

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2271

59th Legislature
2005 Regular Session

Passed by the House March 9, 2005
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 15, 2005
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2271** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2271

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Representatives Miloscia, McDermott, Moeller and Kenney

Read first time 03/02/2005. Referred to Committee on State
Government Operations & Accountability.

1 AN ACT Relating to employment opportunities for people with
2 disabilities; amending RCW 43.19.520, 43.19.530, 43.19.531, 43.19.533,
3 43.19.1911, 50.40.065, and 50.40.066; and providing expiration dates.

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

5 **Sec. 1.** RCW 43.19.520 and 2003 c 136 s 1 are each amended to read
6 as follows:

7 It is the intent of the legislature to encourage state agencies and
8 departments to purchase products and/or services manufactured or
9 provided by:

10 (1) Community rehabilitation programs of the department of social
11 and health services which operate facilities serving disadvantaged
12 persons and persons with disabilities and have achieved or consistently
13 make progress towards the goal of enhancing opportunities for
14 disadvantaged persons and persons with disabilities to maximize their
15 opportunities for employment and career advancement, and increase the
16 number employed and their wages; and

17 (2) Until December 31, (~~2007~~) 2009, businesses owned and operated
18 by persons with disabilities that have achieved or consistently make
19 progress towards the goal of enhancing opportunities for disadvantaged

1 persons and persons with disabilities to maximize their opportunities
2 for employment and career advancement, and increase the number employed
3 and their wages.

4 **Sec. 2.** RCW 43.19.530 and 2003 c 136 s 3 are each amended to read
5 as follows:

6 The state agencies and departments are hereby authorized to
7 purchase products and/or services manufactured or provided by:

8 (1) Community rehabilitation programs of the department of social
9 and health services; and

10 (2) Until December 31, (~~2007~~) 2009, businesses owned and operated
11 by persons with disabilities.

12 Such purchases shall be at the fair market price of such products
13 and services as determined by the division of purchasing of the
14 department of general administration. To determine the fair market
15 price the division shall use the last comparable bid on the products
16 and/or services or in the alternative the last price paid for the
17 products and/or services. The increased cost of labor, materials, and
18 other documented costs since the last comparable bid or the last price
19 paid are additional cost factors which shall be considered in
20 determining fair market price. Upon the establishment of the fair
21 market price as provided for in this section the division is hereby
22 empowered to negotiate directly for the purchase of products or
23 services with officials in charge of the community rehabilitation
24 programs of the department of social and health services and, until
25 December 31, 2007, businesses owned and operated by persons with
26 disabilities.

27 **Sec. 3.** RCW 43.19.531 and 2003 c 136 s 4 are each amended to read
28 as follows:

29 (1) The department of general administration shall identify in the
30 department's vendor registry all vendors in good standing, as defined
31 in RCW 43.19.525.

32 (2) The department of general administration shall annually, but no
33 less often than once every fifteen months:

34 (a) Request that vendors in good standing update their information
35 in the department's vendor registry including but not limited to the

1 Washington state commodity codes for products and services that the
2 vendors propose to offer to state agencies during at least the
3 subsequent fifteen-month period;

4 (b) Disseminate the information obtained in response to the request
5 made pursuant to (a) of this subsection to at least one purchasing
6 official in each state agency; and

7 (c) Notify each vendor in good standing of all contracts for the
8 purchase of goods and services by state agencies with respect to which
9 the department of general administration anticipates either renewing or
10 requesting bids or proposals within at least twelve months of the date
11 of the notice.

12 (3) The department of general administration and the governor's
13 committee on disability issues and employment shall jointly prepare
14 and, on or before December 31, (~~(2006)~~) 2008, issue a report to the
15 governor and the legislature. The report shall describe the activities
16 authorized or required by chapter 136, Laws of 2003, and their effect
17 on enhancing opportunities for disadvantaged persons and persons with
18 disabilities to maximize their opportunities for employment and career
19 advancement, and increase the number employed and their wages.

20 (4) This section expires December 31, (~~(2007)~~) 2009.

