the criteria
12 described in sections 2 through 5 of this act.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 41.06 RCW
14 to read as follows:

15 The definitions in this section apply throughout sections 3 through
16 5 of this act unless the context clearly requires otherwise.

17 (1) "Business unit" means a group of employees submitting a bid
18 under section 3 or 4 of this act.

1 (2) "Contract" means any type of state agreement for the
2 acquisition of services.

3 (3) "Core service" means, as determined by the director of the
4 department of general administration, a service for which the public's
5 interest in having a particular function performed directly by state
6 government is outweighed by the potential economic advantage of
7 contracting for the service with a private entity. In assessing the
8 public's interest, the director of the department of general
9 administration shall take into account:

10 (a) The consequences and potential mitigation of improper or failed
11 performance by the contractor; and

12 (b) Whether performance of the contract involves the improper
13 delegation of a policy-making function.

14 (4) "Indirect overhead costs" means the pro rata share of existing
15 administrative salaries and benefits, rent, equipment costs, utilities,
16 and materials.

17 (5) "Managed competition" means the process by which a state agency
18 authorizes employees of the agency to compete with private businesses
19 or firms for a personal services contract.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 41.06 RCW
21 to read as follows:

22 (1) Any department, agency, or institution of higher education may
23 purchase services, including services that have been customarily and
24 historically provided by employees in classified service under this
25 chapter, by contracting with individuals, nonprofit organizations,
26 businesses, or other entities if the following criteria are met:

27 (a) The service is not a core service;

28 (b) The invitation for bid or request for proposal details
29 performance standards and expectations for the performance of the
30 contract;

31 (c) The agency has allowed state employee business units to
32 participate in the bidding process through the implementation of
33 managed competition as required by section 4 of this act;

34 (d) At least two private entities exist that provide the service to
35 be contracted for or at least two competitive bids for the service have
36 been made by private entities to the state agency; and

37 (e) The personal services contract includes a provision directing
38 a private entity that is awarded the contract to consider offering

1 employment to state agency employees to perform the services under such
2 a contract.

3 (2) Any provision contrary to or in conflict with this section in
4 any collective bargaining agreement in effect on the effective date of
5 this section is not effective beyond the expiration date of the
6 agreement.

7 (3) This section does not apply to the purchase of services or to
8 any contracting for services that was authorized by law prior to the
9 effective date of this section.

10 (4) Nothing in sections 2 through 5 of this act shall be
11 interpreted as meaning that the decision to contract out services shall
12 be subject to collective bargaining.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 41.06 RCW
14 to read as follows:

15 (1) Any department, agency, or institution of higher education may
16 implement managed competition for a personal services contract by
17 soliciting bids or proposals from business units in accordance with the
18 following criteria:

19 (a) At least thirty days prior to requesting bids or proposals from
20 private entities for a personal services contract, the head of the
21 state agency shall notify the employees of the state agency regarding
22 the request for bids or proposals; and

23 (b) If employees of a state agency inform the director of the
24 department of personnel of their desire to submit a bid through one or
25 more business units established for the sole purpose of providing the
26 personal services that are the subject of the request for bids, the
27 department of personnel shall provide the business unit or units with
28 training on the bidding process and shall provide adequate technical
29 assistance in preparing the bid.

30 (2) The state director of the department of general administration
31 shall define in advance and implement procedures by rule to ensure an
32 objective and fair evaluation process, including but not limited to a
33 prohibition against bid evaluation participation by any personnel who
34 assisted in preparing a business unit's bid or who work in a business
35 unit that has within its scope of responsibility the provision of any
36 of the personal services to be contracted for.

37 (3) If the head of a state agency determines to award a contract to
38 a business unit of the agency, the award may not be made unless the

1 business unit received no advantage over other bidders, and the
2 evaluation process was objective and fair. The state agency shall
3 provide a reasonable opportunity for private businesses and other
4 business units to comment regarding the evaluation process and shall
5 consider those comments in making the final contract award.

6 (4) A business unit may submit a bid and be awarded a contract to
7 provide personal services, subject to the requirements of this section
8 including the following conditions:

9 (a) The business unit shall be subject to the same bidding
10 requirements as private parties bidding on the contract, and may not
11 receive any advantage over other bidders;

12 (b) The business unit's bid price may not be less than its
13 attributable fully allocated costs for the personal services. The
14 business unit's cost shall include the salaries and benefits of staff
15 that would be needed and the cost of space, equipment, and materials
16 needed to perform the function. The business unit's cost shall not
17 include the state's indirect overhead costs unless the costs can be
18 attributed solely to the function in question and would not exist if
19 that function were not performed in state service;

20 (c) The business unit must be bound by the same terms, conditions,
21 financial penalties, and standards as would have applied to a private
22 business if it had been awarded the contract under the request for
23 bids. However, this subsection is not intended to expand the personal
24 liability of state employees who are performing their official duties;
25 and

26 (d) If, during any financial quarter during the term of the
27 contract, the cost of the business unit attributable to the service
28 provided under any request for bids exceeds the contract price for the
29 period for the service, the state agency shall cancel the contract and
30 issue new requests for bids for the service provided under the
31 contract.

32 (5) In order to fully realize the benefits of managed competition,
33 the head of the state agency, in conjunction with the director of the
34 department of general administration shall monitor on a monthly basis
35 the performance of the service provider selected, whether it is a
36 business unit within the agency or a private service provider. If the
37 service delivery does not meet the performance standards and the
38 deficiencies are not corrected within sixty days, the state agency

1 shall cancel the contract and issue new requests for bids for the
2 service provided under the contract.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 41.06 RCW
4 to read as follows:

5 If an employee is displaced as a direct result of an agency's
6 contract with a private entity under section 3 of this act, the
7 department of personnel shall make a reasonable effort to offer the
8 employee placement in another position in state service.

9 NEW SECTION. **Sec. 6.** This act may be known and cited as the fair
10 competition act of 1999.

11 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
12 repealed:

13 (1) RCW 41.06.380 (Purchasing services by contract not prohibited--
14 Limitations) and 1979 ex.s. c 46 s 2; and

15 (2) RCW 41.06.382 (Purchasing services by contract not prohibited--
16 Limitations) and 1979 ex.s. c 46 s 1.

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