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ENGROSSED SUBSTITUTE HOUSE BILL 1674

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State of Washington

63rd Legislature

2014 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Santos, Morris, and Maxwell)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to increasing the regulatory oversight and  
2 accountability of the office of minority and women's business  
3 enterprises; amending RCW 39.19.020, 39.19.060, 39.19.080, 39.19.090,  
4 39.19.200, and 39.19.250; adding a new section to chapter 39.19 RCW;  
5 repealing RCW 39.19.100 and 39.19.110; and prescribing penalties.

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

7 **Sec. 1.** RCW 39.19.020 and 1996 c 69 s 4 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Advisory committee" means the advisory committee on minority  
12 and women's business enterprises.

13 (2) "Broker" means a person that provides a bona fide service, such  
14 as professional, technical, consultant, brokerage, or managerial  
15 services and assistance in the procurement of essential personnel,  
16 facilities, equipment, materials, or supplies required for performance  
17 of a contract.

18 (3) "Contractor" means an individual or entity granted state

1 certification and awarded either a direct contract with an agency or an  
2 indirect contract as a subcontractor to perform a service or provide  
3 goods.

4 (4) "Debar" means to prohibit a contractor, individual, or other  
5 entity from submitting a bid, having a bid considered, or entering into  
6 a state contract during a specified period of time as set forth in a  
7 debarment order.

8 (5) "Director" means the director of the office of minority and  
9 women's business enterprises.

10 ~~((4))~~ (6) "Educational institutions" means the state  
11 universities, the regional universities, The Evergreen State College,  
12 and the community colleges.

13 ~~((5))~~ (7) "Goals" means annual overall agency goals, expressed as  
14 a percentage of dollar volume, for participation by minority and women-  
15 owned and controlled businesses and shall not be construed as a minimum  
16 goal for any particular contract or for any particular geographical  
17 area. It is the intent of this chapter that such overall agency goals  
18 shall be achievable and shall be met on a contract-by-contract or  
19 class-of-contract basis.

20 ~~((6))~~ (8) "Goods and/or services" includes professional services  
21 and all other goods and services.

22 ~~((7))~~ (9) "Office" means the office of minority and women's  
23 business enterprises.

24 ~~((8))~~ (10) "Person" includes one or more individuals,  
25 partnerships, associations, organizations, corporations, cooperatives,  
26 legal representatives, trustees and receivers, or any group of persons.

27 ~~((9))~~ (11) "Procurement" means the purchase, lease, or rental of  
28 any goods or services.

29 ~~((10))~~ (12) "Public works" means all work, construction, highway  
30 and ferry construction, alteration, repair, or improvement other than  
31 ordinary maintenance, which a state agency or educational institution  
32 is authorized or required by law to undertake.

33 ~~((11))~~ (13) "State agency" includes the state of Washington and  
34 all agencies, departments, offices, divisions, boards, commissions, and  
35 correctional and other types of institutions.

36 **Sec. 2.** RCW 39.19.060 and 1996 c 288 s 28 are each amended to read  
37 as follows:

1       (1) Each state agency and educational institution shall comply with  
2 the annual goals established for that agency or institution under this  
3 chapter for public works and procuring goods or services. This chapter  
4 applies to all public works and procurement by state agencies and  
5 educational institutions, including all contracts and other procurement  
6 under chapters 28B.10, 39.04, (~~39.29~~) 39.26, 43.19, and 47.28 RCW.

7       (2) Each state agency shall adopt a plan, developed in consultation  
8 with the director and the advisory committee, to insure that minority  
9 and women-owned businesses are afforded the maximum practicable  
10 opportunity to directly and meaningfully participate in the execution  
11 of public contracts for public works and goods and services. The plan  
12 shall include specific measures the agency will undertake to increase  
13 the participation of certified minority and women-owned businesses.

14       (3) Of all state agencies and educational institutions, the office  
15 must annually identify those: (a) In the lowest quintile of  
16 utilization of minority and women-owned contractors as a percentage of  
17 all contracts issued by the agency; (b) in the lowest quintile of the  
18 dollar value awarded to minority and women-owned contractors as a  
19 percentage of the dollar value of all contracts issued by the agency;  
20 and (c) that are performing significantly below their established  
21 goals, as determined by the office. The office must meet with each  
22 identified agency to review its plan and identify available tools and  
23 actions for increasing participation.

24       (4) The office shall annually notify the governor, the state  
25 auditor, and the joint legislative audit and review committee of all  
26 agencies and educational institutions not in compliance with this  
27 chapter.

