

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1770

Chapter 358, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

STATE PURCHASING SMALL BUSINESS PARTICIPATION

EFFECTIVE DATE: 07/22/11

Passed by the House April 13, 2011
Yeas 74 Nays 22

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2011
Yeas 48 Nays 1

BRAD OWEN

President of the Senate

Approved May 16, 2011, 2:38 p.m., with
the exception of Section 5 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is **HOUSE
BILL 1770** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 17, 2011

**Secretary of State
State of Washington**

HOUSE BILL 1770

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington **62nd Legislature** **2011 Regular Session**

By Representatives Hasegawa, Kenney, Orcutt, Frockt, and Stanford

Read first time 02/01/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to enhancing small business participation in state
2 purchasing; amending RCW 39.29.011, 43.19.1908, 43.105.041, and
3 39.29.006; adding new sections to chapter 43.19 RCW; and creating new
4 sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
7 state's economic interest and serves a public purpose to promote and
8 facilitate the fullest possible participation by Washington businesses
9 of all sizes in the process by which goods and services are purchased
10 by the state. The legislature further finds that large businesses have
11 the resources to participate fully and effectively in the state's
12 purchasing system, and because of many factors, including economies of
13 scale, the purchasing system tends to create a preference in favor of
14 large businesses and to disadvantage small businesses. The legislature
15 intends, therefore, to assist, to the maximum extent possible, small
16 businesses to participate in order to enhance and preserve competitive
17 enterprise and to ensure that small businesses have a fair opportunity
18 to be awarded contracts or subcontracts for goods and services
19 purchased by the state. The legislature recognizes the need to

1 increase accountability for the state's procurement and contracting
2 practices. The legislature, therefore, intends to encourage all state
3 agencies to maintain records of state purchasing contracts awarded to
4 registered small businesses. The legislature further recognizes that
5 access to a modernized system that categorizes a state business by such
6 factors as its type and size, is an essential tool for receiving
7 accurate and verifiable information regarding the effects any technical
8 assistance is having on the number of small businesses annually
9 receiving state contracts for goods and services purchased by the
10 state.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.19 RCW
12 to read as follows:

13 (1) The department of general administration must develop a model
14 plan for state agencies to increase: (a) The number of small
15 businesses registering in the state's common vendor registration and
16 bid notification system; (b) the number of such registered small
17 businesses annually receiving state contracts for goods and services
18 purchased by the state; and (c) the percentage of total state dollars
19 spent for goods and services purchased from such registered small
20 businesses. The goal of the plan is to increase the number of small
21 businesses receiving state contracts as well as the percentage of total
22 state dollars spent for goods and services from small businesses
23 registered in the state's common vendor registration and bid
24 notification system by at least fifty percent in fiscal year 2013, and
25 at least one hundred percent in fiscal year 2015 over the baseline data
26 reported for fiscal year 2011.

27 (2) All state purchasing agencies may adopt the model plan
28 developed by the department of general administration under subsection
29 (1) of this section. A state purchasing agency that does not adopt the
30 model plan must establish and implement a plan consistent with the
31 goals of subsection (1) of this section.

32 (3) To facilitate the participation of small businesses in the
33 provision of goods and services to the state, including purchases under
34 chapters 39.29 and 43.105 RCW, the state purchasing and material
35 control director, under the powers granted by RCW 43.19.190 through
36 43.19.1939, and all state purchasing agencies operating under delegated
37 authority granted under RCW 43.19.190 or 28B.10.029, must give

1 technical assistance to small businesses regarding the state bidding
2 process. Such technical assistance shall include providing
3 opportunities for the agency to answer vendor questions about the bid
4 solicitation requirements in advance of the bid due date and, upon
5 request, holding a debriefing after the contract award to assist the
6 vendor in understanding how to improve his or her responses for future
7 competitive procurements.

8 (4)(a) All state purchasing agencies must maintain records of state
9 purchasing contracts awarded to registered small businesses in order to
10 track outcomes and provide accurate, verifiable information regarding
11 the effects the technical assistance under subsection (3) of this
12 section is having on the number of small businesses annually receiving
13 state contracts for goods and services purchased by the state.

14 (b) The department of general administration may provide assistance
15 to other agencies attempting to maintain records of state purchasing
16 contracts awarded to registered small businesses for the purposes
17 described under (a) of this subsection.

18 (5) The definitions in this subsection apply throughout this
19 section and section 3 of this act unless the context clearly requires
20 otherwise.

21 (a) "Small business" has the same meaning as defined in RCW
22 39.29.006.

