
SUBSTITUTE HOUSE BILL 1787

State of Washington

65th Legislature

2017 Regular Session

By House Appropriations (originally sponsored by Representatives Hudgins, Koster, Appleton, Doglio, Kraft, and Ormsby; by request of Office of the Chief Information Officer)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to oversight of the state procurement and
2 contracting for information technology goods and services; amending
3 RCW 39.26.005, 39.26.010, 39.26.050, 39.26.060, 39.26.080, 39.26.090,
4 39.26.110, 39.26.130, 39.26.140, and 39.26.180; and creating a new
5 section.

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

7 **Sec. 1.** RCW 39.26.005 and 2012 c 224 s 1 are each amended to
8 read as follows:

9 It is the intent of this chapter to promote open competition and
10 transparency for all contracts for goods and services entered into by
11 state agencies, unless specifically exempted under this chapter. It
12 is further the intent of this chapter to centralize within one
13 agency, wherever possible, the authority and responsibility for the
14 development and oversight of policies related to state procurement
15 and contracting. To ensure the highest ethical standards, proper
16 accounting for contract expenditures, and for ease of public review,
17 it is further the intent to centralize the location of information
18 about state procurements and contracts. It is also the intent of the
19 legislature to provide state agency contract data to the public in a
20 searchable manner.

1 In addition, the legislature intends that the state develop
2 procurement policies, procedures, and materials that encourage and
3 facilitate state agency purchase of goods and services from
4 Washington small businesses.

5 It is the intent of this act to provide additional oversight of
6 the procurement and contracting for information technology goods and
7 services by the state chief information officer.

8 **Sec. 2.** RCW 39.26.010 and 2015 c 79 s 5 are each amended to read
9 as follows:

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

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

17 (2) "Bid" means an offer, proposal, or quote for goods or
18 services in response to a solicitation issued for such goods or
19 services by the department or an agency of Washington state
20 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) "Client services" means services provided directly to agency
26 clients including, but not limited to, medical and dental services,
27 employment and training programs, residential care, and subsidized
28 housing.

29 (5) "Community rehabilitation program of the department of social
30 and health services" means any entity that:

31 (a) Is registered as a nonprofit corporation with the secretary
32 of state; and

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

36 (6) "Competitive solicitation" means a documented formal process
37 providing an equal and open opportunity to bidders and culminating in
38 a selection based on predetermined criteria.

1 (7) "Contractor" means an individual or entity awarded a contract
2 with an agency to perform a service or provide goods.

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

7 (9) "Department" means the department of enterprise services.

8 (10) "Director" means the director of the department of
9 enterprise services.

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

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

15 (13) "In-state business" means a business that has its principal
16 office located in Washington.

17 (14) "Life-cycle cost" means the total cost of an item to the
18 state over its estimated useful life, including costs of selection,
19 acquisition, operation, maintenance, and where applicable, disposal,
20 as far as these costs can reasonably be determined, minus the salvage
21 value at the end of its estimated useful life.

22 (15) "Master contracts" means a contract for specific goods or
23 services, or both, that is solicited and established by the
24 department in accordance with procurement laws and rules on behalf of
25 and for general use by agencies as specified by the department.

26 (16) "Microbusiness" means any business entity, including a sole
27 proprietorship, corporation, partnership, or other legal entity,
28 that: (a) Is owned and operated independently from all other
29 businesses; and (b) has a gross revenue of less than one million
30 dollars annually as reported on its federal tax return or on its
31 return filed with the department of revenue.

32 (17) "Minibusiness" means any business entity, including a sole
33 proprietorship, corporation, partnership, or other legal entity,
34 that: (a) Is owned and operated independently from all other
35 businesses; and (b) has a gross revenue of less than three million
36 dollars, but one million dollars or more annually as reported on its
37 federal tax return or on its return filed with the department of
38 revenue.

39 (18) "Polychlorinated biphenyls" means any polychlorinated
40 biphenyl congeners and homologs.

1 (19) "Practical quantification limit" means the lowest
2 concentration that can be reliably measured within specified limits
3 of precision, accuracy, representativeness, completeness, and
4 comparability during routine laboratory operating conditions.

5 (20) "Purchase" means the acquisition of goods or services,
6 including the leasing or renting of goods.

7 (21) "Services" means labor, work, analysis, or similar
8 activities provided by a contractor to accomplish a specific scope of
9 work.

