

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1813

Chapter 136, Laws of 2003

58th Legislature
2003 Regular Session

DISABLED PERSONS--EMPLOYMENT

EFFECTIVE DATE: 7/27/03

Passed by the House March 14, 2003
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2003
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 7, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1813** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 7, 2003 - 3:08 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1813

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on State Government (originally sponsored by Representatives Miloscia, Boldt, Linville, Edwards, Romero, Cody, McDermott, Haigh, Hunt, Moeller, Ruderman, Santos, Rockefeller, Simpson, Conway, Wood and Kenney)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to employment opportunities for people with
2 disabilities; amending RCW 43.19.520, 43.19.525, 43.19.530, and
3 43.19.1911; adding new sections to chapter 43.19 RCW; adding new
4 sections to chapter 50.40 RCW; and providing expiration dates.

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

6 **Sec. 1.** RCW 43.19.520 and 1974 ex.s. c 40 s 1 are each amended to
7 read as follows:

8 It is the intent of the legislature to encourage state agencies and
9 departments to purchase products and/or services manufactured or
10 provided by (~~sheltered workshops and~~):

11 (1) Community rehabilitation programs of the department of social
12 and health services which operate facilities serving (~~the handicapped~~
13 and)) disadvantaged persons and persons with disabilities and have
14 achieved or consistently make progress towards the goal of enhancing
15 opportunities for disadvantaged persons and persons with disabilities
16 to maximize their opportunities for employment and career advancement,
17 and increase the number employed and their wages; and

18 (2) Until December 31, 2007, businesses owned and operated by
19 persons with disabilities that have achieved or consistently make

1 progress towards the goal of enhancing opportunities for disadvantaged
2 persons and persons with disabilities to maximize their opportunities
3 for employment and career advancement, and increase the number employed
4 and their wages.

5 **Sec. 2.** RCW 43.19.525 and 1974 ex.s. c 40 s 2 are each amended to
6 read as follows:

7 ~~((As used in RCW 43.19.520 and 43.19.530 the term "sheltered~~
8 ~~workshops" shall have the meaning ascribed to it by RCW 82.04.385 and))~~
9 The definitions in this section apply throughout RCW 43.19.520 through
10 43.19.530 unless the context clearly requires otherwise.

11 (1) "Businesses owned and operated by persons with disabilities"
12 means any for-profit business certified under chapter 39.19 RCW as
13 being owned and controlled by persons who have been either:

14 (a) Determined by the department of social and health services to
15 have a developmental disability, as defined in RCW 71A.10.020;

16 (b) Determined by an agency established under Title I of the
17 federal vocational rehabilitation act to be or have been eligible for
18 vocational rehabilitation services;

19 (c) Determined by the federal social security administration to be
20 or have been eligible for either social security disability insurance
21 or supplemental security income; or

22 (d) Determined by the United States department of veterans affairs
23 to be or have been eligible for vocational rehabilitation services due
24 to service-connected disabilities, under 38 U.S.C. Sec. 3100 et seq.

25 (2) "Community rehabilitation programs of the department of social
26 and health services" ((shall)) means ((the group training homes and day
27 training centers defined in RCW 72.33.800)) any entity that:

28 (a) Is registered as a nonprofit corporation with the secretary of
29 state; and

30 (b) Is recognized by the department of social and health services,
31 division of vocational rehabilitation as eligible to do business as a
32 community rehabilitation program.

33 (3) "Vendor in good standing" means a business owned and operated
34 by persons with disabilities or a community rehabilitation program,
35 that has been determined under sections 4 and 7 of this act to meet the
36 following criteria:

1 (a) Has not been in material breach of any quality or performance
2 provision of any contract for the purchase of goods or services during
3 the past thirty-six months; and

4 (b) Has achieved, or continues to work towards, the goal of
5 enhancing opportunities for disadvantaged persons and persons with
6 disabilities to maximize their opportunities for employment and career
7 advancement, and increase the number employed and their wages, as
8 determined by the governor's committee on disability issues and
9 employment.

