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HOUSE BILL 1674

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State of Washington

63rd Legislature

2013 Regular Session

By Representatives Santos, Morris, and Maxwell

Read first time 02/05/13. Referred to Committee on Technology & Economic Development.

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, 39.19.080, 39.19.090, and  
4 39.19.200; 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 a contract with an agency to perform a  
19 service or provide goods.

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

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

7        ~~((+4))~~ (6) "Educational institutions" means the state  
8 universities, the regional universities, The Evergreen State College,  
9 and the community colleges.

10       ~~((+5))~~ (7) "Goals" means annual overall agency goals, expressed as  
11 a percentage of dollar volume, for participation by minority and women-  
12 owned and controlled businesses and shall not be construed as a minimum  
13 goal for any particular contract or for any particular geographical  
14 area. It is the intent of this chapter that such overall agency goals  
15 shall be achievable and shall be met on a contract-by-contract or  
16 class-of-contract basis.

17       ~~((+6))~~ (8) "Goods and/or services" includes professional services  
18 and all other goods and services.

19       ~~((+7))~~ (9) "Office" means the office of minority and women's  
20 business enterprises.

21       ~~((+8))~~ (10) "Person" includes one or more individuals,  
22 partnerships, associations, organizations, corporations, cooperatives,  
23 legal representatives, trustees and receivers, or any group of persons.

24       ~~((+9))~~ (11) "Procurement" means the purchase, lease, or rental of  
25 any goods or services.

26       ~~((+10))~~ (12) "Public works" means all work, construction, highway  
27 and ferry construction, alteration, repair, or improvement other than  
28 ordinary maintenance, which a state agency or educational institution  
29 is authorized or required by law to undertake.

30       ~~((+11))~~ (13) "State agency" includes the state of Washington and  
31 all agencies, departments, offices, divisions, boards, commissions, and  
32 correctional and other types of institutions.

33       **Sec. 2.** RCW 39.19.080 and 1987 c 328 s 5 are each amended to read  
34 as follows:

35       ~~((+1))~~ A person, firm, corporation, business, union, or other  
36 organization shall not:

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

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

6       ~~((c))~~ (3) Fraudulently obtain, retain, attempt to obtain or  
7 retain, or aid another in fraudulently obtaining or retaining or  
8 attempting to obtain or retain certification as a minority or women's  
9 business enterprise for the purpose of this chapter;

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

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

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

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

25       ~~((2) Any person or entity violating this chapter or any rule  
26 adopted under this chapter shall be subject to the penalties in RCW  
27 39.19.090. Nothing in this section prevents the state agency or  
28 educational institution from pursuing such procedures or sanctions as  
29 are otherwise provided by statute, rule, or contract provision.))~~

30       **Sec. 3.** RCW 39.19.090 and 1987 c 328 s 6 are each amended to read  
31 as follows:

32       (1)(a) If a person, firm, corporation, or business does not comply  
33 with any provision of this chapter other than RCW 39.19.080, or does  
34 not comply with a contract requirement established under this chapter,  
35 the state may ~~((withhold))~~ impose one or more of the following  
36 penalties: Withholding payment, ((debar)) decertifying the contractor,  
37 debaring the contractor, ~~((suspend, or terminate))~~ suspending or

1 terminating the contract ((and subject)), or subjecting the contractor  
2 to civil penalties of up to ten percent of the amount of the contract  
3 or up to five thousand dollars for each violation. ((The office shall  
4 adopt, by rule, criteria for the imposition of penalties under this  
5 section. Wilful))

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

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

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

24 (3) The office shall follow administrative procedures under chapter  
25 34.05 RCW in determining a violation and imposing penalties under this  
26 chapter. The office shall adopt, by rule, criteria for the imposition  
27 of penalties under this section. The rule may incorporate the  
28 debarment process authorized for the department of enterprise services  
29 in RCW 39.26.200.

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

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

1        (c) For the purpose of any investigation or proceeding under this  
2 chapter, the director or the director's designee may administer oaths  
3 and affirmations, subpoena witnesses, compel their attendance, take  
4 evidence, and require the production of any books, papers,  
5 correspondence, memoranda, agreements, or other documents or records  
6 which the director deems relevant or material to the inquiry.

7        (d) Subpoenas issued under this section may be enforced under RCW  
8 34.05.588.

9        (5) The procedures and sanctions in this section are not exclusive;  
10 nothing in this section prevents the state agency or educational  
11 institution administering the contracts from pursuing such procedures  
12 or sanctions as are otherwise provided by statute, rule, or contract  
13 provision.

14        **Sec. 4.** RCW 39.19.200 and 1993 c 195 s 1 are each amended to read  
15 as follows:

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

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