

FILED MAR 22 '04

SENATE FILE 2294
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO SSB 3074)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to competitive bidding requirements for state
2 agencies and establishing purchasing goals from certain
3 businesses located in this state.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2294
GOVERNMENT OVERSIGHT

1 Section 1. NEW SECTION. 7D.36 REVIEW OF CONTRACTS.

2 Every purchase by an agency, department, commission, board,
3 committee, officer, or other governing body of the state in
4 excess of twenty-five thousand dollars shall be reviewed by
5 the executive council, regardless of the existence of any
6 master contract or agreement that may otherwise be available
7 for that purchase, unless that purchase was made through a
8 competitive bidding procedure as defined in section 8A.301,
9 subsection 2. Every purchase in excess of fifty thousand
10 dollars shall be reviewed by the executive council. The
11 council shall promulgate rules, pursuant to chapter 17A, to
12 establish a procedure for the review of contracts for
13 purchases pursuant to this section.

14 Sec. 2. Section 8A.311, unnumbered paragraph 1, Code
15 Supplement 2003, is amended to read as follows:

16 The director shall adopt rules establishing competitive
17 bidding procedures. The term of any master contract for the
18 purchase of equipment, supplies, or services shall be for no
19 longer than one year, and may be extended for one additional
20 year. In order to extend a master contract beyond the second
21 year, the department shall, not less than thirty days prior to
22 the intended extension, post notice of an intent to extend a
23 master contract on a centralized internet website provided and
24 maintained by the department. Following this notification
25 process a master contract may be annually extended up to two
26 times.

27 Sec. 3. Section 8A.311, subsection 1, Code Supplement
28 2003, is amended to read as follows:

29 1. a. All equipment, supplies, or services procured by
30 the department shall be purchased by a competitive bidding
31 procedure. For purposes of this section, unless the context
32 otherwise requires, "services" shall not include construction
33 services or professional services for which a license,
34 certification, registration, or similar credential, issued by
35 the state of Iowa, is required to provide the service.

1 However, the director may exempt by rule purchases of
2 noncompetitive items and purchases in lots or quantities too
3 small to be effectively purchased by competitive bidding.
4 Preference shall be given to purchasing Iowa products and
5 purchases from Iowa-based businesses if the Iowa-based
6 business bids submitted are comparable in price to bids
7 submitted by out-of-state businesses and otherwise meet the
8 required specifications. The department shall also give
9 preference to a small business, as defined in section 15.102,
10 if the bids are comparable in price to other bids submitted
11 and otherwise meet the required specifications. If the laws
12 of another state mandate a percentage preference for
13 businesses or products from that state and the effect of the
14 preference is that bids of Iowa businesses or products that
15 are otherwise low and responsive are not selected in the other
16 state, the same percentage preference shall be applied to Iowa
17 businesses and products when businesses or products from that
18 other state are bid to supply Iowa requirements.

19 b. Every purchase in excess of twenty-five thousand
20 dollars, regardless of the existence of any master contract or
21 agreement that may otherwise be available for that purchase,
22 including purchases otherwise authorized in subsection 8,
23 shall be made in compliance with the following procedure,
24 unless that purchase was made through a competitive bidding
25 procedure:

26 (1) Not less than thirty days prior to making the purchase
27 the department shall post notice of the terms of the intended
28 purchase on a centralized internet website provided and
29 maintained by the department.

30 (2) The department shall consider any proposal, received
31 up to and including thirty days following the posting of the
32 notice, from a vendor who proposes to meet the terms and
33 conditions of that proposed purchase at a price that is lower
34 than that specified in the notice.

35 (3) If the department wishes to complete the purchase

1 using the initial vendor, the department shall submit the
2 terms and conditions of that proposed purchase, along with any
3 other pertinent information, to the state auditor for review.
4 The auditor shall provide a recommendation concerning that
5 purchase to the executive council.

6 c. Any purchase in excess of twenty-five thousand dollars
7 made pursuant to paragraph "b", subparagraph (3), and any
8 purchase in excess of fifty thousand dollars must be reviewed
9 by the executive council as provided in section 7D.36.

