

SENATE BILL REPORT

SB 6198

As Reported by Senate Committee On:
Government Operations, Tribal Relations & Elections, January 31, 2012

Title: An act relating to centralizing the authority and responsibility for the development, process, and oversight of state procurement of goods and services.

Brief Description: Centralizing the authority and responsibility for the development, process, and oversight of state procurement of goods and services.

Sponsors: Senators Pridemore, Swecker and Conway; by request of Department of Enterprise Services.

Brief History:

Committee Activity: Government Operations, Tribal Relations & Elections: 1/30/12, 1/31/12 [DPS].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6198 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pridemore, Chair; Prentice, Vice Chair; Swecker, Ranking Minority Member; Benton, Chase, Nelson and Roach.

Staff: Karen Epps (786-7424)

Background: The Department of Enterprise Services (DES) provides a variety of support services to state agencies, other governmental entities, and nonprofits. DES is an executive branch agency, and the Director (Director) is appointed by the Governor and is subject to confirmation by the Senate. DES combines services from the former departments of General Administration (GA) and Printing, and sections of the former departments of Personnel and Information Services (DIS). Several divisions from the Office of Financial Management (OFM) are also part of the new agency. The procurement lead groups from the departments of GA, DIS and OFM have been consolidated into DES.

ESSB 5931, from the 2011 session, directed DES to review current state procurement practices, not including public works, and provide a report to the Governor with procurement reform recommendations by December 31, 2011. In doing so, DES was directed to review

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national best practices and the procedures used in other states and by the federal government. Additionally, DES was directed to seek input from stakeholders and interested parties. The recommendations from DES include:

- streamlining and consolidating authority for procurement of goods and services within DES;
- centralizing procurement policy in DES;
- requiring training or certification of state agency employees who manage and execute contracts;
- using competitive solicitation as the primary method for procuring goods and services;
- requiring agencies to notify contractors of bid opportunities, indentifying the successful bidder, and posting contract information on a common site;
- requiring sole source contracts to be reviewed by DES prior to signing;
- implementing alternative dispute resolution as a best practice;
- authorizing the Director to debar contractors for cause; and
- requiring employees and contractors to comply with Washington state ethics statutes.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): The Director is responsible for the development and oversight of policy for the procurement of goods and services by all state agencies including standards for the use of credit cards; purchase of goods and services from Washington small businesses; food procurement and food contracts; criteria for vehicle purchases; procurement processes for information technology goods and services; and implementation of an enterprise system for electronic procurement. The Director must adopt rules, policies, and guidelines governing procurement.

The Director has the sole authority to enter into master contracts on behalf of the state. The Director also has the authority to delegate authorization to purchases goods and services to agencies. Such authorization must specify restrictions as to dollar amount or specific types of goods and services, based on a risk assessment process. Delegation does not exempt the agency from conformance to the policies established by the Director. The Director may make goods and services available to support state agencies and may enter into agreements with local governments, the federal government, public benefit nonprofit organizations, or tribes to furnish goods and services. DES must ensure full cost recovery from state agencies, local governments, the federal government, public benefit nonprofit organizations, or tribes when furnishing goods and services. DES may participate in cooperative purchasing, including joint or multiparty contracts, master contracts, or convenience contracts.

DES must adopt uniform policies and procedures for the effective and efficient management of contracts by all state agencies. When establishing overall policies, standards, and procedures, the Director must account for differentiation in procurement practices and needs among state agencies and strive to establish policies, standards, and procedures that promote greater efficiency in procurement. At a minimum, the policies and procedures must include:

- pre-contract procedures for selecting potential contractors based on their qualification and ability to perform;
- model complaint and protest procedures;
- alternative dispute resolution processes;

- incorporation of performance measures and measurable benchmarks in contracts;
- model contract terms to ensure contract performance and compliance with standards;
- executing contracts using electronic signatures;
- criteria for contract amendments;
- post-contract procedures; and
- procedures and criteria for terminating contracts for cause or otherwise.

Agencies may not enter into a contract under which the contractor could charge additional costs for access to data generated under the contract. A contractor must provide access to data generated under the contract to the agency, the Joint Legislative and Audit Review Committee, and the State Auditor. Agencies that work with a board, commission, council, or committee must not enter into contracts with the volunteer members as a means to reimburse or otherwise pay members of a board, commission, council, or committee, except when payment is specifically authorized by statute.

DES must establish a sweat-free procurement policy and code of conduct. Every agency purchasing apparel, garments, or other similar types of materials must require the contractor to certify that none of the materials were produced by sweatshop labor. The contract may not be awarded until the certification has been received by the agency.

All contracts for purchases of goods and services must continue to be based on a competitive solicitation process, which may include electronic or web-based solicitations, bids, and signatures. Exemptions from competitive solicitation, including emergency contracts, sole source contracts, and direct buy purchases, are continued. The competitive solicitation process also applies to contract amendments that substantially change the scope of work or the original contract or that substantially increase the value of the original contract. Additional exemptions from the competitive solicitation process are allowed, including:

- purchases from master contracts;
- contracts determined by the Director as not appropriate or cost-effective for competitive solicitation;
- client services contracts;
- intergovernmental agreements awarded to any governmental entity;
- contracts for services necessary to the conduct of collaborative research, if it is a condition of granting funds; and
- contracts for expert witnesses for litigation purposes.