10 **Sec. 3.** RCW 43.19.530 and 1977 ex.s. c 10 s 2 are each amended to
11 read as follows:

12 The state agencies and departments are hereby authorized to
13 purchase products and/or services manufactured or provided by
14 ((sheltered workshops and)):

15 (1) Community rehabilitation programs of the department of social
16 and health services; and

17 (2) Until December 31, 2007, businesses owned and operated by
18 persons with disabilities.

19 Such purchases shall be at the fair market price of such products
20 and services as determined by the division of purchasing of the
21 department of general administration. To determine the fair market
22 price the division shall use the last comparable bid on the products
23 and/or services or in the alternative the last price paid for the
24 products and/or services. The increased cost of labor, materials, and
25 other documented costs since the last comparable bid or the last price
26 paid are additional cost factors which shall be considered in
27 determining fair market price. Upon the establishment of the fair
28 market price as provided for in this section the division is hereby
29 empowered to negotiate directly for the purchase of products or
30 services with ((sheltered workshops or)) officials in charge of the
31 community rehabilitation programs of the department of social and
32 health services ((for the purchase of the products or services)) and,
33 until December 31, 2007, businesses owned and operated by persons with
34 disabilities.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.19 RCW
36 to read as follows:

1 (1) The department of general administration shall identify in the
2 department's vendor registry all vendors in good standing, as defined
3 in RCW 43.19.525.

4 (2) The department of general administration shall annually, but no
5 less often than once every fifteen months:

6 (a) Request that vendors in good standing update their information
7 in the department's vendor registry including but not limited to the
8 Washington state commodity codes for products and services that the
9 vendors propose to offer to state agencies during at least the
10 subsequent fifteen-month period;

11 (b) Disseminate the information obtained in response to the request
12 made pursuant to (a) of this subsection to at least one purchasing
13 official in each state agency; and

14 (c) Notify each vendor in good standing of all contracts for the
15 purchase of goods and services by state agencies with respect to which
16 the department of general administration anticipates either renewing or
17 requesting bids or proposals within at least twelve months of the date
18 of the notice.

19 (3) The department of general administration and the governor's
20 committee on disability issues and employment shall jointly prepare
21 and, on or before December 31, 2006, issue a report to the governor and
22 the legislature. The report shall describe the activities authorized
23 or required by this act, and their effect on enhancing opportunities
24 for disadvantaged persons and persons with disabilities to maximize
25 their opportunities for employment and career advancement, and increase
26 the number employed and their wages.

27 (4) This section expires December 31, 2007.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.19 RCW
29 to read as follows:

30 (1) Nothing in this act requires any state agency to take any
31 action that interferes with or impairs an existing contract between any
32 state agency and any other party, including but not limited to any
33 other state agency.

34 (2) Until December 31, 2007, except as provided under RCW
35 43.19.1906(2) for purchases up to three thousand dollars, RCW
36 43.19.534, and subsection (1) of this section, a state agency shall not
37 purchase any product or service identified in the notice most recently

1 disseminated by the department of general administration, as provided
2 under section 4(2)(b) of this act, from other than a vendor in good
3 standing until the state agency has included in the solicitation
4 process at least one vendor in good standing supplying the goods or
5 service needed by the agency, unless no vendor in good standing
6 supplying the goods or service needed by the agency is available.

7 **Sec. 6.** RCW 43.19.1911 and 1996 c 69 s 2 are each amended to read
8 as follows:

9 (1) Preservation of the integrity of the competitive bid system
10 dictates that after competitive bids have been opened, award must be
11 made to that responsible bidder who submitted the lowest responsive bid
12 pursuant to subsections (7) and (9) of this section, unless there is a
13 compelling reason to reject all bids and cancel the solicitation.

14 (2) Every effort shall be made to anticipate changes in a
15 requirement before the date of opening and to provide reasonable notice
16 to all prospective bidders of any resulting modification or
17 cancellation. If, in the opinion of the purchasing agency, division,
18 or department head, it is not possible to provide reasonable notice,
19 the published date for receipt of bids may be postponed and all known
20 bidders notified. This will permit bidders to change their bids and
21 prevent unnecessary exposure of bid prices. In addition, every effort
22 shall be made to include realistic, achievable requirements in a
23 solicitation.

