
SUBSTITUTE HOUSE BILL 1674

State of Washington 63rd Legislature 2013 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; and prescribing penalties.

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

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

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

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

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

17 (3) "Contractor" means an individual or entity granted state
18 certification and awarded either a direct contract with an agency or an

1 indirect contract as a subcontractor to perform a service or provide
2 goods.

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

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

9 ~~((+4))~~ (6) "Educational institutions" means the state
10 universities, the regional universities, The Evergreen State College,
11 and the community colleges.

12 ~~((+5))~~ (7) "Goals" means annual overall agency goals, expressed as
13 a percentage of dollar volume, for participation by minority and women-
14 owned and controlled businesses and shall not be construed as a minimum
15 goal for any particular contract or for any particular geographical
16 area. It is the intent of this chapter that such overall agency goals
17 shall be achievable and shall be met on a contract-by-contract or
18 class-of-contract basis.

19 ~~((+6))~~ (8) "Goods and/or services" includes professional services
20 and all other goods and services.

21 ~~((+7))~~ (9) "Office" means the office of minority and women's
22 business enterprises.

23 ~~((+8))~~ (10) "Person" includes one or more individuals,
24 partnerships, associations, organizations, corporations, cooperatives,
25 legal representatives, trustees and receivers, or any group of persons.

26 ~~((+9))~~ (11) "Procurement" means the purchase, lease, or rental of
27 any goods or services.

28 ~~((+10))~~ (12) "Public works" means all work, construction, highway
29 and ferry construction, alteration, repair, or improvement other than
30 ordinary maintenance, which a state agency or educational institution
31 is authorized or required by law to undertake.

32 ~~((+11))~~ (13) "State agency" includes the state of Washington and
33 all agencies, departments, offices, divisions, boards, commissions, and
34 correctional and other types of institutions.

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

37 (1) Each state agency and educational institution shall comply with

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

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

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

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

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

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

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

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

36 (~~(c)~~) (3) Fraudulently obtain, retain, attempt to obtain or

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

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

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

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

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

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

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

26 (1)(a) If a person, firm, corporation, or business does not comply
27 with any provision of this chapter other than RCW 39.19.080, or does
28 not comply with a contract requirement established under this chapter,
29 the state may ~~((withhold))~~ impose one or more of the following
30 penalties: Withholding payment, ((debar)) decertifying the contractor,
31 debaring the contractor, ~~((suspend, or terminate))~~ suspending or
32 terminating the contract ~~((and subject)),~~ or subjecting the contractor
33 to civil penalties of up to ten percent of the amount of the contract
34 or up to five thousand dollars for each violation. ~~((The office shall~~
35 ~~adopt, by rule, criteria for the imposition of penalties under this~~
36 ~~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 **Sec. 5.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read
25 as follows:

26 The minority and women's business enterprises account is created in
27 the custody of the state treasurer. All receipts from RCW 39.19.210,
28 39.19.220, and 39.19.230 and civil penalties imposed under RCW
29 39.19.090 shall be deposited in the account. Expenditures from the
30 account may be used only for the purposes defraying all or part of the
31 costs of the office in administering this chapter. Only the director
32 or the director's designee may authorize expenditures from the account.
33 Moneys in the account may be spent only after appropriation.

34 **Sec. 6.** RCW 39.19.250 and 2009 c 348 s 2 are each amended to read
35 as follows:

36 (1) For the purpose of annual reporting on progress required by

1 ((~~section 1 of this act~~)) RCW 39.19.020, each state agency and
2 educational institution shall submit data to the office and the office
3 of minority and women's business enterprises on the participation by
4 qualified minority and women-owned and controlled businesses in the
5 agency's or institution's contracts and other related information
6 requested by the director. The director of the office of minority and
7 women's business enterprises shall determine the content and format of
8 the data and the reporting schedule, which must be at least annually.

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

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

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