21 **Sec. 4.** RCW 43.19.533 and 2003 c 136 s 5 are each amended to read
22 as follows:

23 (1) Nothing in chapter 136, Laws of 2003 requires any state agency
24 to take any action that interferes with or impairs an existing contract
25 between any state agency and any other party, including but not limited
26 to any other state agency.

27 (2) Until December 31, (~~(2007)~~) 2009, except as provided under RCW
28 43.19.1906(2) for purchases up to three thousand dollars, RCW
29 43.19.534, and subsection (1) of this section, a state agency shall not
30 purchase any product or service identified in the notice most recently
31 disseminated by the department of general administration, as provided
32 under RCW 43.19.531(2)(b), from other than a vendor in good standing
33 until the state agency has included in the solicitation process at
34 least one vendor in good standing supplying the goods or service needed
35 by the agency, unless no vendor in good standing supplying the goods or
36 service needed by the agency is available.

1 **Sec. 5.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read
2 as follows:

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

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

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

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

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

28 (b) Specifications, terms, conditions, or requirements have been
29 revised;

30 (c) The supplies or services being contracted for are no longer
31 required;

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

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

37 (f) All otherwise acceptable bids received are at unreasonable

1 prices or only one bid is received and the agency cannot determine the
2 reasonableness of the bid price;

3 (g) No responsive bid has been received from a responsible bidder;
4 or

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

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

8 (6) After the opening of bids, an agency may not reject all bids
9 and enter into direct negotiations to complete the planned acquisition.
10 However, the agency can enter into negotiations exclusively with the
11 lowest responsible bidder in order to determine if the lowest
12 responsible bid may be improved. Until December 31, ((2007)) 2009, for
13 purchases requiring a formal bid process the agency shall also enter
14 into negotiations with and may consider for award the lowest
15 responsible bidder that is a vendor in good standing, as defined in RCW
16 43.19.525. An agency shall not use this negotiation opportunity to
17 permit a bidder to change a nonresponsive bid into a responsive bid.

18 (7) In determining the lowest responsible bidder, the agency shall
19 consider any preferences provided by law to Washington products and
20 vendors and to RCW 43.19.704, and further, may take into consideration
21 the quality of the articles proposed to be supplied, their conformity
22 with specifications, the purposes for which required, and the times of
23 delivery.

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

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

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

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

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

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

36 (e) The previous and existing compliance by the bidder with laws
37 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 **Sec. 6.** RCW 50.40.065 and 2003 c 136 s 7 are each amended to read
21 as follows:

22 (1) No less frequently than once each year, the governor's
23 committee on disability issues and employment shall determine whether
24 entities seeking to qualify as vendors in good standing, pursuant to
25 this section and RCW 43.19.531, have achieved, or continue to work
26 towards, the goal of enhancing opportunities for persons of
27 disabilities to maximize their employment and career advancement, and
28 increase the number employed and their wages.

29 (2) In making the determination provided for in subsection (1) of
30 this section, the governor's committee on disability issues and
31 employment shall appoint and, except in the case of malfeasance or
32 misfeasance, shall rely upon the conclusions of an advisory
33 subcommittee consisting of: (a) Three members chosen from among those
34 current or former clients of a community rehabilitation program who
35 have nominated themselves, at least one of whom must be a person with
36 a developmental disability; (b) one member chosen from among those
37 guardians, parents, or other relatives of a current client or employee

1 of a community rehabilitation program who have nominated themselves;
2 (c) one member chosen from among those who have been nominated by a
3 community rehabilitation program; (d) one member chosen from among
4 those owners of a business owned and operated by persons with
5 disabilities who have nominated themselves; (e) one member who is
6 designated by the developmental disabilities council; (f) one member
7 who is a member of and selected by the governor's committee on
8 disability issues and employment; (g) one member who is designated by
9 the secretary of the department of social and health services; and (h)
10 one member who is designated by the director of the department of
11 services for the blind.

