
SENATE BILL 5075

State of Washington 64th Legislature 2015 Regular Session

By Senator Baumgartner; by request of Department of Enterprise Services

Read first time 01/13/15. Referred to Committee on Government Operations & State Security.

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, 39.26.251, 39.26.255, 39.26.271, 39.35C.050, 39.35C.090,
4 and 43.19.1919; reenacting and amending RCW 39.26.010; and repealing
5 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
10 RCW 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
13 of all material, supplies, services, and equipment needed for the
14 support, maintenance, and use of the respective institution of higher
15 education.

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

19 (c)(i) Except as provided in (c)(ii) and (iii) of this subsection
20 and elsewhere as provided by law, purchasing policies and procedures
21 followed by institutions of higher education shall be in compliance

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

4 (ii) Institutions of higher education may use all appropriate
5 means for making and paying for travel arrangements including, but
6 not limited to, electronic booking and reservations, advance payment
7 and deposits for tours, lodging, and other necessary expenses, and
8 other travel transactions based on standard industry practices and
9 federal accountable plan requirements. Such arrangements shall
10 support student, faculty, staff, and other participants' travel, by
11 groups and individuals, both domestic and international, in the most
12 cost-effective and efficient manner possible, regardless of the
13 source of 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
18 ten thousand dollars or more and less than one hundred thousand
19 dollars, quotations must be secured from at least three vendors to
20 assure establishment of a competitive price and may be obtained by
21 telephone, electronic, or written quotations, or any combination
22 thereof. As part of securing the three vendor quotations,
23 institutions of higher education must invite at least one quotation
24 each from a certified minority and a certified woman-owned vendor
25 that otherwise qualifies to perform the work. A record of competition
26 for all such purchases and personal services contracts of ten
27 thousand dollars or more and less than one hundred thousand dollars
28 must be documented for audit 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
31 for materials, supplies, services, or equipment negotiated or entered
32 into 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
36 higher education shall comply with RCW 43.19.769, 43.19.763, and
37 43.19.781.

38 (g) If an institution of higher education can satisfactorily
39 demonstrate to the director of the office of financial management
40 that the cost of compliance is greater than the value of benefits

1 from any of the following statutes, then it shall be exempt from
2 them: RCW 43.19.685 and 43.19.637.

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

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

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

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

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

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

33 (4)(a) Institutions of higher education shall set as a target to
34 contract, beginning not later than June 30, 2006, to purchase one
35 percent of the total goods and services required by the institutions
36 each year produced or provided in whole or in part from class II
37 inmate work programs operated by the department of corrections.
38 Institutions of higher education shall set as a target to contract,
39 beginning not later than June 30, 2008, to purchase two percent of
40 the total goods and services required by the institutions each year

1 produced or provided in whole or in part from class II inmate work
2 programs operated by the department of corrections.

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

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

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

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

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

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

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

29 (2) At least twice per year, the municipality shall publish in a
30 newspaper of general circulation within the jurisdiction a notice of
31 the existence of vendor lists and solicit the names of vendors for
32 the lists. Municipalities shall by resolution establish a procedure
33 for securing telephone or written quotations, or both, from at least
34 three different vendors whenever possible to assure that a
35 competitive price is established and for awarding the contracts for
36 the purchase of any materials, equipment, supplies, or services to
37 the lowest responsible bidder as defined in chapter 39.26 RCW

1 ((43.19.1911)). Immediately after the award is made, the bid
2 quotations obtained shall be recorded, open to public inspection, and
3 shall be available by telephone inquiry. A contract awarded pursuant
4 to this section need not be advertised.

5 **Sec. 5.** RCW 39.26.010 and 2014 c 135 s 2 are each reenacted and
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

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

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

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

22 (4) (~~"Businesses owned and operated by persons with~~
23 ~~disabilities" means any for-profit business certified under chapter~~
24 ~~39.19 RCW as being owned and controlled by persons who have been~~
25 ~~either:~~

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

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

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

34 ~~(d) Determined by the United States department of veterans~~
35 ~~affairs to be or have been eligible for vocational rehabilitation~~
36 ~~services due to service-connected disabilities, under 38 U.S.C. Sec.~~
37 ~~3100 et seq.~~

38 (5)) "Client services" means services provided directly to
39 agency clients including, but not limited to, medical and dental

1 services, employment and training programs, residential care, and
2 subsidized housing.

3 ~~((+6))~~ (5) "Community rehabilitation program of the department
4 of social and health services" means any entity that:

5 (a) Is registered as a nonprofit corporation with the secretary
6 of state; and

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

10 ~~((+7))~~ (6) "Competitive solicitation" means a documented formal
11 process providing an equal and open opportunity to bidders and
12 culminating in a selection based on predetermined criteria.

13 ~~((+8))~~ (7) "Contractor" means an individual or entity awarded a
14 contract with an agency to perform a service or provide goods.

15 ~~((+9))~~ (8) "Debar" means to prohibit a contractor, individual,
16 or other entity from submitting a bid, having a bid considered, or
17 entering into a state contract during a specified period of time as
18 set forth in a debarment order.