24 (3) After the opening of bids, a solicitation may not be canceled
25 and resolicited solely because of an increase in requirements for the
26 items being acquired. Award may be made on the initial solicitation
27 and an increase in requirements may be treated as a new acquisition.

28 (4) A solicitation may be canceled and all bids rejected before
29 award but after bid opening only when, consistent with subsection (1)
30 of this section, the purchasing agency, division, or department head
31 determines in writing that:

32 (a) Unavailable, inadequate, ambiguous specifications, terms,
33 conditions, or requirements were cited in the solicitation;

34 (b) Specifications, terms, conditions, or requirements have been
35 revised;

36 (c) The supplies or services being contracted for are no longer
37 required;

1 (d) The solicitation did not provide for consideration of all
2 factors of cost to the agency;

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

6 (f) All otherwise acceptable bids received are at unreasonable
7 prices or only one bid is received and the agency cannot determine the
8 reasonableness of the bid price;

9 (g) No responsive bid has been received from a responsible bidder;
10 or

11 (h) The bid process was not fair or equitable.

12 (5) The agency, division, or department head may not delegate his
13 or her authority under this section.

14 (6) After the opening of bids, an agency may not reject all bids
15 and enter into direct negotiations to complete the planned acquisition.
16 However, the agency can enter into negotiations exclusively with the
17 lowest responsible bidder in order to determine if the lowest
18 responsible bid may be improved. Until December 31, 2007, for
19 purchases requiring a formal bid process the agency shall also enter
20 into negotiations with and may consider for award the lowest
21 responsible bidder that is a vendor in good standing, as defined in RCW
22 43.19.525. An agency shall not use this negotiation opportunity to
23 permit a bidder to change a nonresponsive bid into a responsive bid.

24 (7) In determining the lowest responsible bidder, the agency shall
25 consider any preferences provided by law to Washington products and
26 vendors and to RCW 43.19.704, and further, may take into consideration
27 the quality of the articles proposed to be supplied, their conformity
28 with specifications, the purposes for which required, and the times of
29 delivery.

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

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

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

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

1 (c) Whether the bidder can perform the contract within the time
2 specified;

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

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

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

25 NEW SECTION. **Sec. 7.** A new section is added to chapter 50.40 RCW
26 to read as follows:

27 (1) No less frequently than once each year, the governor's
28 committee on disability issues and employment shall determine whether
29 entities seeking to qualify as vendors in good standing, pursuant to
30 this section and section 4 of this act, have achieved, or continue to
31 work towards, the goal of enhancing opportunities for persons of
32 disabilities to maximize their employment and career advancement, and
33 increase the number employed and their wages.

34 (2) In making the determination provided for in subsection (1) of
35 this section, the governor's committee on disability issues and
36 employment shall appoint and, except in the case of malfeasance or
37 misfeasance, shall rely upon the conclusions of an advisory

1 subcommittee consisting of: (a) Three members chosen from among those
2 current or former clients of a community rehabilitation program who
3 have nominated themselves, at least one of whom must be a person with
4 a developmental disability; (b) one member chosen from among those
5 guardians, parents, or other relatives of a current client or employee
6 of a community rehabilitation program who have nominated themselves;
7 (c) one member chosen from among those who have been nominated by a
8 community rehabilitation program; (d) one member chosen from among
9 those owners of a business owned and operated by persons with
10 disabilities who have nominated themselves; (e) one member who is
11 designated by the developmental disabilities council; (f) one member
12 who is a member of and selected by the governor's committee on
13 disability issues and employment; (g) one member who is designated by
14 the secretary of the department of social and health services; and (h)
15 one member who is designated by the director of the department of
16 services for the blind.

