
SUBSTITUTE HOUSE BILL 2374

State of Washington **63rd Legislature** **2014 Regular Session**

By House Government Operations & Elections (originally sponsored by Representative S. Hunt)

READ FIRST TIME 01/27/14.

1 AN ACT Relating to making nonsubstantive changes to procurement
2 law; amending RCW 28B.10.029, 35.57.080, 36.100.190, 39.04.190,
3 39.26.070, 39.26.235, 39.26.251, 39.26.255, 39.26.271, 39.35C.050,
4 39.35C.090, and 43.19.1919; reenacting and amending RCW 39.26.010; and
5 repealing RCW 43.19.520, 43.19.525, and 43.19.533.

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

7 **Sec. 1.** RCW 28B.10.029 and 2013 c 291 s 27 are each amended to
8 read as follows:

9 (1)(a) An institution of higher education may, consistent with RCW
10 28B.10.925 and 28B.10.926, exercise independently those powers
11 otherwise granted to the director of enterprise services in chapters
12 43.19 and 39.26 RCW in connection with the purchase and disposition of
13 all material, supplies, services, and equipment needed for the support,
14 maintenance, and use of the respective institution of higher education.

15 (b) Property disposition policies followed by institutions of
16 higher education shall be consistent with policies followed by the
17 department of enterprise services.

18 (c)(i) Except as provided in (c)(ii) and (iii) of this subsection,
19 purchasing policies and procedures followed by institutions of higher

1 education shall be in compliance with chapters 39.19, (~~(39.29)~~) 39.26,
2 and 43.03 RCW(~~(, and RCW 43.19.1917, 43.19.685, 39.26.260 through~~
3 ~~39.26.271, and 43.19.560 through 43.19.637)~~).

4 (ii) Institutions of higher education may use all appropriate means
5 for making and paying for travel arrangements including, but not
6 limited to, electronic booking and reservations, advance payment and
7 deposits for tours, lodging, and other necessary expenses, and other
8 travel transactions based on standard industry practices and federal
9 accountable plan requirements. Such arrangements shall support
10 student, faculty, staff, and other participants' travel, by groups and
11 individuals, both domestic and international, in the most cost-
12 effective and efficient manner possible, regardless of the source of
13 funds.

14 (iii) Formal sealed, electronic, or web-based competitive bidding
15 is not necessary for purchases or personal services contracts by
16 institutions of higher education for less than one hundred thousand
17 dollars. However, for purchases and personal services contracts of ten
18 thousand dollars or more and less than one hundred thousand dollars,
19 quotations must be secured from at least three vendors to assure
20 establishment of a competitive price and may be obtained by telephone,
21 electronic, or written quotations, or any combination thereof. As part
22 of securing the three vendor quotations, institutions of higher
23 education must invite at least one quotation each from a certified
24 minority and a certified woman-owned vendor that otherwise qualifies to
25 perform the work. A record of competition for all such purchases and
26 personal services contracts of ten thousand dollars or more and less
27 than one hundred thousand dollars must be documented for audit
28 purposes.

29 (d) Purchases under chapter (~~(39.29)~~) 39.26, 43.19, or 43.105 RCW
30 by institutions of higher education may be made by using contracts for
31 materials, supplies, services, or equipment negotiated or entered into
32 by, for, or through group purchasing organizations.

33 (e) The community and technical colleges shall comply with RCW
34 43.19.450.

35 (f) Except for the University of Washington, institutions of higher
36 education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

37 (g) If an institution of higher education can satisfactorily
38 demonstrate to the director of the office of financial management that

1 the cost of compliance is greater than the value of benefits from any
2 of the following statutes, then it shall be exempt from them: RCW
3 43.19.685 and 43.19.637.

4 (h) Any institution of higher education that chooses to exercise
5 independent purchasing authority for a commodity or group of
6 commodities shall notify the director of enterprise services.
7 Thereafter the director of enterprise services shall not be required to
8 provide those services for that institution for the duration of the
9 enterprise services contract term for that commodity or group of
10 commodities.