23 (b) "State purchasing agencies" are limited to the department of
24 general administration, the department of information services, the
25 office of financial management, the department of transportation, and
26 institutions of higher education.

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.19 RCW
28 to read as follows:

29 (1) By November 15, 2013, and November 15th every two years
30 thereafter, all state purchasing agencies shall submit a report to the
31 appropriate committees of the legislature providing verifiable
32 information regarding the effects the technical assistance under
33 section 2(3) of this act is having on the number of small businesses
34 annually receiving state contracts for goods and services purchased by
35 the state.

36 (2) By December 31, 2013, all state purchasing agencies must use

1 the web-based information system created under subsection (3)(a) of
2 this section to capture the data required under subsection (3)(a) of
3 this section.

4 (3)(a) The department of general administration, in consultation
5 with the department of information services, the department of
6 transportation, and the department of commerce, must develop and
7 implement a web-based information system. The web-based information
8 system must be used to capture data, track outcomes, and provide
9 accurate and verifiable information regarding the effects the technical
10 assistance under section 2(3) of this act is having on the number of
11 small businesses annually receiving state contracts for goods and
12 services purchased by the state. Such measurable data shall include,
13 but not be limited to: (i) The number of registered small businesses
14 that have been awarded state procurement contracts, (ii) the percentage
15 of total state dollars spent for goods and services purchased from
16 registered small businesses, and (iii) the number of registered small
17 businesses that have bid on but were not awarded state purchasing
18 contracts.

19 (b) By October 1, 2011, the department of general administration,
20 in collaboration with the department of information services and the
21 department of transportation, shall submit a report to the appropriate
22 committees of the legislature detailing the projected cost associated
23 with the implementation and maintenance of the web-based information
24 system.

25 (c) By September 1, 2012, the department of general administration,
26 in collaboration with the department of information services and the
27 department of transportation, shall submit a report to the appropriate
28 committees of the legislature providing any recommendations for needed
29 legislation to improve the collection of data required under (a) of
30 this subsection.

31 (d) By December 31, 2013, the department of general administration
32 must make the web-based information system available to all state
33 purchasing agencies.

34 (e) The department of general administration may also make the web-
35 based information system available to other agencies that would like to
36 use the system for the purposes of chapter . . . , Laws of 2011 (this
37 act).

1 **Sec. 4.** RCW 39.29.011 and 2009 c 486 s 7 are each amended to read
2 as follows:

3 All personal service contracts shall be entered into pursuant to
4 competitive solicitation, except for:

5 (1) Emergency contracts;

6 (2) Sole source contracts;

7 (3) Contract amendments;

8 (4) Contracts between a consultant and an agency of less than
9 twenty thousand dollars. However, contracts of five thousand dollars
10 or greater but less than (~~twenty~~) ten thousand dollars shall have
11 documented evidence of competition. Contracts of ten thousand dollars
12 or greater, but less than twenty thousand dollars, shall have
13 documented evidence of competition, which must include agency posting
14 of the contract opportunity on the state's common vendor registration
15 and bid notification system. Agencies shall not structure contracts to
16 evade these requirements; and

17 (5) Other specific contracts or classes or groups of contracts
18 exempted from the competitive solicitation process by the director of
19 the office of financial management when it has been determined that a
20 competitive solicitation process is not appropriate or cost-effective.

21 ***Sec. 5.** RCW 43.19.1908 and 2009 c 486 s 11 are each amended to
22 read as follows:

23 (1) For contracts of twenty-five thousand dollars or greater, the
24 competitive bidding required by RCW 43.19.190 through 43.19.1939 shall
25 be solicited by public notice, by posting of the contract opportunity
26 on the state's common vendor registration and bid notification system,
27 and through the sending of notices by mail, electronic transmission, or
28 other means to bidders on the appropriate list of bidders who shall
29 have qualified by application to the division of purchasing.

30 (2) Contracts for less than twenty-five thousand dollars, and
31 contracts up to the direct buy dollar amount limit pursuant to RCW
32 43.19.1906(2), must be solicited by public notice and have documented
33 evidence of competition.

34 (3) Bids may be solicited by the purchasing division from any
35 source thought to be of advantage to the state. All bids shall be in
36 written or electronic form and conform to rules of the division of
37 purchasing.