10 Sec. 4. Section 8A.311, subsection 8, unnumbered paragraph
11 1, Code Supplement 2003, is amended to read as follows:

12 The Except as otherwise provided in this section, the
13 director shall adopt rules providing that any state agency
14 may, upon request, purchase directly from a vendor if the
15 direct purchasing is as economical or more economical than
16 purchasing through the department, or upon a showing that
17 direct purchasing by the state agency would be in the best
18 interests of the state due to an immediate or emergency need.
19 The rules shall include a provision permitting a state agency
20 to purchase directly from a vendor, on the agency's own
21 authority, if the purchase will not exceed five thousand
22 dollars and the purchase will contribute to the agency
23 complying with or exceeding the targeted small business
24 procurement goals under sections 73.15 through 73.21.

25 Sec. 5. Section 10A.104, subsection 8, Code Supplement
26 2003, is amended to read as follows:

27 8. Establish by rule standards and procedures for
28 certifying that targeted small businesses are eligible to
29 participate in the procurement program established in sections
30 73.15 through 73.21. Any Iowa business which has been
31 certified through the federal small business administration's
32 certification process as a small disadvantaged business is
33 automatically certified to participate in the procurement
34 program. The procedure for determination of eligibility shall
35 not include self-certification by a business. The director

1 shall maintain a current directory of targeted small
2 businesses that have been certified pursuant to this
3 subsection.

4 Sec. 6. Section 73.1, Code 2003, is amended by adding the
5 following new unnumbered paragraph:

6 NEW UNNUMBERED PARAGRAPH. All requests for proposals for
7 materials, products, supplies, provisions, and other needed
8 articles and services to be purchased at public expense shall
9 not knowingly be written in such a way as to exclude an Iowa-
10 based company capable of filling the needs of the purchasing
11 entity from submitting a responsive proposal.

12 Sec. 7. NEW SECTION. 73.12 SOFTWARE AND INFORMATION
13 TECHNOLOGY PURCHASES BY STATE.

14 1. PREFERENCE FOR IOWA COMPANIES. Every agency,
15 department, commission, board, committee, officer, or other
16 governing body of this state shall in good faith consider
17 purchasing software or information technology-related goods or
18 services supplied by companies located in this state. The
19 department of administrative services shall, on an annual
20 basis, provide a report to the government oversight committee
21 by January 1 each year. This report shall set out the dollar
22 value of software and information technology-related goods and
23 services supplied to the state entities or officers by
24 companies located in this state as compared to the value of
25 the total amount of such goods and services purchased for
26 state entities and officers.

27 2. PURCHASING SOFTWARE AND INFORMATION TECHNOLOGY.

28 a. Purchases of software and information technology goods
29 or services over fifty thousand dollars must be made using a
30 request for proposals and shall not be made using a master
31 contract without first seeking competitive bids. All master
32 contracts for purchases of software and information technology
33 goods or services shall be limited to two years in duration
34 and shall be nonrenewable.

35 b. When issuing a request for proposals for software or

1 information technology goods or services, all agencies,
2 departments, commissions, boards, committees, and other
3 governing bodies of this state shall post the request for
4 proposals on a centralized internet website provided and
5 maintained by the department of administrative services and
6 report all subsequent contract awards as a result of each
7 request for proposals on the website. The department of
8 administrative services shall provide an electronic
9 notification feature on the website that allows qualified
10 vendors to receive e-mail notification when a new request for
11 proposals is posted and awarded. Responses to and awards
12 relating to requests for proposals not posted on this site
13 using the required timeline for notification are
14 unenforceable.

15 Sec. 8. Section 216B.3, Code Supplement 2003, is amended
16 by adding the following new subsection:

17 NEW SUBSECTION. 12A. Make purchases of equipment,
18 supplies, and services in accordance with this subsection.
19 Every purchase in excess of twenty-five thousand dollars,
20 regardless of the existence of any master contract or
21 agreement that may otherwise be available for that purchase,
22 shall be made in compliance with the following procedure,
23 unless that purchase was made through a competitive bidding
24 procedure as defined in section 8A.301, subsection 2:

25 a. Not less than thirty days prior to making the purchase
26 the commission shall post notice of the terms of the intended
27 purchase on a centralized internet website provided and
28 maintained by the department of administrative services.

29 b. The commission shall consider any proposal, received up
30 to and including thirty days following the posting of the
31 notice, from a vendor who proposes to meet the terms and
32 conditions of that proposed purchase at a price that is lower
33 than that specified in the notice.

34 c. If the commission wishes to complete the purchase using
35 the initial vendor, the commission shall submit the terms and

1 conditions of that proposed purchase, along with any other
2 pertinent information, to the state auditor for review. The
3 auditor shall provide a recommendation concerning that
4 purchase to the executive council.