11 (2) The council of presidents and the state board for community and
12 technical colleges shall convene its correctional industries business
13 development advisory committee, and work collaboratively with
14 correctional industries, to:

15 (a) Reaffirm purchasing criteria and ensure that quality, service,
16 and timely delivery result in the best value for expenditure of state
17 dollars;

18 (b) Update the approved list of correctional industries products
19 from which higher education shall purchase; and

20 (c) Develop recommendations on ways to continue to build
21 correctional industries' business with institutions of higher
22 education.

23 (3) Higher education and correctional industries shall develop a
24 plan to build higher education business with correctional industries to
25 increase higher education purchases of correctional industries
26 products, based upon the criteria established in subsection (2) of this
27 section. The plan shall include the correctional industries'
28 production and sales goals for higher education and an approved list of
29 products from which higher education institutions shall purchase, based
30 on the criteria established in subsection (2) of this section. Higher
31 education and correctional industries shall report to the legislature
32 regarding the plan and its implementation no later than January 30,
33 2005.

34 (4)(a) Institutions of higher education shall set as a target to
35 contract, beginning not later than June 30, 2006, to purchase one
36 percent of the total goods and services required by the institutions
37 each year produced or provided in whole or in part from class II inmate
38 work programs operated by the department of corrections. Institutions

1 of higher education shall set as a target to contract, beginning not
2 later than June 30, 2008, to purchase two percent of the total goods
3 and services required by the institutions each year produced or
4 provided in whole or in part from class II inmate work programs
5 operated by the department of corrections.

6 (b) Institutions of higher education shall endeavor to assure the
7 department of corrections has notifications of bid opportunities with
8 the goal of meeting or exceeding the purchasing target in (a) of this
9 subsection.

10 **Sec. 2.** RCW 35.57.080 and 1999 c 165 s 8 are each amended to read
11 as follows:

12 In addition to provisions contained in chapter 39.04 RCW, the
13 public facilities district is authorized to follow procedures contained
14 in chapter 39.26 RCW (~~(43.19.1906 and 43.19.1911)~~) for all purchases,
15 contracts for purchase, and sales.

16 **Sec. 3.** RCW 36.100.190 and 1995 c 396 s 16 are each amended to
17 read as follows:

18 In addition to provisions contained in chapter 39.04 RCW, the
19 public facilities district is authorized to follow procedures contained
20 in chapter 39.26 RCW (~~(43.19.1906 and 43.19.1911)~~) for all purchases,
21 contracts for purchase, and sales.

22 **Sec. 4.** RCW 39.04.190 and 1993 c 198 s 2 are each amended to read
23 as follows:

24 (1) This section provides a uniform process to award contracts for
25 the purchase of any materials, equipment, supplies, or services by
26 those municipalities that are authorized to use this process in lieu of
27 the requirements for formal sealed bidding. The state statutes
28 governing a specific type of municipality shall establish the maximum
29 dollar thresholds of the contracts that can be awarded under this
30 process, and may include other matters concerning the awarding of
31 contracts for purchases, for the municipality.

32 (2) At least twice per year, the municipality shall publish in a
33 newspaper of general circulation within the jurisdiction a notice of
34 the existence of vendor lists and solicit the names of vendors for the
35 lists. Municipalities shall by resolution establish a procedure for

1 securing telephone or written quotations, or both, from at least three
2 different vendors whenever possible to assure that a competitive price
3 is established and for awarding the contracts for the purchase of any
4 materials, equipment, supplies, or services to the lowest responsible
5 bidder as defined in chapter 39.26 RCW (~~(43.19.1911)~~). Immediately
6 after the award is made, the bid quotations obtained shall be recorded,
7 open to public inspection, and shall be available by telephone inquiry.
8 A contract awarded pursuant to this section need not be advertised.

9 **Sec. 5.** RCW 39.26.010 and 2012 c 224 s 2 are each reenacted and
10 amended to read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Agency" means any state office or activity of the executive
14 and judicial branches of state government, including state agencies,
15 departments, offices, divisions, boards, commissions, institutions of
16 higher education as defined in RCW 28B.10.016, and correctional and
17 other types of institutions.

18 (2) "Bid" means an offer, proposal, or quote for goods or services
19 in response to a solicitation issued for such goods or services by the
20 department or an agency of Washington state government.

