
SUBSTITUTE SENATE BILL 5777

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Kohl-Welles, Pridemore, Shin, Franklin, Kastama, Regala, Kline, Poulsen, Thibaudeau, Keiser, Eide, Prentice and Berkey)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to prohibiting the offshoring of work under state
2 contracts; amending RCW 39.29.008, 41.06.142, and 43.19.1911; adding a
3 new section to chapter 39.04 RCW; adding a new section to chapter 39.29
4 RCW; creating new sections; providing an effective date; and declaring
5 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 taxpayer dollars in a manner
9 that is both responsible and consistent with the economic interests of
10 the state and the nation. The legislature and state agencies should,
11 therefore, consider indirect benefits that may be achieved when
12 entering into contracts for public works, personal services, purchased
13 services, information services, and highway design and construction.
14 Such benefits include, but are not limited to, job creation, capital
15 investment, and economic stimulus.

16 **Sec. 2.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to read
17 as follows:

18 PERSONAL SERVICES. Personal services may be procured only to

1 resolve a particular agency problem or issue or to expedite a specific
2 project that is temporary in nature. An agency may procure personal
3 services only if it documents that: (1) The service is critical to
4 agency responsibilities or operations, or is mandated or authorized by
5 the legislature; (2) sufficient staffing or expertise is not available
6 within the agency to perform the service; and (3) other qualified
7 public resources are not available to perform the service. Except as
8 provided in section 6 of this act, services performed under a personal
9 services contract, or under any subcontract awarded under the personal
10 services contract, may not be performed at a location outside the
11 United States.

12 **Sec. 3.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
13 read as follows:

14 CIVIL SERVICE CONTRACTS. (1) Any department, agency, or
15 institution of higher education may purchase services, including
16 services that have been customarily and historically provided by
17 employees in the classified service under this chapter, by contracting
18 with individuals, nonprofit organizations, businesses, employee
19 business units, or other entities if the following criteria are met:

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

22 (b) Employees in the classified service whose positions or work
23 would be displaced by the contract are provided an opportunity to offer
24 alternatives to purchasing services by contract and, if these
25 alternatives are not accepted, compete for the contract under
26 competitive contracting procedures in subsection (4) of this section;

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

30 (d) Except as provided in section 6 of this act, services performed
31 under the contract, or under any subcontract awarded under the
32 contract, may not be performed at a location outside the United States;

33 (e) The department, agency, or institution of higher education has
34 established a contract monitoring process to measure contract
35 performance, costs, service delivery quality, and other contract
36 standards, and to cancel contracts that do not meet those standards;
37 and

1 (~~(e)~~) (f) The department, agency, or institution of higher
2 education has determined that the contract results in savings or
3 efficiency improvements. The contracting agency must consider the
4 consequences and potential mitigation of improper or failed performance
5 by the contractor.

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

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

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

15 (a) At least ninety days prior to the date the contracting agency
16 requests bids from private entities for a contract for services
17 provided by classified employees, the contracting agency shall notify
18 the classified employees whose positions or work would be displaced by
19 the contract. The employees shall have sixty days from the date of
20 notification to offer alternatives to purchasing services by contract,
21 and the agency shall consider the alternatives before requesting bids.

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

26 (c) The director of personnel, with the advice and assistance of
27 the department of general administration, shall develop and make
28 available to employee business units training in the bidding process
29 and general bid preparation.

30 (d) The director of general administration, with the advice and
31 assistance of the department of personnel, shall, by rule, establish
32 procedures to ensure that bids are submitted and evaluated in a fair
33 and objective manner and that there exists a competitive market for the
34 service. Such rules shall include, but not be limited to: (i)
35 Prohibitions against participation in the bid evaluation process by
36 employees who prepared the business unit's bid or who perform any of
37 the services to be contracted; (ii) provisions to ensure no bidder
38 receives an advantage over other bidders and that bid requirements are

1 applied equitably to all parties; and (iii) procedures that require the
2 contracting agency to receive complaints regarding the bidding process
3 and to consider them before awarding the contract. Appeal of an
4 agency's actions under this subsection is an adjudicative proceeding
5 and subject to the applicable provisions of chapter 34.05 RCW, the
6 administrative procedure act, with the final decision to be rendered by
7 an administrative law judge assigned under chapter 34.12 RCW.