28       **Sec. 3.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to read  
29 as follows:

30       (~~(1)~~) A person, firm, corporation, business, union, or other  
31 organization shall not:

32       (~~(a)~~) (1) Prevent or interfere with a contractor's or  
33 subcontractor's compliance with this chapter, or any rule adopted  
34 under this chapter;

35       (~~(b)~~) (2) Submit false or fraudulent information to the state  
36 concerning compliance with this chapter or any such rule;

1       ~~((e))~~ (3) Fraudulently obtain, retain, attempt to obtain or  
2 retain, or aid another in fraudulently obtaining or retaining or  
3 attempting to obtain or retain certification as a minority or women's  
4 business enterprise for the purpose of this chapter;

5       ~~((d))~~ (4) Knowingly make a false statement, whether by affidavit,  
6 verified statement, report, or other representation, to a state  
7 official or employee for the purpose of influencing the certification  
8 or denial of certification of any entity as a minority or women's  
9 business enterprise;

10       ~~((e))~~ (5) Knowingly obstruct, impede, or attempt to obstruct or  
11 impede any state official or employee who is investigating the  
12 qualification of a business entity that has requested certification as  
13 a minority or women's business enterprise;

14       ~~((f))~~ (6) Fraudulently obtain, attempt to obtain, or aid another  
15 person in fraudulently obtaining or attempting to obtain public moneys  
16 to which the person is not entitled under this chapter; or

17       ~~((g))~~ (7) Knowingly make false statements that any entity is or  
18 is not certified as a minority or women's business enterprise for  
19 purposes of obtaining a contract governed by this chapter.

20       ~~((2) Any person or entity violating this chapter or any rule  
21 adopted under this chapter shall be subject to the penalties in RCW  
22 39.19.090. Nothing in this section prevents the state agency or  
23 educational institution from pursuing such procedures or sanctions as  
24 are otherwise provided by statute, rule, or contract provision.))~~

25       **Sec. 4.** RCW 39.19.090 and 1987 c 328 s 6 are each amended to read  
26 as follows:

27       (1)(a) If a person, firm, corporation, or business does not comply  
28 with any provision of this chapter other than RCW 39.19.080, or does  
29 not comply with a contract requirement established under this chapter,  
30 the state may ~~((withheld))~~ impose one or more of the following  
31 penalties: Withholding payment, ~~((debar))~~ decertifying the contractor,  
32 debaring the contractor, ~~((suspend, or terminate))~~ suspending or  
33 terminating the contract ~~((and subject)),~~ or subjecting the contractor  
34 to civil penalties of up to ten percent of the amount of the contract  
35 or up to five thousand dollars for each violation. ~~((The office shall~~  
36 ~~adopt, by rule, criteria for the imposition of penalties under this~~  
37 ~~section. Wilful))~~

1       (b) If a person, firm, corporation, or business commits any of the  
2 activities prohibited in RCW 39.19.080, the state must impose one or  
3 more of the following penalties: Withholding payment, decertifying the  
4 contractor, debarring the contractor for a period between one and three  
5 years, terminating the contract, or subjecting the contractor to civil  
6 penalties of between two and ten percent of the amount of the contract  
7 or between one and five thousand dollars for each violation.

8       (c) In addition to any other penalties imposed, willful repeated  
9 violations, exceeding a single violation, ((may)) must disqualify the  
10 contractor from further participation in state contracts for a period  
11 of ((up to)) three years. A willful violation includes a conscious or  
12 deliberate false statement, misrepresentation, omission, or concealment  
13 of a material fact, with the specific intent of obtaining, continuing,  
14 or increasing benefits under this chapter.

15       (2) An apparent low-bidder must be in compliance with the contract  
16 provisions required under this chapter as a condition precedent to the  
17 granting of a notice of award by any state agency or educational  
18 institution.

19       (3) The office shall follow administrative procedures under chapter  
20 34.05 RCW in determining a violation and imposing penalties under this  
21 chapter. The office shall adopt, by rule, criteria for the imposition  
22 of penalties under this section. The rule may incorporate the  
23 debarment process authorized for the department of enterprise services  
24 in RCW 39.26.200.

25       (4)(a) An investigation unit is established within the office for  
26 the purpose of detecting and investigating fraud and violations of this  
27 chapter. The office must employ qualified personnel for the unit.

28       (b) The director and the investigation unit are authorized to  
29 receive criminal history record information that includes nonconviction  
30 data for any purpose associated with the investigation of fraud or for  
31 violations of this chapter. Dissemination or use of nonconviction data  
32 for purposes other than that authorized in this section is prohibited.