21 (3) "Bidder" means an individual or entity who submits a bid,
22 quotation, or proposal in response to a solicitation issued for such
23 goods or services by the department or an agency of Washington state
24 government.

25 (4) (~~"Businesses owned and operated by persons with disabilities"~~
26 ~~means any for-profit business certified under chapter 39.19 RCW as~~
27 ~~being owned and controlled by persons who have been either:~~

28 ~~(a) Determined by the department of social and health services to~~
29 ~~have a developmental disability, as defined in RCW 71A.10.020;~~

30 ~~(b) Determined by an agency established under Title I of the~~
31 ~~federal vocational rehabilitation act to be or have been eligible for~~
32 ~~vocational rehabilitation services;~~

33 ~~(c) Determined by the federal social security administration to be~~
34 ~~or have been eligible for either social security disability insurance~~
35 ~~or supplemental security income; or~~

36 ~~(d) Determined by the United States department of veterans affairs~~

1 ~~to be or have been eligible for vocational rehabilitation services due~~
2 ~~to service connected disabilities, under 38 U.S.C. Sec. 3100 et seq.~~

3 ~~(5))~~ (5) "Client services" means services provided directly to agency
4 clients including, but not limited to, medical and dental services,
5 employment and training programs, residential care, and subsidized
6 housing.

7 ~~((6))~~ (5) "Community rehabilitation program of the department of
8 social and health services" means any entity that:

9 (a) Is registered as a nonprofit corporation with the secretary of
10 state; and

11 (b) Is recognized by the department of social and health services,
12 division of vocational rehabilitation as eligible to do business as a
13 community rehabilitation program.

14 ~~((7))~~ (6) "Competitive solicitation" means a documented formal
15 process providing an equal and open opportunity to bidders and
16 culminating in a selection based on predetermined criteria.

17 ~~((8))~~ (7) "Contractor" means an individual or entity awarded a
18 contract with an agency to perform a service or provide goods.

19 ~~((9))~~ (8) "Debar" means to prohibit a contractor, individual, or
20 other entity from submitting a bid, having a bid considered, or
21 entering into a state contract during a specified period of time as set
22 forth in a debarment order.

23 ~~((10))~~ (9) "Department" means the department of enterprise
24 services.

25 ~~((11))~~ (10) "Director" means the director of the department of
26 enterprise services.

27 ~~((12))~~ (11) "Estimated useful life" of an item means the
28 estimated time from the date of acquisition to the date of replacement
29 or disposal, determined in any reasonable manner.

30 ~~((13))~~ (12) "Goods" means products, materials, supplies, or
31 equipment provided by a contractor.

32 ~~((14))~~ (13) "In-state business" means a business that has its
33 principal office located in Washington.

34 ~~((15))~~ (14) "Life-cycle cost" means the total cost of an item to
35 the state over its estimated useful life, including costs of selection,
36 acquisition, operation, maintenance, and where applicable, disposal, as
37 far as these costs can reasonably be determined, minus the salvage
38 value at the end of its estimated useful life.

1 ~~((16))~~ (15) "Master contracts" means a contract for specific
2 goods or services, or both, that is solicited and established by the
3 department in accordance with procurement laws and rules on behalf of
4 and for general use by agencies as specified by the department.

5 ~~((17))~~ (16) "Microbusiness" means any business entity, including
6 a sole proprietorship, corporation, partnership, or other legal entity,
7 that: (a) Is owned and operated independently from all other
8 businesses; and (b) has a gross revenue of less than one million
9 dollars annually as reported on its federal tax return or on its return
10 filed with the department of revenue.

11 ~~((18))~~ (17) "Minibusiness" means any business entity, including
12 a sole proprietorship, corporation, partnership, or other legal entity,
13 that: (a) Is owned and operated independently from all other
14 businesses; and (b) has a gross revenue of less than three million
15 dollars, but one million dollars or more annually as reported on its
16 federal tax return or on its return filed with the department of
17 revenue.

18 ~~((19))~~ (18) "Purchase" means the acquisition of goods or
19 services, including the leasing or renting of goods.

20 ~~((20))~~ (19) "Services" means labor, work, analysis, or similar
21 activities provided by a contractor to accomplish a specific scope of
22 work.