5 Any purchase in excess of twenty-five thousand dollars made
6 pursuant to paragraph "c" and any purchase in excess of fifty
7 thousand dollars must be reviewed by the executive council as
8 provided in section 7D.36.

9 Sec. 9. Section 262.9, Code Supplement 2003, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 4A. Adopt rules, pursuant to chapter 17A,
12 that establish policies for fully competitive purchasing
13 systems that serve the best interests of the state, the board
14 of regents, and the regents institutions in accordance with
15 best practices. These policies shall address preferences for
16 Iowa products and suppliers, purchasing thresholds,
17 contracting provisions, qualifications of vendors, competitive
18 conditions, and cooperative purchasing. These policies are
19 not subject to the provisions of sections 7D.36 and 73.12.

20 Sec. 10. Section 307.21, subsection 4, paragraph a, Code
21 Supplement 2003, is amended to read as follows:

22 a. Provide centralized purchasing services for the
23 department, in cooperation with the department of
24 administrative services. Every purchase by the department in
25 excess of twenty-five thousand dollars, regardless of the
26 existence of any master contract or agreement that may
27 otherwise be available for that purchase, shall be made in
28 compliance with the following procedure, unless that purchase
29 was made through a competitive bidding procedure as defined in
30 section 8A.301, subsection 2:

31 (1) Not less than thirty days prior to making the purchase
32 the administrator shall post notice of the terms of the
33 intended purchase on a centralized internet website provided
34 and maintained by the department of administrative services.

35 (2) The department shall consider any proposal, received

1 up to and including thirty days following the posting of the
2 notice, from a vendor who proposes to meet the terms and
3 conditions of that proposed purchase at a price that is lower
4 than that specified in the notice.

5 (3) If the department wishes to complete the purchase
6 using the initial vendor, the department shall submit the
7 terms and conditions of that proposed purchase, along with any
8 other pertinent information, to the state auditor for review.
9 The auditor shall provide a recommendation concerning that
10 purchase to the executive council.

11 Any purchase in excess of twenty-five thousand dollars made
12 pursuant to subparagraph (3) and any purchase in excess of
13 fifty thousand dollars must be reviewed by the executive
14 council pursuant to section 7D.36.

15 PARAGRAPH DIVIDED. The administrator shall, when the price
16 is reasonably competitive and the quality as intended,
17 purchase soybean-based inks and plastic products with recycled
18 content, including but not limited to plastic garbage can
19 liners, and shall purchase these items in accordance with the
20 schedule established in section 8A.315. However, the
21 administrator need not purchase garbage can liners in
22 accordance with the schedule if the liners are utilized by a
23 facility approved by the environmental protection commission
24 created under section 455A.6, for purposes of recycling. For
25 purposes of this subsection, "recycled content" means that the
26 content of the product contains a minimum of thirty percent
27 postconsumer material.

28

EXPLANATION

29 This bill requires that certain purchases by state
30 agencies, regardless of their organization, be reviewed by the
31 executive council. The requirement applies to purchases over
32 \$25,000 that were not made using a competitive bidding
33 procedure and every purchase in excess of \$50,000. The bill
34 limits the period of master contracts, executed by the
35 department of administrative services, to one year, with one

1 annual extension allowable. If an additional extension is
2 desired, a notice of that proposed extension must be published
3 not less than 30 days prior to the extension. Following this
4 notice, the contract may be extended for two additional annual
5 extensions.

6 Code section 8A.311 generally requires that the department
7 of administrative services purchase equipment, supplies, and
8 services using a competitive bidding procedure. The bill
9 exempts services provided by certain licensed professionals
10 from this requirement.

11 The bill requires the department of administrative
12 services, the department for the blind, and the state
13 department of transportation to follow a specific process for
14 purchases in excess of \$25,000, unless a competitive bidding
15 procedure was used for that purchase. Under this process, a
16 notice of the intended purchase must be posted on an internet
17 website not less than 30 days prior to making the purchase.
18 The agency must consider any proposal by a vendor who offers
19 to provide the good or service at a better price. If the
20 agency chooses to complete the sale using the initial vendor,
21 that sale must be reviewed by the state auditor as well as the
22 executive council. The bill also requires the state board of
23 regents to develop detailed procurement policies by rule.

