

# SENATE BILL REPORT

## HB 1770

---

---

As of March 9, 2011

**Title:** An act relating to enhancing small business participation in state purchasing.

**Brief Description:** Enhancing small business participation in state purchasing.

**Sponsors:** Representatives Hasegawa, Kenney, Orcutt, Frockt and Stanford.

**Brief History:** Passed House: 3/05/11, 74-23.

**Committee Activity:** Economic Development, Trade & Innovation: 3/10/11.

---

### SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TRADE & INNOVATION

**Staff:** Edward Redmond (786-7471)

**Background:** The Department of General Administration (GA) establishes overall state policy for state purchasing, and contracts with individuals and companies outside of state government to provide goods and services to the state. Under delegated authority, other state agencies and the institutions of higher education also contract for goods and services. The state's purchasing authority is generally organized into categories based on the type of service. Among these categories are:

- Purchased Goods and Services. These goods and services are ones provided by a vendor to accomplish routine, continuing and necessary functions.
- Personal Services. This term refers to professional or technical expertise provided by a consultant to accomplish a specific study or project.
- Information Services. These services include data processing, telecommunications, office automation, and computerized information systems.
- Printing Services. This term refers to the production of the state's printed materials.

Except in specific circumstances, Washington law does not provide preferences to bidders who are in-state. The statutory exceptions include:

- Ferries. In Washington, the Department of Transportation's bid documents for jumbo ferries must include a requirement that the vessels be constructed within Washington, with exceptions for certain equipment and systems.
- Washington-Grown Food for Schools. School districts are authorized to implement policies to maximize the purchases of Washington-grown food. Such policies may include permitting a percentage price preference for Washington-grown food.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- In-State Printing. Printing for state agencies must be done within Washington, unless the work cannot be executed in state or the lowest in-state bid exceeds the customary charges in the private sector.

In addition to these in-state preferences, GA is required to identify other states that provide in-state preferences to their own bidders. If a bidder from one of those states submits a bid for a state contract in Washington, GA may add a percentage increase to that bidder's proposal. This increase is used only to evaluate the bid and is not paid to any supplier whose bid is accepted.

State procurement laws that give preference to domestic goods or prohibit purchasing foreign goods have been challenged on one or more grounds. These include arguments that such laws are (1) invalid exercises of state power under the federal Commerce Clause; (2) preempted by federal statute or in violation of international agreements on government procurement; or (3) in violation of Equal Protection/Privileges and Immunities clauses.

**Summary of Bill:** All state purchasing agencies, subject to specified terms and conditions, must apply a bidding preference in the purchase of goods and services from in-state small businesses. The application of the bidding preference requires the contracting agency to provide:

- a 5 percent bidding preference to the bids of in-state small businesses;
- a bidding preference of up to 5 percent to the bids of in-state businesses which are not small businesses, but which provide for small business subcontractor participation in the contract; and
- assistance to small businesses by providing vendor information about bid solicitation requirements either prior to the bid due date, or after the contract award, in order to assist the vendor.

A purchasing agency that, in good faith, applies the bidding preference is exempt from any legal action for damages arising out of the contract award. If state bidding preference provisions conflict with international trade agreements, federal agreements regarding the allocation of funding to the state, or with federal law, then the purchasing agency cannot apply the conflicting bidding preference.

A business that receives the bidding preference is subject to a variety of sanctions if it provides or withholds information that is material to the award of the contract. These sanctions may include:

- payment of an assessment related to the value of the contract;
- a civil penalty; and
- ineligibility for future contracts for a period of six months to three years.

In-state business means a business that has its principal office located in Washington and its officers domiciled in Washington.

Small business means a business that is owned and operated independently from all other businesses and:

- has either 50 or fewer employees; or

- has a gross revenue of of less than \$7 million averaged over the previous three years;  
or
- is certified by the Office of Minority and Women's Business Enterprises.

Beginning on December 1, 2011, and each December 1 thereafter, GA must provide a comprehensive report to the Governor and the Legislature regarding its implementation of the Small Business Vendor Bidding Preference Program (Program).

The Small Business Bidding Preference Account (Account) is created in the office of the State Treasurer. The Account is the repository of the receipts of any civil penalties collected under the act.

The Director of GA must establish overall state policy regarding the development of procurement procedures necessary to implement the Program, including model bidding application documents.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.