17 (3) The advisory subcommittee appointed by the governor's committee
18 on disability issues and employment shall conclude that entities
19 seeking to qualify, pursuant to this section and section 4 of this act,
20 as vendors in good standing, have achieved, or continue to work
21 towards, the goal of enhancing opportunities for persons of
22 disabilities to maximize their employment and career advancement, and
23 increase the number employed and their wages if, and only if, the
24 entity provides reasonably conclusive evidence that, during the twelve-
25 month period immediately preceding the entity's application, at least
26 one-half of the following measurement categories applicable to the
27 entity have been either achieved, pursuant to rules established under
28 subsection (4) of this section, or have been improved as compared to
29 the entity's condition with respect to that measurement category one
30 year ago:

31 (a) The number of people with disabilities in the entity's total
32 work force who are working in integrated settings;

33 (b) The percentage of the people with disabilities in the entity's
34 total work force who are working in integrated settings;

35 (c) The number of people with disabilities in the entity's total
36 work force who are working in individual supported employment settings;

37 (d) The percentage of the people with disabilities in the entity's

1 total work force who are working in individual supported employment
2 settings;

3 (e) The number of people with disabilities in the entity's total
4 work force who, during the last twelve months, have transitioned to
5 less restrictive employment settings either within the entity or with
6 other community employers;

7 (f) The number of people with disabilities in the entity's total
8 work force who are earning at least the state minimum wage;

9 (g) The percentage of the people with disabilities in the entity's
10 total work force who are earning at least the state minimum wage;

11 (h) The number of people with disabilities serving in supervisory
12 capacities within the entity;

13 (i) The percentage of supervisory positions within the entity that
14 are occupied by people with disabilities;

15 (j) The number of people with disabilities serving in an ownership
16 capacity or on the governing board of the entity;

17 (k) The ratio of the total amount paid by the entity in wages,
18 salaries, and related employment benefits to people with disabilities,
19 as compared to the amount paid by the entity in wages, salaries, and
20 related employment benefits paid by the entity to persons without
21 disabilities during the previous year; and

22 (l) The percentage of people with disabilities in the entity's
23 total work force for whom the entity has developed a reasonable,
24 achievable, and written career plan.

25 (4) The commissioner shall consult with the advisory subcommittee
26 established in subsection (2) of this section to develop and adopt
27 rules establishing the measurement at which it is deemed that the
28 measurement categories identified in subsection (3)(b), (d), (e), (g),
29 (h), (j), (k), and (l) of this section have been achieved.

30 (5) This section expires December 31, 2007.

31 NEW SECTION. **Sec. 8.** A new section is added to chapter 50.40 RCW
32 to read as follows:

33 (1) The commissioner is authorized to adopt rules to implement
34 section 7 of this act, including but not limited to authority to
35 establish (a) a nonrefundable application fee of not more than five
36 hundred dollars to be paid by each entity seeking to establish or renew
37 qualification as a vendor in good standing, pursuant to sections 4 and

1 7 of this act; (b) a fee of not more than two percent of the face
2 amount of any contract awarded under this act; or (c) both fees
3 identified in (a) and (b) of this subsection.

4 (2) The fee or fees established pursuant to subsection (1) of this
5 section must set a level of revenue sufficient to recover costs
6 incurred by the department of general administration in fulfilling the
7 duties identified in section 4 of this act and the governor's committee
8 on disability issues and employment in fulfilling the duties identified
9 in section 7 of this act.

10 (3) The vendors in good standing account is created in the custody
11 of the state treasurer. All receipts from the fee or fees established
12 pursuant to subsection (1) of this section must be deposited into the
13 account. Expenditures from the account may be used only for the
14 purpose described in subsection (2) of this section. Expenditures from
15 the account may be authorized only upon the approval of both the
16 director of the department of general administration and the
17 commissioner, or their respective designees. The account is subject to
18 allotment procedures under chapter 43.88 RCW, but an appropriation is
19 not required for expenditures.

20 (4) This section expires December 31, 2007, and any unencumbered
21 funds remaining in the vendors in good standing account on that date
22 shall revert to the general fund.

Passed by the House March 14, 2003.

Passed by the Senate April 11, 2003.

Approved by the Governor May 7, 2003.

Filed in Office of Secretary of State May 7, 2003.