
HOUSE BILL 2144

State of Washington 59th Legislature 2005 Regular Session

By Representatives Williams, Conway, Hudgins, Chase and Hunt

Read first time 02/21/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to requiring state agencies to contract for
2 services in a manner consistent with the state's best interests;
3 amending RCW 39.29.008, 41.06.142, and 43.19.1911; adding a new section
4 to chapter 39.29 RCW; creating new sections; providing an effective
5 date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. It is essential that
8 the legislature and state agencies spend tax dollars in a manner that
9 is both responsible and consistent with the best interests of the state
10 and the nation. The legislature and state agencies should, therefore,
11 consider indirect benefits that may be achieved when entering into
12 contracts, including personal services, purchased services, and civil
13 service contracts. Such benefits include, but are not limited to, job
14 creation, capital investment, and economic stimulus. Additionally,
15 such benefits include greater protection of privacy interests, less
16 risk of disclosure of personal information, and avoidance of undue
17 risk.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.29 RCW
2 to read as follows:

3 BEST INTERESTS. For purposes of RCW 39.29.008, 41.06.142, and
4 43.19.1911, the governor or the governor's designee, in consultation
5 with representatives of state agency management and labor, shall
6 develop and implement procurement policies and procedures necessary to
7 determine whether a personal services, purchased services, or civil
8 service contract is in the best interests of Washington state, its
9 residents, and its economy. These procurement policies and procedures
10 shall require state agencies to consider the following when making
11 decisions to contract for services:

12 (1) Whether a proposal to provide services to this state from a
13 location outside of this state or the United States would be
14 detrimental to Washington, its residents, or its economy;

15 (2) Whether the acquisition of services from an expatriated
16 business entity located in a tax haven country or an affiliate of an
17 expatriated business entity located in a tax haven country would be
18 detrimental to Washington, its residents, or its economy. As used in
19 this subsection:

20 (a) "Expatriated business entity" means a corporation or an
21 affiliate of the corporation incorporated in a tax haven country after
22 September 11, 2001, but with the United States as the principal market
23 for the public trading of the corporation's stock, as determined by the
24 director of the office of financial management;

25 (b) "Tax haven country" means a country that has no corporate
26 income tax or an effective tax rate less than ten percent on income
27 that does not arise in or is not derived from that country. Tax haven
28 countries include, but are not limited to, Barbados, Bermuda, British
29 Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus,
30 Gibraltar, Isle of Man, the Principality of Liechtenstein, the
31 Principality of Monaco, and the Republic of the Seychelles;

32 (3) Whether the provision of services to this state at a location
33 outside of this state or the United States would be detrimental to the
34 privacy interests of Washington residents, or risk the disclosure of
35 personal information of Washington residents, such as social security,
36 financial, or medical data; and

37 (4) Whether the provision of services to this state from a location

1 outside of this state or the United States would constitute undue risk
2 under Washington's risk management policies, practices, or procedures.

3 **Sec. 3.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to read
4 as follows:

5 (1) Personal services may be procured only to resolve a particular
6 agency problem or issue or to expedite a specific project that is
7 temporary in nature. An agency may procure personal services only if
8 it documents that:

9 ~~((1))~~ (a) The service is critical to agency responsibilities or
10 operations, or is mandated or authorized by the legislature;

11 ~~((2))~~ (b) Sufficient staffing or expertise is not available
12 within the agency to perform the service; and

13 ~~((3))~~ (c) Other qualified public resources are not available to
14 perform the service.

15 (2) Personal services contracts must be in the state's best
16 interests, as specified in section 2 of this act.

17 **Sec. 4.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
18 read as follows:

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

25 (a) The department, agency, or institution of higher education has
26 determined that the contract is in the state's best interests, as
27 specified in section 2 of this act;

28 (b) The invitation for bid or request for proposal contains
29 measurable standards for the performance of the contract;

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

35 ~~((e))~~ (d) The contract with an entity other than an employee

1 business unit includes a provision requiring the entity to consider
2 employment of state employees who may be displaced by the contract;

3 ~~((d))~~ (e) The department, agency, or institution of higher
4 education has established a contract monitoring process to measure
5 contract performance, costs, service delivery quality, and other
6 contract standards, and to cancel contracts that do not meet those
7 standards; and

8 ~~((e))~~ (f) The department, agency, or institution of higher
9 education has determined that the contract results in savings or
10 efficiency improvements. The contracting agency must consider the
11 consequences and potential mitigation of improper or failed performance
12 by the contractor.