**Sec. 5 was vetoed. See message at end of chapter.*

1 **Sec. 6.** RCW 43.105.041 and 2010 1st sp.s. c 7 s 65 are each
2 amended to read as follows:

3 (1) The board shall have the following powers and duties related to
4 information services:

5 (a) To develop standards and procedures governing the acquisition
6 and disposition of equipment, proprietary software and purchased
7 services, licensing of the radio spectrum by or on behalf of state
8 agencies, and confidentiality of computerized data;

9 (b) To purchase, lease, rent, or otherwise acquire, dispose of, and
10 maintain equipment, proprietary software, and purchased services, or to
11 delegate to other agencies and institutions of state government, under
12 appropriate standards, the authority to purchase, lease, rent, or
13 otherwise acquire, dispose of, and maintain equipment, proprietary
14 software, and purchased services: PROVIDED, That, agencies and
15 institutions of state government are expressly prohibited from
16 acquiring or disposing of equipment, proprietary software, and
17 purchased services without such delegation of authority. The
18 acquisition and disposition of equipment, proprietary software, and
19 purchased services is exempt from RCW 43.19.1919 and, as provided in
20 RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200,
21 except that the board, the department, and state agencies, as
22 delegated, must post notices of technology procurement bids on the
23 state's common vendor registration and bid notification system for (i)
24 goods and purchased services of fifty thousand dollars or greater, and
25 (ii) personal services of ten thousand dollars or greater. This
26 subsection (1)(b) does not apply to the legislative branch;

27 (c) To develop statewide or interagency technical policies,
28 standards, and procedures;

29 (d) To review and approve standards and common specifications for
30 new or expanded telecommunications networks proposed by agencies,
31 public postsecondary education institutions, educational service
32 districts, or statewide or regional providers of K-12 information
33 technology services, and to assure the cost-effective development and
34 incremental implementation of a statewide video telecommunications
35 system to serve: Public schools; educational service districts;
36 vocational-technical institutes; community colleges; colleges and
37 universities; state and local government; and the general public
38 through public affairs programming;

1 (e) To provide direction concerning strategic planning goals and
2 objectives for the state. The board shall seek input from the
3 legislature and the judiciary;

4 (f) To develop and implement a process for the resolution of
5 appeals by:

6 (i) Vendors concerning the conduct of an acquisition process by an
7 agency or the department; or

8 (ii) A customer agency concerning the provision of services by the
9 department or by other state agency providers;

10 (g) To establish policies for the periodic review by the department
11 of agency performance which may include but are not limited to analysis
12 of:

13 (i) Planning, management, control, and use of information services;

14 (ii) Training and education; and

15 (iii) Project management;

16 (h) To set its meeting schedules and convene at scheduled times, or
17 meet at the request of a majority of its members, the chair, or the
18 director;

19 (i) To review and approve that portion of the department's budget
20 requests that provides for support to the board; and

21 (j) To develop procurement policies and procedures, such as
22 unbundled contracting and subcontracting, that encourage and facilitate
23 the purchase of products and services by state agencies and
24 institutions from Washington small businesses to the maximum extent
25 practicable and consistent with international trade agreement
26 commitments.

27 (2) Statewide technical standards to promote and facilitate
28 electronic information sharing and access are an essential component of
29 acceptable and reliable public access service and complement content-
30 related standards designed to meet those goals. The board shall:

31 (a) Establish technical standards to facilitate electronic access
32 to government information and interoperability of information systems,
33 including wireless communications systems. Local governments are
34 strongly encouraged to follow the standards established by the board;
35 and

36 (b) Require agencies to consider electronic public access needs
37 when planning new information systems or major upgrades of systems.

1 In developing these standards, the board is encouraged to include
2 the state library, state archives, and appropriate representatives of
3 state and local government.

4 (3)(a) The board has the duty to govern, operate, and oversee the
5 technical design, implementation, and operation of the K-20 network
6 including, but not limited to, the following duties: Establishment and
7 implementation of K-20 network technical policy, including technical
8 standards and conditions of use; review and approval of network design;
9 procurement of shared network services and equipment; and resolving
10 user/provider disputes concerning technical matters. The board shall
11 delegate general operational and technical oversight to the department
12 as appropriate.

13 (b) The board has the authority to adopt rules under chapter 34.05
14 RCW to implement the provisions regarding the technical operations and
15 conditions of use of the K-20 network.

16 **Sec. 7.** RCW 39.29.006 and 2009 c 486 s 6 are each amended to read
17 as follows:

18 As used in this chapter:

19 (1) "Agency" means any state office or activity of the executive
20 and judicial branches of state government, including state agencies,
21 departments, offices, divisions, boards, commissions, and educational,
22 correctional, and other types of institutions.

