
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0049.3/11 3rd draft

ATTY/TYPIST: AL:crs

BRIEF DESCRIPTION: Integrating environmental elements into state purchasing criteria.

1 AN ACT Relating to integrating environmental elements into state
2 purchasing criteria; amending RCW 43.19.1911 and 43.19.190; adding new
3 sections to chapter 43.19 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) The department of general administration's procurement role is
7 to satisfy a defined need with goods and purchased services that
8 represent best value, which includes consideration of environmental
9 attributes, in addition to performance, availability, and price;

10 (2) The department of ecology can aid the department of general
11 administration by identifying environmentally preferred product
12 accreditations as well as those chemicals that should be avoided in the
13 product selection process;

14 (3) State purchasing practices can stimulate innovation, market
15 development, and demand for environmentally preferred goods and
16 purchased services, encouraging and supporting emerging environmental
17 technologies, local products and services, and the green economy in
18 Washington state;

1 (4) The state should implement environmentally preferred
2 procurement practices by addressing priority chemicals or products
3 first, rather than attempting to assess the thousands of chemicals
4 found in products; and

5 (5) State agencies should buy environmentally preferred products
6 and services whenever they are comparable in quality, availability, and
7 price.

8 For the purposes of this section, "environmentally preferred" has
9 the same meaning as in RCW 43.19.1911.

10 **Sec. 2.** RCW 43.19.1911 and 2006 c 363 s 3 are each amended to read
11 as follows:

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

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

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

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

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

1 (b) Specifications, terms, conditions, or requirements have been
2 revised;

3 (c) The supplies or services being contracted for are no longer
4 required;

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

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

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

13 (g) No responsive bid has been received from a responsible bidder;
14 or

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

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

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

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

34 (8) Each bid with the name of the bidder shall be entered of record
35 and each record, with the successful bid indicated, shall, after
36 letting of the contract, be open to public inspection. Bid prices
37 shall not be disclosed during electronic or web-based bidding before
38 the letting of the contract.

1 (9) In determining "~~((lowest))~~ responsible bidder", ~~((in addition~~
2 ~~to 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~~
14 ~~bids for purchase, manufacture, or lease, and in determining the~~
15 ~~"lowest responsible bidder," whenever there is reason to believe that~~
16 ~~applying the "life cycle costing" technique to bid evaluation would~~
17 ~~result in lowest total cost to the state, first consideration shall be~~
18 ~~given by state purchasing activities to the bid with the lowest life~~
19 ~~cycle cost which complies with specifications. "Life cycle cost" means~~
20 ~~the total cost of an item to the state over its estimated useful life,~~
21 ~~including costs of selection, acquisition, operation, maintenance, and~~
22 ~~where 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.~~

27 ~~Nothing in this section shall prohibit any state agency,~~
28 ~~department, board, commission, committee, or other state level entity~~
29 ~~from allowing for preferential purchase of products made from recycled~~
30 ~~materials or products that may be recycled or reused)).~~

31 (10) In determining "lowest cost" of a bid, in addition to price,
32 the following elements must be considered:

33 (a) The capability of the proposed goods and services to satisfy
34 the defined needs;

35 (b) Whether the goods and services to be supplied are
36 environmentally preferred;

37 (c) The life-cycle cost of the good or service to be supplied; and

1 (d) Such other information as may be secured having a bearing on
2 the decision to award the contract.

3 (11) For the purposes of this section:

4 (a) "Environmentally preferred" means those goods and services
5 that:

6 (i) Are certified by nationally or internationally recognized
7 environmental certification organizations or other state, national, or
8 international experts where no certified standard exists, as determined
9 by the department of ecology;

10 (ii) Consider life-cycle costs as defined in (b) of this
11 subsection; and

12 (iii) Avoid use of substances described in section 3 of this act;

13 (b) "Life-cycle costs" means the total cost of an item to the state
14 over its estimated useful life, including costs of selection,
15 acquisition, operation, maintenance, and where applicable, disposal, as
16 far as these costs can reasonably be determined, minus the salvage
17 value at the end of its estimated useful life. Factors that contribute
18 to determining life-cycle costs include: Costs associated with
19 greenhouse gases, energy, and water; the amount of toxic, persistent or
20 bioaccumulative chemicals used, disposed of, or consumed; waste and
21 packaging; and postconsumer and overall recycled content, reuse, or
22 recycling. For the purposes of this subsection, "estimated useful
23 life" means the estimated time from the date of acquisition to the date
24 of replacement, recycling, or disposal, determined in any reasonable
25 manner.

26 NEW SECTION. Sec. 3. (1) Vendors supplying nondurable goods and
27 services in which the manufacturer has intentionally used or added the
28 chemicals or metals of concern found in subsection (3) of this section
29 shall disclose this information, along with their efforts to identify
30 safer chemical alternatives, during the bidding process, as existing
31 contracts expire and are renewed, or as new contracts are otherwise
32 established. For the purposes of this subsection, "nondurable goods"
33 are goods purchased by the state which are used daily or frequently or
34 which typically have an expected life span of three years or less.

35 (2) State agencies shall avoid the purchase of goods and services
36 that contain or use the chemicals or metals of concern found in
37 subsection (3) of this section when safer, effective alternatives are

1 available. When contracts are established with environmentally
2 preferred attributes or accreditations, as defined in RCW 43.19.1911,
3 state agencies shall use those contracts unless the agency notifies the
4 department of general administration per the requirements found in RCW
5 43.19.190(2).

