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**SUBSTITUTE HOUSE BILL 3160**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Hudgins, Conway, Chase and Simpson)

READ FIRST TIME 2/3/06.

1            AN ACT Relating to requiring disclosure of information regarding  
2 work done for the state of Washington; amending RCW 39.29.008,  
3 41.06.142, and 43.19.1911; adding new sections to chapter 39.29 RCW;  
4 and creating new sections.

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

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

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

17            DISCLOSURE REQUIREMENT. For purposes of RCW 39.29.008, 41.06.142,  
18 and 43.19.1911, "offshore outsourcing information" means records of:

1 (1) The locations, by country, in which work under a personal  
2 service, purchased service, or civil service contract, or any  
3 subcontract under such a contract, is performed outside the United  
4 States;

5 (2) The nature of the work performed under a personal service,  
6 purchased service, or civil service contract, or any subcontract under  
7 such a contract, outside the United States; and

8 (3) The percentage of work performed under a personal service,  
9 purchased service, or civil service contract, or any subcontract under  
10 such a contract, outside the United States.

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

13 Personal services may be procured only to resolve a particular  
14 agency problem or issue or to expedite a specific project that is  
15 temporary in nature. An agency may procure personal services only if  
16 it documents that: (1) The service is critical to agency  
17 responsibilities or operations, or is mandated or authorized by the  
18 legislature; (2) sufficient staffing or expertise is not available  
19 within the agency to perform the service; and (3) other qualified  
20 public resources are not available to perform the service. Personal  
21 services contracts, and any subcontracts awarded under personal  
22 services contracts, must include provisions requiring disclosure of  
23 offshore outsourcing information as specified in section 2 of this act.

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

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

32 (a) The invitation for bid or request for proposal contains  
33 measurable standards for the performance of the contract;

34 (b) Employees in the classified service whose positions or work  
35 would be displaced by the contract are provided an opportunity to offer

1 alternatives to purchasing services by contract and, if these  
2 alternatives are not accepted, compete for the contract under  
3 competitive contracting procedures in subsection (4) of this section;

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

7 (d) The contract, and any subcontract awarded under the contract,  
8 must include provisions requiring disclosure of offshore outsourcing  
9 information as specified in section 2 of this act;

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

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

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

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

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

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

36 (b) If the employees decide to compete for the contract, they shall  
37 notify the contracting agency of their decision. Employees must form

1 one or more employee business units for the purpose of submitting a bid  
2 or bids to perform the services.

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

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

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

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

33 (5) As used in this section:

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

37 (b) "Indirect overhead costs" means the pro rata share of existing

1 agency administrative salaries and benefits, and rent, equipment costs,  
2 utilities, and materials associated with those administrative  
3 functions.

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

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

13 **Sec. 5.** RCW 43.19.1911 and 2005 c 204 s 5 are each amended to read  
14 as follows:

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

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

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

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

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

3 (b) Specifications, terms, conditions, or requirements have been  
4 revised;

5 (c) The supplies or services being contracted for are no longer  
6 required;

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

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

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

15 (g) No responsive bid has been received from a responsible bidder;  
16 or

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

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

20 (6) After the opening of bids, an agency may not reject all bids  
21 and enter into direct negotiations to complete the planned acquisition.  
22 However, the agency can enter into negotiations exclusively with the  
23 lowest responsible bidder in order to determine if the lowest  
24 responsible bid may be improved. Until December 31, 2009, for  
25 purchases requiring a formal bid process the agency shall also enter  
26 into negotiations with and may consider for award the lowest  
27 responsible bidder that is a vendor in good standing, as defined in RCW  
28 43.19.525. An agency shall not use this negotiation opportunity to  
29 permit a bidder to change a nonresponsive bid into a responsive bid.

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

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

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

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

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

7 (c) Whether the bidder can perform the contract within the time  
8 specified;

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

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

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

31 (10) Contracts for services, and any subcontracts awarded under  
32 contracts for services, must include provisions requiring disclosure of  
33 offshore outsourcing information as specified in section 2 of this act.

34 NEW SECTION. Sec. 6. A new section is added to chapter 39.29 RCW  
35 to read as follows:

36 (1) The requirement in RCW 39.29.008, 41.06.142, and 43.19.1911

1 that certain contracts include provisions requiring disclosure of  
2 offshore outsourcing information as specified in section 2 of this act  
3 does not apply to:

4 (a) Contracts for goods;

5 (b) Contracts for services if the director of the office of  
6 financial management determines that the only practicable location  
7 where the services may be performed is clearly and justifiably a  
8 location outside the United States. This exception to the disclosure  
9 requirement may apply, by way of illustration and not as a limitation,  
10 to services related to the establishment and operation of foreign  
11 offices created for the purpose of promoting overseas trade and  
12 commerce; or

13 (c) Research projects conducted by faculty at state institutions of  
14 higher education and study abroad programs offered by state  
15 institutions of higher education.

16 (2) By September 1st of each year, the director of the office of  
17 financial management shall provide the house of representatives  
18 commerce and labor committee and the senate labor, commerce, research  
19 and development committee, or their successor committees, with a list  
20 of contracts entered into in the previous fiscal year for which he or  
21 she determined that the only practicable location where the services  
22 could be performed was clearly and justifiably a location outside the  
23 United States.

24 NEW SECTION. **Sec. 7.** SEVERABILITY. If any provision of this act  
25 or its application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 8.** FEDERAL SEVERABILITY. If any part of this  
29 act is found to be in conflict with federal requirements that are a  
30 prescribed condition to the allocation of federal funds to the state,  
31 the conflicting part of this act is inoperative solely to the extent of  
32 the conflict and with respect to the agencies directly affected, and  
33 this finding does not affect the operation of the remainder of this act  
34 in its application to the agencies concerned. Rules adopted under this  
35 act must meet federal requirements that are a necessary condition to  
36 the receipt of federal funds by the state.



1        NEW SECTION.   **Sec. 9.**   CAPTIONS NOT LAW.   Captions used in this act  
2   are not any part of the law.

3        NEW SECTION.   **Sec. 10.**   APPLICABILITY.   This act does not apply to  
4   contracts entered into before July 1, 2006.

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