23 (2) "Client services" means services provided directly to agency
24 clients including, but not limited to, medical and dental services,
25 employment and training programs, residential care, and subsidized
26 housing.

27 (3) "Common vendor registration and bid notification system" means
28 the internet-based vendor registration and bid notification system
29 maintained by and housed within the department of general
30 administration. The requirements contained in chapter 486, Laws of
31 2009 shall continue to apply to this system, regardless of future
32 changes to its name or management structure.

33 (4) "Competitive solicitation" means a documented formal process
34 providing an equal and open opportunity to qualified parties and
35 culminating in a selection based on criteria which may include such
36 factors as the consultant's fees or costs, ability, capacity,
37 experience, reputation, responsiveness to time limitations,

1 responsiveness to solicitation requirements, quality of previous
2 performance, and compliance with statutes and rules relating to
3 contracts or services. "Competitive solicitation" includes posting of
4 the contract opportunity on the state's common vendor registration and
5 bid notification system.

6 (5) "Consultant" means an independent individual or firm
7 contracting with an agency to perform a service or render an opinion or
8 recommendation according to the consultant's methods and without being
9 subject to the control of the agency except as to the result of the
10 work. The agency monitors progress under the contract and authorizes
11 payment.

12 (6) "Emergency" means a set of unforeseen circumstances beyond the
13 control of the agency that either:

14 (a) Present a real, immediate threat to the proper performance of
15 essential functions; or

16 (b) May result in material loss or damage to property, bodily
17 injury, or loss of life if immediate action is not taken.

18 (7) "Evidence of competition" means documentation demonstrating
19 that the agency has solicited responses from multiple firms in
20 selecting a consultant. "Evidence of competition" includes
21 documentation that the agency has posted the contract opportunity on
22 the state's common vendor registration and bid notification system.

23 (8) "In-state business" means a business that has its principal
24 office located in Washington.

25 (9) "Personal service" means professional or technical expertise
26 provided by a consultant to accomplish a specific study, project, task,
27 or other work statement. This term does not include purchased services
28 as defined under subsection ~~((+10+))~~ (11) of this section. This term
29 does include client services.

30 ~~((+9+))~~ (10) "Personal service contract" means an agreement, or any
31 amendment thereto, with a consultant for the rendering of personal
32 services to the state which is consistent with RCW 41.06.142.

33 ~~((+10+))~~ (11) "Purchased services" means services provided by a
34 vendor to accomplish routine, continuing and necessary functions. This
35 term includes, but is not limited to, services acquired under RCW
36 43.19.190 or 43.105.041 for equipment maintenance and repair; operation
37 of a physical plant; security; computer hardware and software

1 maintenance; data entry; key punch services; and computer time-sharing,
2 contract programming, and analysis.

3 ~~((+11+))~~ (12) "Small business" means an in-state business,
4 including a sole proprietorship, corporation, partnership, or other
5 legal entity, that: (a) Certifies, under penalty of perjury, that it
6 is owned and operated independently from all other businesses and has
7 either ((+a+)) (i) fifty or fewer employees, or ((+b+)) (ii) a gross
8 revenue of less than seven million dollars annually as reported on its
9 federal income tax return or its return filed with the department of
10 revenue over the previous three consecutive years~~((. As used in this~~
11 ~~definition, "in state business" means a business that has its principal~~
12 ~~office — located — in — Washington — and — its — officers — domiciled — in~~
13 ~~Washington)); or (b) is certified under chapter 39.19 RCW.~~

14 ~~((+12+))~~ (13) "Sole source" means a consultant providing
15 professional or technical expertise of such a unique nature that the
16 consultant is clearly and justifiably the only practicable source to
17 provide the service. The justification shall be based on either the
18 uniqueness of the service or sole availability at the location
19 required.

20 NEW SECTION. Sec. 8. If specific funding for the purposes of
21 section 3 of this act, referencing section 3 of this act by bill or
22 chapter number and section number, is not provided by June 30, 2012, in
23 the omnibus appropriations act, section 3 of this act is null and void.

Passed by the House April 13, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 16, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 17, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5, House
Bill 1770 entitled:

"AN ACT Relating to enhancing small business participation in
state purchasing."

I am vetoing Section 5 because it inadvertently eliminated the ability
for agencies to make purchases up to three thousand dollars based on
buyer experience and knowledge of the market and is therefore in
conflict with RCW 43.19.1906(2).

For this reason I have vetoed Section 5 of House Bill 1770.

With the exception of Section 5, House Bill 1770 is approved."