12 (3) The advisory subcommittee appointed by the governor's committee
13 on disability issues and employment shall conclude that entities
14 seeking to qualify, pursuant to this section and RCW 43.19.531, as
15 vendors in good standing, have achieved, or continue to work towards,
16 the goal of enhancing opportunities for persons of disabilities to
17 maximize their employment and career advancement, and increase the
18 number employed and their wages if, and only if, the entity provides
19 reasonably conclusive evidence that, during the twelve-month period
20 immediately preceding the entity's application, at least one-half of
21 the following measurement categories applicable to the entity have been
22 either achieved, pursuant to rules established under subsection (4) of
23 this section, or have been improved as compared to the entity's
24 condition with respect to that measurement category one year ago:

25 (a) The number of people with disabilities in the entity's total
26 work force who are working in integrated settings;

27 (b) The percentage of the people with disabilities in the entity's
28 total work force who are working in integrated settings;

29 (c) The number of people with disabilities in the entity's total
30 work force who are working in individual supported employment settings;

31 (d) The percentage of the people with disabilities in the entity's
32 total work force who are working in individual supported employment
33 settings;

34 (e) The number of people with disabilities in the entity's total
35 work force who, during the last twelve months, have transitioned to
36 less restrictive employment settings either within the entity or with
37 other community employers;

1 (f) The number of people with disabilities in the entity's total
2 work force who are earning at least the state minimum wage;

3 (g) The percentage of the people with disabilities in the entity's
4 total work force who are earning at least the state minimum wage;

5 (h) The number of people with disabilities serving in supervisory
6 capacities within the entity;

7 (i) The percentage of supervisory positions within the entity that
8 are occupied by people with disabilities;

9 (j) The number of people with disabilities serving in an ownership
10 capacity or on the governing board of the entity;

11 (k) The ratio of the total amount paid by the entity in wages,
12 salaries, and related employment benefits to people with disabilities,
13 as compared to the amount paid by the entity in wages, salaries, and
14 related employment benefits paid by the entity to persons without
15 disabilities during the previous year; and

16 (l) The percentage of people with disabilities in the entity's
17 total work force for whom the entity has developed a reasonable,
18 achievable, and written career plan.

19 (4) The commissioner shall consult with the advisory subcommittee
20 established in subsection (2) of this section to develop and adopt
21 rules establishing the measurement at which it is deemed that the
22 measurement categories identified in subsection (3)(b), (d), (e), (g),
23 (h), (j), (k), and (l) of this section have been achieved.

24 (5) This section expires December 31, (~~(2007)~~) 2009.

25 **Sec. 7.** RCW 50.40.066 and 2003 c 136 s 8 are each amended to read
26 as follows:

27 (1) The commissioner is authorized to adopt rules to implement RCW
28 50.40.065, including but not limited to authority to establish (a) a
29 nonrefundable application fee of not more than five hundred dollars to
30 be paid by each entity seeking to establish or renew qualification as
31 a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b)
32 a fee of not more than two percent of the face amount of any contract
33 awarded under chapter 136, Laws of 2003; or (c) both fees identified in
34 (a) and (b) of this subsection.

35 (2) The fee or fees established pursuant to subsection (1) of this
36 section must set a level of revenue sufficient to recover costs
37 incurred by the department of general administration in fulfilling the

1 duties identified in RCW 43.19.531 and the governor's committee on
2 disability issues and employment in fulfilling the duties identified in
3 RCW 50.40.065.

4 (3) The vendors in good standing account is created in the custody
5 of the state treasurer. All receipts from the fee or fees established
6 pursuant to subsection (1) of this section must be deposited into the
7 account. Expenditures from the account may be used only for the
8 purpose described in subsection (2) of this section. Expenditures from
9 the account may be authorized only upon the approval of both the
10 director of the department of general administration and the
11 commissioner, or their respective designees. The account is subject to
12 allotment procedures under chapter 43.88 RCW, but an appropriation is
13 not required for expenditures.

14 (4) This section expires December 31, (~~2007~~) 2009, and any
15 unencumbered funds remaining in the vendors in good standing account on
16 that date shall revert to the general fund.

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