19 ~~((+10))~~ (9) "Department" means the department of enterprise
20 services.

21 ~~((+11))~~ (10) "Director" means the director of the department of
22 enterprise services.

23 ~~((+12))~~ (11) "Estimated useful life" of an item means the
24 estimated time from the date of acquisition to the date of
25 replacement or disposal, determined in any reasonable manner.

26 ~~((+13))~~ (12) "Goods" means products, materials, supplies, or
27 equipment provided by a contractor.

28 ~~((+14))~~ (13) "In-state business" means a business that has its
29 principal office located in Washington.

30 ~~((+15))~~ (14) "Life-cycle cost" means the total cost of an item
31 to the state over its estimated useful life, including costs of
32 selection, acquisition, operation, maintenance, and where applicable,
33 disposal, as far as these costs can reasonably be determined, minus
34 the salvage value at the end of its estimated useful life.

35 ~~((+16))~~ (15) "Master contracts" means a contract for specific
36 goods or services, or both, that is solicited and established by the
37 department in accordance with procurement laws and rules on behalf of
38 and for general use by agencies as specified by the department.

39 ~~((+17))~~ (16) "Microbusiness" means any business entity,
40 including a sole proprietorship, corporation, partnership, or other

1 legal entity, that: (a) Is owned and operated independently from all
2 other businesses; and (b) has a gross revenue of less than one
3 million dollars annually as reported on its federal tax return or on
4 its return filed with the department of revenue.

5 ~~((18))~~ (17) "Minibusiness" means any business entity, including
6 a sole proprietorship, corporation, partnership, or other legal
7 entity, that: (a) Is owned and operated independently from all other
8 businesses; and (b) has a gross revenue of less than three million
9 dollars, but one million dollars or more annually as reported on its
10 federal tax return or on its return filed with the department of
11 revenue.

12 ~~((19))~~ (18) "Polychlorinated biphenyls" means any
13 polychlorinated biphenyl congeners and homologs.

14 ~~((20))~~ (19) "Practical quantification limit" means the lowest
15 concentration that can be reliably measured within specified limits
16 of precision, accuracy, representativeness, completeness, and
17 comparability during routine laboratory operating conditions.

18 ~~((21))~~ (20) "Purchase" means the acquisition of goods or
19 services, including the leasing or renting of goods.

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

23 ~~((23))~~ (22) "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
30 as reported on its federal income tax return or its return filed with
31 the department of revenue over the previous three consecutive years;
32 or

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

35 ~~((24))~~ (23) "Sole source" means a contractor providing goods or
36 services of such a unique nature or sole availability at the location
37 required that the contractor is clearly and justifiably the only
38 practicable source to provide the goods or services.

39 ~~((25))~~ (24) "Washington grown" has the definition in RCW
40 15.64.060.

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

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

11 **Sec. 7.** RCW 39.26.251 and 2012 c 220 s 1 are each amended to
12 read as follows:

13 (1) State agencies, the legislature, and departments shall
14 purchase for their use all goods and services required by the
15 legislature, agencies, or departments that are produced or provided
16 in whole or in part from class II inmate work programs operated by
17 the department of corrections through state contract. These goods and
18 services shall not be purchased from any other source unless, upon
19 application by the department or agency: (a) The department finds
20 that the articles or products do not meet the reasonable requirements
21 of the agency or department, (b) are not of equal or better quality,
22 or (c) the price of the product or service is higher than that
23 produced by the private sector. However, the criteria contained in
24 (a), (b), and (c) of this subsection for purchasing goods and
25 services from sources other than correctional industries do not apply
26 to goods and services produced by correctional industries that
27 primarily replace goods manufactured or services obtained from
28 outside the state. The department of corrections and department shall
29 adopt administrative rules that implement this section.

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

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

37 **Sec. 8.** RCW 39.26.255 and 2011 1st sp.s. c 43 s 228 are each
38 amended to read as follows:

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

4 (a) The use of a weighting factor determined by the amount of
5 recycled material in a product, where appropriate and known in
6 advance to potential bidders, to determine the lowest responsible
7 bidder. The actual dollars bid shall be the contracted amount. If the
8 department determines, according to criteria established by rule that
9 the use of this weighting factor does not encourage the use of more
10 recycled material, the department shall consider and award bids
11 without regard to the weighting factor. In making this determination,
12 the department shall consider but not be limited to such factors as
13 adequate competition, economics or environmental constraints,
14 quality, and availability.

15 (b) Requiring a written statement of the percentage range of
16 recycled content from the bidder providing products containing
17 recycled (~~material~~) material. The range may be stated in five
18 percent increments.

19 (2) The director shall develop a directory of businesses that
20 have a master contract with the department that supply products
21 containing significant quantities of recycled materials. This
22 directory may be combined with and made accessible through the
23 database of recycled content products to be developed under RCW
24 43.19A.060.

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

27 (4) The rules, specifications, and bid evaluation shall be
28 consistent with recycled content standards adopted under RCW
29 43.19A.020.