33       (c) For the purpose of any investigation or proceeding under this  
34 chapter, the director or the director's designee may administer oaths  
35 and affirmations, subpoena witnesses, compel their attendance, take  
36 evidence, and require the production of any books, papers,  
37 correspondence, memoranda, agreements, or other documents or records

1 which the director or the director's designee deems relevant or  
2 material to the inquiry.

3 (d) Subpoenas issued under this section may be enforced under RCW  
4 34.05.588.

5 (e) The investigation unit must annually:

6 (i) Conduct a site review of a minimum of three percent of persons,  
7 firms, corporations, or businesses awarded a contract under this  
8 chapter;

9 (ii) Submit a response for all complaints for investigation made by  
10 an external agency to the agency submitting the complaint;

11 (iii) Develop and implement a process for prioritizing and  
12 conducting thorough investigations of persons, firms, corporations, or  
13 businesses identified by an external complaint and determined to be the  
14 highest priority for the agency; and

15 (iv) Develop and implement a process for prioritizing and  
16 conducting thorough investigations of persons, firms, corporations, or  
17 businesses internally identified and determined to be the highest  
18 priority for the agency.

19 (5) The procedures and sanctions in this section are not exclusive;  
20 nothing in this section prevents the state agency or educational  
21 institution administering the contracts from pursuing such procedures  
22 or sanctions as are otherwise provided by statute, rule, or contract  
23 provision.

24 NEW SECTION. Sec. 5. A new section is added to chapter 39.19 RCW  
25 to read as follows:

26 (1) The director or director's designee may apply for and obtain a  
27 superior court order approving and authorizing a subpoena in advance of  
28 its issuance. The application may be made in the county where the  
29 subpoenaed person resides or is found, or the county where the  
30 subpoenaed documents, records, or evidence are located, or in Thurston  
31 county. The application must:

32 (a) State that an order is sought under this section;

33 (b) Adequately specify the documents, records, evidence, or  
34 testimony; and

35 (c) Include a declaration made under oath that an investigation is  
36 being conducted for a lawfully authorized purpose related to an

1 investigation within the office's authority and that the subpoenaed  
2 documents, records, evidence, or testimony are reasonably related to an  
3 investigation within the office's authority.

4 (2) When an application under this section is made to the  
5 satisfaction of the court, the court must issue an order approving the  
6 subpoena. An order under this subsection constitutes authority of law  
7 for the agency to subpoena the documents, records, evidence, or  
8 testimony.

9 (3) The director or director's designee may seek approval and a  
10 court may issue an order under this section without prior notice to any  
11 person, including the person to whom the subpoena is directed and the  
12 person who is the subject of an investigation. An application for  
13 court approval is subject to the fee and process set forth in RCW  
14 36.18.012(3).

15 **Sec. 6.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read  
16 as follows:

17 The minority and women's business enterprises account is created in  
18 the custody of the state treasurer. All receipts from RCW 39.19.210,  
19 39.19.220, and 39.19.230 and civil penalties imposed under RCW  
20 39.19.090 shall be deposited in the account. Expenditures from the  
21 account may be used only for the purposes defraying all or part of the  
22 costs of the office in administering this chapter. Only the director  
23 or the director's designee may authorize expenditures from the account.  
24 Moneys in the account may be spent only after appropriation.

25 **Sec. 7.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to read  
26 as follows:

27 (1) For the purpose of annual reporting on progress required by  
28 (~~section 1 of this act~~) RCW 39.19.020, each state agency and  
29 educational institution shall submit data to the office and the office  
30 of minority and women's business enterprises on the participation by  
31 qualified minority and women-owned and controlled businesses in the  
32 agency's or institution's contracts and other related information  
33 requested by the director. The director of the office of minority and  
34 women's business enterprises shall determine the content and format of  
35 the data and the reporting schedule, which must be at least annually.

1           (2) The office must develop and maintain a list of contact people  
2 at each state agency and educational institution (~~(that is)~~) who are  
3 able to present to hearings of the appropriate committees of the  
4 legislature its progress in carrying out the purposes of chapter 39.19  
5 RCW.

6           (3) The office must submit a report aggregating the data received  
7 from each state agency and educational institution, and the information  
8 identified and actions taken under RCW 39.19.060(3) and 39.19.090(4),  
9 to the legislature and the governor.

10           NEW SECTION. Sec. 8. The following acts or parts of acts are each  
11 repealed:

12           (1) RCW 39.19.100 (Enforcement by attorney general--Injunctive  
13 relief) and 1987 c 328 s 12; and

14           (2) RCW 39.19.110 (Enforcement by attorney general--Investigative  
15 powers) and 1987 c 328 s 13.

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