Agencies must submit sole source contracts to DES and make the contracts available for public inspection not less than ten days before the proposed starting date of the contract. DES must approve sole source contracts before the contract becomes binding and before services may be performed. Agencies may be given an exemption from these requirements by the Director. Contracts by higher education institutions using federal funds are also exempt.

Once a bid has been accepted, an agency may require the successful bidder to submit a bond to the agency in an amount and with surety or sureties determined by the agency. Bidders who regularly do business with the state must be permitted to file an annual bid bond in an amount established by the agency. An annual bid bond must be acceptable as surety in lieu of

furnishing surety with individual bids. Agencies may also require performance bonds, protest bonds, or other bonds deemed necessary.

Agencies with procurement authority must develop clear and transparent complaint and protest processes. A complaint process allows for the complaint to be submitted and a response provided before the deadline for bid submissions. A protest process must include a protest period after the apparent successful bidder is announced but before the contract is signed. The Director may grant authority for an agency to sign a contract before the protest process is completed under exigent circumstances.

The Director has the authority to debar any contractor based on one or more of the following causes:

- conviction of a criminal offense as an incident to obtaining a contract or subcontract, or in the performance of a contract;
- conviction under state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
- conviction under state or federal antitrust laws arising out of the submission of bids or proposals;
- violation of contract provisions of a character regarded by the Director to justify debarment action;
- violation of ethical standards; or
- any other serious or compelling cause to affect responsibility as a state contractor, including debarment by another governmental entity.

A decision to debar must be issued by the Director in writing, must state the reasons for the action taken, and must inform the debarred contractor of the right to a judicial or administrative review.

DES must provide expertise and training on best practices for state procurement. Training or certification programs, or both, must be established and state agency employees responsible for procurement must complete the training or certification programs beginning July 1, 2013. DES may approve existing training or certification programs at state agencies. Additionally, DES must work with agencies with existing training programs when establishing programs or approving existing programs to ensure coordination and minimize additional costs associated with training requirements. By July 1, 2015, no agency employee may execute or manage contracts unless the training and certification requirements have been met. The DES may exempt an employee or a group of employees from the training or certification requirement.

The ethics laws relating to limitations on gifts that apply to all state officers and employees also apply to a contractor who provides goods and services for, or on behalf of, the state. Any person or entity who seeks or may seek a contract with a state agency may not give, loan, transfer, or deliver to any person something of economic value that would cause a state officer or employee to be in violation of ethics laws pertaining to assisting in transactions, compensation for official duties or nonperformance, compensation for outside duties, gifts, or limitation on gifts.

Records related to state procurements are public records subject to disclosure under the Public Records Act. Agencies must provide on an annual basis a list of all contracts that the agency has entered into or renewed. The DES must maintain a list of all contracts entered into by agencies.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS, TRIBAL RELATIONS & ELECTIONS COMMITTEE (Recommended Substitute as Passed Committee):

- Provides that, when establishing overall policies, standards, and procedures, the Director must account for differentiation in procurement practices and needs among state agencies and strive to establish policies, standards and procedures that promote greater efficiency in procurement.
- Allows DES to approve existing training or certification programs at state agencies.
- Requires DES to work with agencies with existing training programs when establishing programs or approving existing programs to ensure coordination and minimize additional costs associated with training requirements.
- Allows DES to exempt a group of employees from the training or certification requirement.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2013.

Staff Summary of Public Testimony as Heard in Committee: PRO: This is a good bill that does not go far enough in that it should also include public works contracts. It is clear that the public wants to increase transparency and accountability in government. This bill is a step in that direction in the way the state contracts for goods and services. This bill addresses some of the problems that state employees have seen, including no consistency, lack of accountability, and wide-spread change order abuse. Additionally, this bill should be expanded to cover higher education institutions' contracts. There are further efficiencies to be made by aligning procurement thresholds among different types of procurement. This bill authorizes DES to do that and that should improve efficiency. The concept of debarment in the bill raises some concerns to state agencies as it relates to large firms who perform well on one contract and poorly on another contract. DES reviewed procurement laws from other states, the federal laws, and the American Bar Association's model procurement code. This bill comes out of the recommendations that the work group provided to DES. DES sent the recommendations to over 200 vendors and procurement contract specialists. The recommendations have been incorporated into this bill. This bill is designed to streamline the procurement process; provide updates to the procurement process, including electronic submission and electronic signatures; improve transparency; and make the state competitive. This proposed bill is the next step to move purchasing in our state in the right direction.

Persons Testifying: PRO: Alia Griffing, Jeanine Livingston, WA State Federation of State Employees; Margaret Shepherd, University of Washington; Heidi Robbins Brown, Health Care Authority; Joyce Turner, Ro Marcus, DES; Frank Lemos; Office of Minority and Women Business Enterprises Ad Hoc Committee.