24 The bill revises the Iowa preference law, Code chapter 73.
25 The certification of targeted small businesses is expanded to
26 include an Iowa business certified by the federal small
27 business administration. The bill prohibits any governmental
28 body in Iowa from deliberately drafting a request for
29 proposals in such a way as to exclude an Iowa-based business.
30 The bill adds a new Iowa preference for software and
31 information technology purchases by state agencies, requiring
32 them to in good faith consider making these purchases from
33 Iowa companies. All purchases of software and information
34 technology by state agencies over \$50,000 must utilize a
35 request for proposals. That request for proposals must be

1 published on an electronic website.

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SSB# 3074
Government Oversight

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON LUNDBY)

Succeeded By
SP/HF 2294

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to competitive bidding requirements for state
2 agencies and establishing purchasing goals from certain
3 businesses located in this state.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 8A.311, unnumbered paragraph 1, Code
2 Supplement 2003, is amended to read as follows:

3 The director shall adopt rules establishing competitive
4 bidding procedures. Every purchase in excess of fifty
5 thousand dollars, including purchases otherwise authorized in
6 subsection 8, must be made through a competitive bidding
7 process, regardless of the existence of any master contract or
8 agreement that may otherwise be available for that purchase.

9 Sec. 2. Section 8A.311, subsection 1, Code Supplement
10 2003, is amended to read as follows:

11 1. All equipment, supplies, or services procured by the
12 department shall be purchased by a competitive bidding
13 procedure. However, the director may exempt by rule purchases
14 of noncompetitive items and purchases in lots or quantities
15 too small to be effectively purchased by competitive bidding.
16 Preference shall be given to purchasing Iowa products and
17 purchases from Iowa-based businesses if the Iowa-based
18 business bids submitted are comparable in price to bids
19 submitted by out-of-state businesses and otherwise meet the
20 required specifications. The department shall also give
21 preference to a small business, as defined in section 15.102,
22 if the bids are comparable in price to other bids submitted
23 and otherwise meet the required specifications. The
24 department shall establish a goal that fifty percent of the
25 value of all purchases made by state agencies each fiscal year
26 will be made from small businesses. If the laws of another
27 state mandate a percentage preference for businesses or
28 products from that state and the effect of the preference is
29 that bids of Iowa businesses or products that are otherwise
30 low and responsive are not selected in the other state, the
31 same percentage preference shall be applied to Iowa businesses
32 and products when businesses or products from that other state
33 are bid to supply Iowa requirements.

34 Sec. 3. Section 8A.311, subsection 8, unnumbered paragraph
35 1, Code Supplement 2003, is amended to read as follows:

1 The Except as otherwise provided in this section, the
2 director shall adopt rules providing that any state agency
3 may, upon request, purchase directly from a vendor if the
4 direct purchasing is as economical or more economical than
5 purchasing through the department, or upon a showing that
6 direct purchasing by the state agency would be in the best
7 interests of the state due to an immediate or emergency need.
8 The rules shall include a provision permitting a state agency
9 to purchase directly from a vendor, on the agency's own
10 authority, if the purchase will not exceed five thousand
11 dollars and the purchase will contribute to the agency
12 complying with or exceeding the targeted small business
13 procurement goals under sections 73.15 through 73.21.

14 Sec. 4. NEW SECTION. 73.12 SOFTWARE AND INFORMATION
15 TECHNOLOGY PURCHASES BY STATE.

16 1. GOAL ESTABLISHED. Every agency, department,
17 commission, board, committee, officer, or other governing body
18 of this state shall in good faith consider purchasing and
19 shall purchase, when reasonable, software or information
20 technology-related goods or services supplied by software and
21 information technology companies located in this state. Of
22 the total value of anticipated procurement of goods and
23 services under this section, a statewide goal shall be
24 established to procure at least sixty percent of all such
25 purchases each fiscal year from software and information
26 technology companies located in this state. The department of
27 administrative services shall, on an annual basis, assess the
28 state's progress with respect to this goal and shall provide a
29 report of the progress to the government oversight committee
30 by January 1 each year.

31 2. PURCHASING SOFTWARE AND INFORMATION TECHNOLOGY.

32 a. Purchases of software and information technology goods
33 or services over fifty thousand dollars must be made using a
34 request for proposal and shall not be made using a master
35 contract without first seeking competitive bids. All master

1 contracts for purchases of software and information technology
2 goods or services shall be limited to two years in duration
3 and shall be nonrenewable.