23 ~~((21))~~ (20) "Small business" means an in-state business,
24 including a sole proprietorship, corporation, partnership, or other
25 legal entity, that:

26 (a) Certifies, under penalty of perjury, that it is owned and
27 operated independently from all other businesses and has either:

28 (i) Fifty or fewer employees; or

29 (ii) A gross revenue of less than seven million dollars annually as
30 reported on its federal income tax return or its return filed with the
31 department of revenue over the previous three consecutive years; or

32 (b) Is certified with the office of women and minority business
33 enterprises under chapter 39.19 RCW.

34 ~~((22))~~ (21) "Sole source" means a contractor providing goods or
35 services of such a unique nature or sole availability at the location
36 required that the contractor is clearly and justifiably the only
37 practicable source to provide the goods or services.

1 ((+23)) (22) "Washington grown" has the definition in RCW
2 15.64.060.

3 **Sec. 6.** RCW 39.26.070 and 2012 c 224 s 8 are each amended to read
4 as follows:

5 A convenience contract is a contract for specific goods or
6 services, or both, that is solicited and established (~~by the~~
7 ~~department~~) in accordance with procurement laws and rules (~~on behalf~~
8 ~~of and~~) for use by a specific agency or a specified group of agencies
9 as needed from time to time. A convenience contract is not available
10 for general use and may only be used as specified by the department.
11 Convenience contracts are not intended to replace or supersede master
12 contracts as defined in this chapter.

13 **Sec. 7.** RCW 39.26.235 and 2012 c 229 s 584 are each amended to
14 read as follows:

15 (1) State agencies that are purchasing wireless devices or services
16 must make such purchases through the state master contract, unless the
17 state agency provides to the office of the chief information officer
18 evidence that the state agency is securing its wireless devices or
19 services from another source for a lower cost than through
20 participation in the state master contract. The state agency must also
21 provide to the director a copy of the information provided to the chief
22 information officer, including the name of the vendor, the goods and
23 services to be purchased, and the price.

24 (2) For the purposes of this section, "state agency" means any
25 office, department, board, commission, or other unit of state
26 government, but does not include a unit of state government headed by
27 a statewide elected official, an institution of higher education as
28 defined in RCW 28B.10.016, the student achievement council, the state
29 board for community and technical colleges, or agencies of the
30 legislative or judicial branches of state government.

31 **Sec. 8.** RCW 39.26.251 and 2012 c 220 s 1 are each amended to read
32 as follows:

33 (1) State agencies, the legislature, and departments shall purchase
34 for their use all goods and services required by the legislature,
35 agencies, or departments that are produced or provided in whole or in

1 part from class II inmate work programs operated by the department of
2 corrections through state contract. These goods and services shall not
3 be purchased from any other source unless, upon application by the
4 department or agency: (a) The department finds that the articles or
5 products do not meet the reasonable requirements of the agency or
6 department, (b) are not of equal or better quality, or (c) the price of
7 the product or service is higher than that produced by the private
8 sector. However, the criteria contained in (a), (b), and (c) of this
9 subsection for purchasing goods and services from sources other than
10 correctional industries do not apply to goods and services produced by
11 correctional industries that primarily replace goods manufactured or
12 services obtained from outside the state. The department of
13 corrections and department shall adopt administrative rules that
14 implement this section.

15 ~~(2) ((During the 2009-2011 and 2011-2013 fiscal biennia, and in~~
16 ~~conformance with section 223(11), chapter 470, Laws of 2009 and section~~
17 ~~221(2), chapter 367, Laws of 2011, this section does not apply to the~~
18 ~~purchase of uniforms by the Washington state ferries.~~

19 ~~(3))~~ Effective July 1, 2012, this section does not apply to the
20 purchase of uniforms for correctional officers employed with the
21 Washington state department of corrections.