30 **Sec. 9.** RCW 39.26.271 and 2011 1st sp.s. c 43 s 241 are each
31 amended to read as follows:

32 The director shall adopt and apply rules designed to provide for
33 some reciprocity in bidding between Washington and those states
34 having statutes or regulations on the list under RCW (~~43.19.702~~)
35 39.26.270. The director shall have broad discretionary power in
36 developing these rules and the rules shall provide for reciprocity
37 only to the extent and in those instances where the director
38 considers it appropriate. For the purpose of determining the lowest
39 responsible bidder pursuant to RCW (~~43.19.1911~~) 39.26.160, such

1 rules shall (1) require the director to impose a reciprocity increase
2 on bids when appropriate under the rules and (2) establish methods
3 for determining the amount of the increase. In no instance shall such
4 increase, if any, be paid to a vendor whose bid is accepted.

5 **Sec. 10.** RCW 39.35C.050 and 1996 c 186 s 409 are each amended to
6 read as follows:

7 In addition to any other authorities conferred by law:

8 (1) The department, with the consent of the state agency or
9 school district responsible for a facility, a state or regional
10 university acting independently, and any other state agency acting
11 through the department (~~(of general administration)~~) or as otherwise
12 authorized by law, may:

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

15 (b) Contract for energy services, including performance-based
16 contracts;

17 (c) Contract to sell energy savings from a conservation project
18 at public facilities to local utilities or the Bonneville power
19 administration.

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

25 (3) A school district may:

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

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

30 (c) Contract to sell energy savings from energy conservation
31 projects at school district facilities to local utilities or the
32 Bonneville power administration directly or to local utilities or the
33 Bonneville power administration through third parties.

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

37 **Sec. 11.** RCW 39.35C.090 and 1996 c 186 s 413 are each amended to
38 read as follows:

1 In addition to any other authorities conferred by law:

2 (1) The department, with the consent of the state agency
3 responsible for a facility, a state or regional university acting
4 independently, and any other state agency acting through the
5 department (~~(of general administration)~~) or as otherwise authorized
6 by law, may:

7 (a) Contract to sell electric energy generated at state
8 facilities to a utility; and

9 (b) Contract to sell thermal energy produced at state facilities
10 to a utility.

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

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

17 (b) Lease state property for the installation and operation of
18 cogeneration and facility heating and cooling equipment at its
19 facilities;

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

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

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

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

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

35 **Sec. 12.** RCW 43.19.1919 and 2013 c 291 s 5 are each amended to
36 read as follows:

37 (1) The department shall sell or exchange personal property
38 belonging to the state for which the agency, office, department, or
39 educational institution having custody thereof has no further use, at

1 public or private sale, and cause the moneys realized from the sale
2 of any such property to be paid into the fund from which such
3 property was purchased or, if such fund no longer exists, into the
4 state general fund. This requirement is subject to the following
5 exceptions and limitations:

6 (a) This section does not apply to property under RCW 27.53.045,
7 28A.335.180, or 43.19.1920;

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

11 (c) Personal property, excess to a state agency, including
12 educational institutions, shall not be sold or disposed of prior to
13 reasonable efforts by the department to determine if other state
14 agencies have a requirement for such personal property. Such
15 determination shall follow sufficient notice to all state agencies to
16 allow adequate time for them to make their needs known. Surplus items
17 may be disposed of without prior notification to state agencies if it
18 is determined by the director to be in the best interest of the
19 state. The department shall maintain a record of disposed surplus
20 property, including date and method of disposal, identity of any
21 recipient, and approximate value of the property;

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

26 (e) A state agency having a surplus personal property asset with
27 a fair market value of less than five hundred dollars may transfer
28 the asset to another state agency without charging fair market value.
29 A state agency conducting this action must maintain adequate records
30 to comply with agency inventory procedures and state audit
31 requirements.

32 (2)(a) Prior to transferring ownership of a department-owned
33 vessel, the department shall conduct a thorough review of the
34 physical condition of the vessel, the vessel's operating capability,
35 and any containers and other materials that are not fixed to the
36 vessel.

37 (b) If the department determines that the vessel is in a state of
38 advanced deterioration or poses a reasonably imminent threat to human
39 health or safety, including a threat of environmental contamination,
40 the department may: (i) Not transfer the vessel until the conditions

1 identified under this subsection have been corrected; or (ii)
2 permanently dispose of the vessel by landfill, deconstruction, or
3 other related method.

4 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
5 each repealed:

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

10 (2) RCW 43.19.525 (Purchases from entities serving or providing
11 opportunities for disadvantaged or disabled persons--Definitions) and
12 2003 c 136 s 2 & 1974 ex.s. c 40 s 2; and

13 (3) RCW 43.19.533 (Purchases from entities serving or providing
14 opportunities for disadvantaged or disabled persons--Existing
15 contracts not impaired--Solicitation of vendors in good standing) and
16 2005 c 204 s 4 & 2003 c 136 s 5.

--- END ---