4 b. When issuing a request for proposal for software or
5 information technology goods or services, all agencies,
6 departments, commissions, boards, committees, and other
7 governing bodies of this state shall post the request for
8 proposal on a centralized internet website provided and
9 maintained by the department of administrative services and
10 report all subsequent contract awards as a result of each
11 request for proposal on the website. The department of
12 administrative services shall provide an electronic
13 notification feature on this website that allows qualified
14 vendors to receive e-mail notification when a new request for
15 proposal is posted and awarded. Responses to and awards
16 relating to requests for proposal not posted on this site
17 using the required timeline for notification are
18 unenforceable.

19 Sec. 5. Section 73.16, subsection 2, unnumbered paragraph
20 1, Code 2003, is amended to read as follows:

21 The director of each agency or department of state
22 government having purchasing authority shall establish an
23 overall procurement goal from small business, as defined in
24 section 15.102, of fifty percent of the value of anticipated
25 procurements of goods and services, including construction,
26 but not including utility services, each fiscal year. This
27 goal includes procurements from certified targeted small
28 businesses. The director of each agency or department of
29 state government having purchasing authority shall establish a
30 procurement goal from certified targeted small businesses
31 identified pursuant to section 10A.104, subsection 8, of at
32 least ten percent of the value of anticipated procurements of
33 goods and services, including construction, but not including
34 utility services, each fiscal year. The director of each
35 department and agency of state government shall cooperate with

1 the director of the department of inspections and appeals, the
2 director of the department of economic development, and the
3 director of the department of management and do all acts
4 necessary to carry out the provisions of this division.

5 Sec. 6. Section 216B.3, subsection 12, unnumbered
6 paragraph 1, Code Supplement 2003, is amended to read as
7 follows:

8 Manage and control the property, both real and personal,
9 belonging to the department. Every purchase by the department
10 in excess of fifty thousand dollars must be made through a
11 competitive bidding process, regardless of the existence of
12 any master contract or agreement that may otherwise be
13 available for that purchase. The commission shall, according
14 to the schedule established in this subsection, when the price
15 is reasonably competitive and the quality as intended,
16 purchase soybean-based inks and plastic products with recycled
17 content, including but not limited to plastic garbage can
18 liners. For purposes of this subsection, "recycled content"
19 means that the content of the product contains a minimum of
20 thirty percent postconsumer material.

21 Sec. 7. Section 262.9, Code Supplement 2003, is amended by
22 adding the following new subsection:

23 NEW SUBSECTION. 32. Every purchase by the board and any
24 institution under its jurisdiction in excess of fifty thousand
25 dollars must be made through a competitive bidding process,
26 regardless of the existence of any master contract or
27 agreement that may otherwise be available for that purchase.

28 Sec. 8. Section 307.21, subsection 4, paragraph a, Code
29 Supplement 2003, is amended to read as follows:

30 a. Provide centralized purchasing services for the
31 department, in cooperation with the department of
32 administrative services. Every purchase in excess of fifty
33 thousand dollars must be made through a competitive bidding
34 process, regardless of the existence of any master contract or
35 agreement that may otherwise be available for that purchase.

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S.F. _____ H.F. _____

1 PARAGRAPH DIVIDED. The administrator shall, when the price
2 is reasonably competitive and the quality as intended,
3 purchase soybean-based inks and plastic products with recycled
4 content, including but not limited to plastic garbage can
5 liners, and shall purchase these items in accordance with the
6 schedule established in section 8A.315. However, the
7 administrator need not purchase garbage can liners in
8 accordance with the schedule if the liners are utilized by a
9 facility approved by the environmental protection commission
10 created under section 455A.6, for purposes of recycling. For
11 purposes of this subsection, "recycled content" means that the
12 content of the product contains a minimum of thirty percent
13 postconsumer material.

14

EXPLANATION

15 This bill requires that all purchases by an executive
16 branch state agency and in excess of \$50,000 be done through a
17 competitive bidding process, without regard to any master
18 contract or agreement that might otherwise be available for
19 that purchase. The bill also establishes a goal of 50 per
20 cent of state purchasing from small business located in Iowa.
21 The term small business is defined in Iowa law and includes
22 any enterprise which is located in this state, which is
23 operated for profit and under a single management, and which
24 has either fewer than 20 employees or an annual gross income
25 of less than \$3 million computed as the average of the three
26 preceding fiscal years. This 50 percent goal does include the
27 current 10 percent goal for purchasing from targeted small
28 businesses.

29 The bill also establishes a special goal, applying to all
30 state agencies, for purchasing at least 60 percent of software
31 and information technology from companies located in Iowa.
32 The bill establishes a procedure for the acquisition of
33 software and information technology that includes a request
34 for proposal and limits the use of master contracts.

35