22 **Sec. 9.** RCW 39.26.255 and 2011 1st sp.s. c 43 s 228 are each
23 amended to read as follows:

24 (1) The director shall develop specifications and adopt rules for
25 the purchase of products which will provide for preferential purchase
26 of products containing recycled material by:

27 (a) The use of a weighting factor determined by the amount of
28 recycled material in a product, where appropriate and known in advance
29 to potential bidders, to determine the lowest responsible bidder. The
30 actual dollars bid shall be the contracted amount. If the department
31 determines, according to criteria established by rule that the use of
32 this weighting factor does not encourage the use of more recycled
33 material, the department shall consider and award bids without regard
34 to the weighting factor. In making this determination, the department
35 shall consider but not be limited to such factors as adequate
36 competition, economics or environmental constraints, quality, and
37 availability.

1 (b) Requiring a written statement of the percentage range of
2 recycled content from the bidder providing products containing recycled
3 (~~(material)~~) material. The range may be stated in five percent
4 increments.

5 (2) The director shall develop a directory of businesses that have
6 a master contract with the department that supply products containing
7 significant quantities of recycled materials. This directory may be
8 combined with and made accessible through the database of recycled
9 content products to be developed under RCW 43.19A.060.

10 (3) The director shall encourage all parties using the state
11 purchasing office to purchase products containing recycled materials.

12 (4) The rules, specifications, and bid evaluation shall be
13 consistent with recycled content standards adopted under RCW
14 43.19A.020.

15 **Sec. 10.** RCW 39.26.271 and 2011 1st sp.s. c 43 s 241 are each
16 amended to read as follows:

17 The director shall adopt and apply rules designed to provide for
18 some reciprocity in bidding between Washington and those states having
19 statutes or regulations on the list under RCW (~~(43.19.702)~~) 39.26.270.
20 The director shall have broad discretionary power in developing these
21 rules and the rules shall provide for reciprocity only to the extent
22 and in those instances where the director considers it appropriate.
23 For the purpose of determining the lowest responsible bidder pursuant
24 to RCW (~~(43.19.1911)~~) 39.26.160, such rules shall (1) require the
25 director to impose a reciprocity increase on bids when appropriate
26 under the rules and (2) establish methods for determining the amount of
27 the increase. In no instance shall such increase, if any, be paid to
28 a vendor whose bid is accepted.

29 **Sec. 11.** RCW 39.35C.050 and 1996 c 186 s 409 are each amended to
30 read as follows:

31 In addition to any other authorities conferred by law:

32 (1) The department, with the consent of the state agency or school
33 district responsible for a facility, a state or regional university
34 acting independently, and any other state agency acting through the
35 department (~~(of general administration)~~) or as otherwise authorized by
36 law, may:

1 (a) Develop and finance conservation at public facilities in
2 accordance with express provisions of this chapter;

3 (b) Contract for energy services, including performance-based
4 contracts;

5 (c) Contract to sell energy savings from a conservation project at
6 public facilities to local utilities or the Bonneville power
7 administration.

8 (2) A state or regional university acting independently, and any
9 other state agency acting through the department (~~(of general~~
10 ~~administration))~~) or as otherwise authorized by law, may undertake
11 procurements for third-party development of conservation at its
12 facilities.

13 (3) A school district may:

14 (a) Develop and finance conservation at school district facilities;

15 (b) Contract for energy services, including performance-based
16 contracts at school district facilities; and

17 (c) Contract to sell energy savings from energy conservation
18 projects at school district facilities to local utilities or the
19 Bonneville power administration directly or to local utilities or the
20 Bonneville power administration through third parties.

21 (4) In exercising the authority granted by subsections (1), (2),
22 and (3) of this section, a school district or state agency must comply
23 with the provisions of RCW 39.35C.040.

24 **Sec. 12.** RCW 39.35C.090 and 1996 c 186 s 413 are each amended to
25 read as follows:

26 In addition to any other authorities conferred by law:

27 (1) The department, with the consent of the state agency
28 responsible for a facility, a state or regional university acting
29 independently, and any other state agency acting through the department
30 (~~(of general administration))~~) or as otherwise authorized by law, may:

31 (a) Contract to sell electric energy generated at state facilities
32 to a utility; and

33 (b) Contract to sell thermal energy produced at state facilities to
34 a utility.