8 (e) An employee business unit's bid must include the fully
9 allocated costs of the service, including the cost of the employees'
10 salaries and benefits, space, equipment, materials, and other costs
11 necessary to perform the function. An employee business unit's cost
12 shall not include the state's indirect overhead costs unless those
13 costs can be attributed directly to the function in question and would
14 not exist if that function were not performed in state service.

15 (f) A department, agency, or institution of higher education may
16 contract with the department of general administration to conduct the
17 bidding process.

18 (5) As used in this section:

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

22 (b) "Indirect overhead costs" means the pro rata share of existing
23 agency administrative salaries and benefits, and rent, equipment costs,
24 utilities, and materials associated with those administrative
25 functions.

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

30 (6) The joint legislative audit and review committee shall conduct
31 a performance audit of the implementation of this section, including
32 the adequacy of the appeals process in subsection (4)(d) of this
33 section, and report to the legislature by January 1, 2007, on the
34 results of the audit.

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

37 PURCHASED SERVICES. (1) Preservation of the integrity of the

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

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

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

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

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

26 (b) Specifications, terms, conditions, or requirements have been
27 revised;

28 (c) The supplies or services being contracted for are no longer
29 required;

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

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

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

1 (g) No responsive bid has been received from a responsible bidder;

2 or

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

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

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

16 (7) In determining the lowest responsible bidder, the agency shall
17 consider any preferences provided by law to Washington products and
18 vendors and to RCW 43.19.704, and further, may take into consideration
19 the quality of the articles proposed to be supplied, their conformity
20 with specifications, the purposes for which required, and the times of
21 delivery. Except as provided in section 6 of this act, services
22 performed under a contract for services, or under any subcontract
23 awarded under a contract for services, may not be performed at a
24 location outside the United States.

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

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

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

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

34 (c) Whether the bidder can perform the contract within the time
35 specified;

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

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

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

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 39.04 RCW
21 to read as follows:

22 All work under a public works project contract or subcontract for
23 the fabrication or manufacture of nonstandard items specifically for a
24 public works project under this chapter may not be performed at sites
25 outside of the United States.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 39.29 RCW
27 to read as follows:

28 (1) The prohibition against services under certain contracts being
29 performed at locations outside the United States in RCW 39.29.008,
30 41.06.142, and 43.19.1911 does not apply to:

31 (a) Goods procured under such contracts;

32 (b) Services performed under such contracts if the director of the
33 office of financial management determines that the only practicable
34 location where the services may be performed is clearly and justifiably
35 a location outside the United States. This exception to the
36 prohibition may apply, by way of illustration and not as a limitation,

1 to services related to the establishment and operation of foreign
2 offices created for the purpose of promoting overseas trade and
3 commerce;

4 (c) Research projects conducted by faculty at state institutions of
5 higher education, study abroad programs offered by state institutions
6 of higher education, academic press printing and publication at state
7 institutions of higher education, or all nonstate funds received by
8 state institutions of higher education; or

9 (d) Contracts involving the parties to the agreement on government
10 procurement of the world trade organization, the United States - Chile
11 free trade agreement, the United States - Singapore free trade
12 agreement, or other trade agreements applicable to government
13 procurement that would violate the specific terms of these agreements.

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

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

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

5 NEW SECTION. **Sec. 11.** EFFECTIVE DATE. This act is necessary for
6 the immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and takes effect immediately, except for section 3 of this act which
9 takes effect July 1, 2006.

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