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

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

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

22 (a) At least ninety days prior to the date the contracting agency
23 requests bids from private entities for a contract for services
24 provided by classified employees, the contracting agency shall notify
25 the classified employees whose positions or work would be displaced by
26 the contract. The employees shall have sixty days from the date of
27 notification to offer alternatives to purchasing services by contract,
28 and the agency shall consider the alternatives before requesting bids.

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

33 (c) The director of personnel, with the advice and assistance of
34 the department of general administration, shall develop and make
35 available to employee business units training in the bidding process
36 and general bid preparation.

37 (d) The director of general administration, with the advice and
38 assistance of the department of personnel, shall, by rule, establish

1 procedures to ensure that bids are submitted and evaluated in a fair
2 and objective manner and that there exists a competitive market for the
3 service. Such rules shall include, but not be limited to: (i)
4 Prohibitions against participation in the bid evaluation process by
5 employees who prepared the business unit's bid or who perform any of
6 the services to be contracted; (ii) provisions to ensure no bidder
7 receives an advantage over other bidders and that bid requirements are
8 applied equitably to all parties; and (iii) procedures that require the
9 contracting agency to receive complaints regarding the bidding process
10 and to consider them before awarding the contract. Appeal of an
11 agency's actions under this subsection is an adjudicative proceeding
12 and subject to the applicable provisions of chapter 34.05 RCW, the
13 administrative procedure act, with the final decision to be rendered by
14 an administrative law judge assigned under chapter 34.12 RCW.

15 (e) An employee business unit's bid must include the fully
16 allocated costs of the service, including the cost of the employees'
17 salaries and benefits, space, equipment, materials, and other costs
18 necessary to perform the function. An employee business unit's cost
19 shall not include the state's indirect overhead costs unless those
20 costs can be attributed directly to the function in question and would
21 not exist if that function were not performed in state service.

22 (f) A department, agency, or institution of higher education may
23 contract with the department of general administration to conduct the
24 bidding process.

25 (5) As used in this section:

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

29 (b) "Indirect overhead costs" means the pro rata share of existing
30 agency administrative salaries and benefits, and rent, equipment costs,
31 utilities, and materials associated with those administrative
32 functions.

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

37 (6) The joint legislative audit and review committee shall conduct
38 a performance audit of the implementation of this section, including

1 the adequacy of the appeals process in subsection (4)(d) of this
2 section, and report to the legislature by January 1, 2007, on the
3 results of the audit.

4 **Sec. 5.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read
5 as follows:

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

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

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

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

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

31 (b) Specifications, terms, conditions, or requirements have been
32 revised;

33 (c) The supplies or services being contracted for are no longer
34 required;

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

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

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

7 (g) No responsive bid has been received from a responsible bidder;
8 or

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

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

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

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

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

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

33 (a) Whether the contract is in the state's best interests, as
34 specified in section 2 of this act;

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

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

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

26 NEW SECTION. **Sec. 6.** CAPTIONS NOT LAW. Captions used in this act
27 are not any part of the law.

28 NEW SECTION. **Sec. 7.** APPLICABILITY. This act does not apply to
29 contracts entered into before July 1, 2005.

30 NEW SECTION. **Sec. 8.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
2 conflict with federal requirements that are a prescribed condition to
3 the allocation of federal funds to the state, the conflicting part of
4 this act is inoperative solely to the extent of the conflict and with
5 respect to the agencies directly affected, and this finding does not
6 affect the operation of the remainder of this act in its application to
7 the agencies concerned. Rules adopted under this act must meet federal
8 requirements that are a necessary condition to the receipt of federal
9 funds by the state.

10 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately, except for section 4 of this act, which takes effect July
14 1, 2005.

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