35 (2) A state or regional university acting independently, and any
36 other state agency acting through the department (~~(of general~~
37 ~~administration))~~) or as otherwise authorized by law, may:

1 (a) Acquire, install, permit, construct, own, operate, and maintain
2 cogeneration and facility heating and cooling measures or equipment, or
3 both, at its facilities;

4 (b) Lease state property for the installation and operation of
5 cogeneration and facility heating and cooling equipment at its
6 facilities;

7 (c) Contract to purchase all or part of the electric or thermal
8 output of cogeneration plants at its facilities;

9 (d) Contract to purchase or otherwise acquire fuel or other energy
10 sources needed to operate cogeneration plants at its facilities; and

11 (e) Undertake procurements for third-party development of
12 cogeneration projects at its facilities, with successful bidders to be
13 selected based on the responsible bid, including nonprice elements
14 listed in RCW ((~~43.19.1911~~)) 39.26.160, that offers the greatest net
15 achievable benefits to the state and its agencies.

16 (3) After July 28, 1991, a state agency shall consult with the
17 department prior to exercising any authority granted by this section.

18 (4) In exercising the authority granted by subsections (1) and (2)
19 of this section, a state agency must comply with the provisions of RCW
20 39.35C.080.

21 **Sec. 13.** RCW 43.19.1919 and 2013 c 291 s 5 are each amended to
22 read as follows:

23 (1) The department shall sell or exchange personal property
24 belonging to the state for which the agency, office, department, or
25 educational institution having custody thereof has no further use, at
26 public or private sale, and cause the moneys realized from the sale of
27 any such property to be paid into the fund from which such property was
28 purchased or, if such fund no longer exists, into the state general
29 fund. This requirement is subject to the following exceptions and
30 limitations:

31 (a) This section does not apply to property under RCW 27.53.045,
32 28A.335.180, or 43.19.1920;

33 (b) Sales of capital assets may be made by the department and a
34 credit established for future purchases of capital items as provided
35 for in chapter 39.26 RCW ((~~43.19.190 through 43.19.1939~~));

36 (c) Personal property, excess to a state agency, including
37 educational institutions, shall not be sold or disposed of prior to

1 reasonable efforts by the department to determine if other state
2 agencies have a requirement for such personal property. Such
3 determination shall follow sufficient notice to all state agencies to
4 allow adequate time for them to make their needs known. Surplus items
5 may be disposed of without prior notification to state agencies if it
6 is determined by the director to be in the best interest of the state.
7 The department shall maintain a record of disposed surplus property,
8 including date and method of disposal, identity of any recipient, and
9 approximate value of the property;

10 (d) This section does not apply to personal property acquired by a
11 state organization under federal grants and contracts if in conflict
12 with special title provisions contained in such grants or contracts;

13 (e) A state agency having a surplus personal property asset with a
14 fair market value of less than five hundred dollars may transfer the
15 asset to another state agency without charging fair market value. A
16 state agency conducting this action must maintain adequate records to
17 comply with agency inventory procedures and state audit requirements.

18 (2)(a) Prior to transferring ownership of a department-owned
19 vessel, the department shall conduct a thorough review of the physical
20 condition of the vessel, the vessel's operating capability, and any
21 containers and other materials that are not fixed to the vessel.

22 (b) If the department determines that the vessel is in a state of
23 advanced deterioration or poses a reasonably imminent threat to human
24 health or safety, including a threat of environmental contamination,
25 the department may: (i) Not transfer the vessel until the conditions
26 identified under this subsection have been corrected; or (ii)
27 permanently dispose of the vessel by landfill, deconstruction, or other
28 related method.

29 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 43.19.520 (Purchase of products and services from entities
32 serving or providing opportunities for disadvantaged or disabled
33 persons--Intent) and 2005 c 204 s 1, 2003 c 136 s 1, & 1974 ex.s. c 40
34 s 1;

35 (2) RCW 43.19.525 (Purchases from entities serving or providing
36 opportunities for disadvantaged or disabled persons--Definitions) and
37 2003 c 136 s 2 & 1974 ex.s. c 40 s 2; and

1 (3) RCW 43.19.533 (Purchases from entities serving or providing
2 opportunities for disadvantaged or disabled persons--Existing contracts
3 not impaired--Solicitation of vendors in good standing) and 2005 c 204
4 s 4 & 2003 c 136 s 5.

--- END ---