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HOUSE BILL 1044

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State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Santos, Morris, Smith, Gregerson, Jinkins,  
Bergquist, Hudgins, and Pollet

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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, 39.19.060, 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,  
14 such 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  
17 performance of a contract.

18            (3) "Contractor" means an individual or entity granted state  
19 certification and awarded either a direct contract with an agency or  
20 an indirect contract as a subcontractor to perform a service or  
21 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  
3 into a state contract during a specified period of time as set forth  
4 in a 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  
11 as a percentage of dollar volume, for participation by minority and  
12 women- owned and controlled businesses and shall not be construed as  
13 a minimum goal for any particular contract or for any particular  
14 geographical area. It is the intent of this chapter that such overall  
15 agency goals shall be achievable and shall be met on a contract-by-  
16 contract or class-of-contract basis.

17       ~~((6))~~ (8) "Goods and/or services" includes professional  
18 services 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,  
23 cooperatives, legal representatives, trustees and receivers, or any  
24 group of persons.

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

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

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

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

36       (1) Each state agency and educational institution shall comply  
37 with the annual goals established for that agency or institution  
38 under this chapter for public works and procuring goods or services.  
39 This chapter applies to all public works and procurement by state

1 agencies and educational institutions, including all contracts and  
2 other procurement under chapters 28B.10, 39.04, ~~((39.29))~~ 39.26,  
3 43.19, and 47.28 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35       (b) If a person, firm, corporation, or business commits any of  
36 the activities prohibited in RCW 39.19.080, the state must impose one  
37 or more of the following penalties: Withholding payment, decertifying  
38 the contractor, debarring the contractor for a period between one and  
39 three years, terminating the contract, or subjecting the contractor

1 to civil penalties of between two and ten percent of the amount of  
2 the contract or between one and five thousand dollars for each  
3 violation.

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

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

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

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

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

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

38 (d) Subpoenas issued under this section may be enforced under RCW  
39 34.05.588.

40 (e) The investigation unit must annually:

1       (i) Conduct a site review of a minimum of three percent of  
2 persons, firms, corporations, or businesses awarded a contract under  
3 this chapter;

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

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

10       (iv) Develop and implement a process for prioritizing and  
11 conducting thorough investigations of persons, firms, corporations,  
12 or businesses internally identified and determined to be the highest  
13 priority for the agency.

14       (5) The procedures and sanctions in this section are not  
15 exclusive; nothing in this section prevents the state agency or  
16 educational institution administering the contracts from pursuing  
17 such procedures or sanctions as are otherwise provided by statute,  
18 rule, or contract provision.

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

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

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

28       (b) Adequately specify the documents, records, evidence, or  
29 testimony; and

30       (c) Include a declaration made under oath that an investigation  
31 is being conducted for a lawfully authorized purpose related to an  
32 investigation within the office's authority and that the subpoenaed  
33 documents, records, evidence, or testimony are reasonably related to  
34 an investigation within the office's authority.

35       (2) When an application under this section is made to the  
36 satisfaction of the court, the court must issue an order approving  
37 the subpoena. An order under this subsection constitutes authority of  
38 law for the agency to subpoena the documents, records, evidence, or  
39 testimony.

1 (3) The director or director's designee may seek approval and a  
2 court may issue an order under this section without prior notice to  
3 any person, including the person to whom the subpoena is directed and  
4 the person who is the subject of an investigation. An application for  
5 court approval is subject to the fee and process set forth in RCW  
6 36.18.012(3).

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

9 The minority and women's business enterprises account is created  
10 in the custody of the state treasurer. All receipts from RCW  
11 39.19.210, 39.19.220, and 39.19.230 and civil penalties imposed under  
12 RCW 39.19.090 shall be deposited in the account. Expenditures from  
13 the account may be used only for the purposes defraying all or part  
14 of the costs of the office in administering this chapter. Only the  
15 director or the director's designee may authorize expenditures from  
16 the account. Moneys in the account may be spent only after  
17 appropriation.

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

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

30 (2) The office must develop and maintain a list of contact people  
31 at each state agency and educational institution (~~that is~~) who are  
32 able to present to hearings of the appropriate committees of the  
33 legislature its progress in carrying out the purposes of chapter  
34 39.19 RCW.

35 (3) The office must submit a report aggregating the data received  
36 from each state agency and educational institution, and the  
37 information identified and actions taken under RCW 39.19.060(3) and  
38 39.19.090(4), to the legislature and the governor.

1        NEW SECTION.    **Sec. 8.**    The following acts or parts of acts are  
2 each repealed:

3        (1)    RCW 39.19.100 (Enforcement by attorney general—Injunctive  
4 relief) and 1987 c 328 s 12; and

5        (2)    RCW 39.19.110 (Enforcement by attorney general—Investigative  
6 powers) and 1987 c 328 s 13.

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