6 (3) Chemicals or metals of concern include:

7 (a) Persistent, bioaccumulative toxic chemicals and metals of
8 concern as found in chapter 70.105 RCW;

9 (b) Polybrominated diphenyl ethers as described in chapter 70.76
10 RCW;

11 (c) Mercury or mercury-contained products as described in chapter
12 70.95M RCW;

13 (d) Lead wheel weights for vehicles as described in chapter 70.270
14 RCW;

15 (e) Copper in vehicle brake pads as regulated by state law;

16 (f) Bisphenol A as regulated by state law;

17 (g) Chemicals of high concern to children, as described in chapter
18 70.240 RCW, when contained in products or services that may reasonably
19 impact children;

20 (h) Other chemicals established by the department of ecology
21 through rule making or specifically banned by state law because of
22 their impacts to human health and the environment.

23 **Sec. 4.** RCW 43.19.190 and 2002 c 200 s 3 are each amended to read
24 as follows:

25 The director of general administration, through the state
26 purchasing and material control director, shall:

27 (1) Establish and staff such administrative organizational units
28 within the division of purchasing as may be necessary for effective
29 administration of the provisions of RCW 43.19.190 through 43.19.1939;

30 (2) Purchase all material, supplies, services, and equipment needed
31 for the support, maintenance, and use of all state institutions,
32 colleges, community colleges, technical colleges, college districts,
33 and universities, the offices of the elective state officers, the
34 supreme court, the court of appeals, the administrative and other
35 departments of state government, and the offices of all appointive
36 officers of the state: PROVIDED, That the provisions of RCW 43.19.190
37 through 43.19.1937 do not apply in any manner to the operation of the

1 state legislature except as requested by the legislature: PROVIDED,
2 That any agency may purchase material, supplies, services, and
3 equipment for which the agency has notified the purchasing and material
4 control director that it is more cost-effective for the agency to make
5 the purchase directly from the vendor and an analysis of the criteria
6 in RCW 43.19.1911 and section 3 of this act is part of the
7 notification: PROVIDED, That primary authority for the purchase of
8 specialized equipment, instructional, and research material for their
9 own use shall rest with the colleges, community colleges, and
10 universities: PROVIDED FURTHER, That universities operating hospitals
11 and the state purchasing and material control director, as the agent
12 for state hospitals as defined in RCW 72.23.010, and for health care
13 programs provided in state correctional institutions as defined in RCW
14 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and
15 72.36.070, may make purchases for hospital operation by participating
16 in contracts for materials, supplies, and equipment entered into by
17 nonprofit cooperative hospital group purchasing organizations:
18 PROVIDED FURTHER, That primary authority for the purchase of materials,
19 supplies, and equipment for resale to other than public agencies shall
20 rest with the state agency concerned: PROVIDED FURTHER, That authority
21 to purchase services as included herein does not apply to personal
22 services as defined in chapter 39.29 RCW, unless such organization
23 specifically requests assistance from the division of purchasing in
24 obtaining personal services and resources are available within the
25 division to provide such assistance: PROVIDED FURTHER, That the
26 authority for the purchase of insurance and bonds shall rest with the
27 risk manager under RCW (~~(43.19.1935)~~) 43.41.310: PROVIDED FURTHER,
28 That, except for the authority of the risk manager to purchase
29 insurance and bonds, the director is not required to provide purchasing
30 services for institutions of higher education that choose to exercise
31 independent purchasing authority under RCW 28B.10.029: PROVIDED
32 FURTHER, That the authority to purchase interpreter services and
33 interpreter brokerage services on behalf of limited-English speaking or
34 sensory-impaired applicants and recipients of public assistance shall
35 rest with the department of social and health services;

36 (3) Have authority to delegate to state agencies authorization to
37 purchase or sell, which authorization shall specify restrictions as to
38 dollar amount or to specific types of material, equipment, services,

1 and supplies. Acceptance of the purchasing authorization by a state
2 agency does not relieve such agency from conformance with other
3 sections of RCW 43.19.190 through 43.19.1939, or from policies
4 established by the director. Also, delegation of such authorization to
5 a state agency, including an educational institution to which this
6 section applies, to purchase or sell material, equipment, services, and
7 supplies shall not be granted, or otherwise continued under a previous
8 authorization, if such agency is not in substantial compliance with
9 overall state purchasing and material control policies as established
10 herein;

11 (4) Contract for the testing of material, supplies, and equipment
12 with public and private agencies as necessary and advisable to protect
13 the interests of the state;

14 (5) Prescribe the manner of inspecting all deliveries of supplies,
15 materials, and equipment purchased through the division;

16 (6) Prescribe the manner in which supplies, materials, and
17 equipment purchased through the division shall be delivered, stored,
18 and distributed;

19 (7) Provide for the maintenance of a catalogue library,
20 manufacturers' and wholesalers' lists, and current market information;

21 (8) Provide for a commodity classification system and may, in
22 addition, provide for the adoption of standard specifications;

23 (9) Provide for the maintenance of inventory records of supplies,
24 materials, and other property;

25 (10) Prepare rules and regulations governing the relationship and
26 procedures between the division of purchasing and state agencies and
27 vendors;

28 (11) Publish procedures and guidelines for compliance by all state
29 agencies, including those educational institutions to which this
30 section applies, which implement overall state purchasing and material
31 control policies;

32 (12) Advise state agencies, including educational institutions,
33 regarding compliance with established purchasing and material control
34 policies under existing statutes.

35 NEW SECTION. **Sec. 5.** The department of general administration may
36 adopt rules to implement or enforce provisions of this chapter relating
37 to procurement of environmentally preferred goods and services.

1 NEW SECTION. **Sec. 6.** Local governments, higher education
2 institutions, K-12 schools, and school districts are encouraged, but
3 not required, to comply with provisions of this chapter concerning
4 procurement of environmentally preferred goods or services, as defined
5 in RCW 43.19.1911.

6 NEW SECTION. **Sec. 7.** Sections 3, 5, and 6 of this act are each
7 added to chapter 43.19 RCW.

--- END ---