10 (22) "Small business" means an in-state business, including a
11 sole proprietorship, corporation, partnership, or other legal entity,
12 that:

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

15 (i) Fifty or fewer employees; or

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

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

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

26 (24) "Washington grown" has the definition in RCW 15.64.060.

27 (25) "Information technology" has the definition in RCW
28 43.105.020.

29 (26) "Office" means the office of the state chief information
30 officer within the consolidated technology services agency.

31 **Sec. 3.** RCW 39.26.050 and 2012 c 224 s 6 are each amended to
32 read as follows:

33 (1) In addition to the powers and duties provided in chapter
34 43.19 RCW, the department shall make available goods and services to
35 support state agencies, and may enter into agreements with any other
36 local or federal governmental agency or entity or a public benefit
37 nonprofit organization, in compliance with RCW 39.34.055, and any
38 tribes located in the state, to furnish such products and services as
39 deemed appropriate by both parties. The department must consult with

1 the office when it makes available information technology goods and
2 services to ensure consistency with standards and policies to govern
3 information technology as established by the office in accordance
4 with RCW 43.105.054.

5 (2) The department shall ensure full cost recovery from state
6 agencies, other local or federal governmental agency or entity,
7 public benefit nonprofit organizations, or any tribes located in the
8 state, for activities performed pursuant to subsection (1) of this
9 section. Cost recovery must ensure that the department is reimbursed
10 its full cost for providing the goods and services furnished as
11 determined by the department. Cost recovery may be collected through
12 the state agency, other governmental entity, nonprofit organization,
13 or through the contractor.

14 (3) All governmental entities of this state may enter into
15 agreements under this section with the department, unless otherwise
16 prohibited.

17 **Sec. 4.** RCW 39.26.060 and 2012 c 224 s 7 are each amended to
18 read as follows:

19 (1) On behalf of the state, the department may participate in,
20 sponsor, conduct, or administer a cooperative purchasing agreement
21 for the procurement of any goods or services with one or more states,
22 state agencies, local governments, local government agencies, federal
23 agencies, or tribes located in the state, in accordance with an
24 agreement entered into between the participants. The cooperative
25 purchasing may include, but is not limited to, joint or multiparty
26 contracts between the entities, and master contracts or convenience
27 contracts that are made available to other public agencies.

28 (2) All cooperative purchasing conducted under this chapter must
29 be through contracts awarded through a competitive solicitation
30 process.

31 (3) Cooperative purchasing for information technology goods and
32 services must be coordinated with the office.

33 **Sec. 5.** RCW 39.26.080 and 2012 c 224 s 9 are each amended to
34 read as follows:

35 (1) The director is responsible for the development and oversight
36 of policy for the procurement of goods and services by all state
37 agencies under this chapter. When establishing policies, standards,
38 and procedures, the director shall account for differentiation in

1 procurement practices and needs among state agencies and strive to
2 establish policies, standards, and procedures that promote greater
3 efficiency in procurement. Policies, standards, and procedures for
4 the procurement of information technology goods and services must be
5 developed in consultation with and approved by the office.

6 (2) The director is authorized to adopt rules, policies, and
7 guidelines governing the procurement, contracting, and contract
8 management of any and all goods and services procured by state
9 agencies under this chapter. Policies and guidelines governing the
10 procurement, contracting, and contract management of information
11 technology goods and services must be developed in consultation with
12 and approved by the office.

13 (3) The director or designee is the sole authority to enter into
14 master contracts on behalf of the state. The director may delegate
15 the authority to enter into master contracts for information
16 technology goods and services to the consolidated technology services
17 agency. The consolidated technology services agency shall comply with
18 this chapter when establishing master contracts.

19 (4) Master contracts for information technology goods and
20 services may not be designated "mandatory use" without approval of
21 the office.

22 **Sec. 6.** RCW 39.26.090 and 2012 c 224 s 10 are each amended to
23 read as follows:

24 The director shall:

25 (1) Establish overall state policies, standards, and procedures
26 regarding the procurement of goods and services by all state
27 agencies;

28 (2) Develop policies and standards for the use of credit cards or
29 similar methods to make purchases;

30 (3) Establish procurement processes for information technology
31 goods and services, using technology standards and policies
32 established by the office of the chief information officer under
33 chapter ((43.41A)) 43.105 RCW. The procurement processes must be
34 established in consultation with and approved by the office;

35 (4) Enter into contracts or delegate the authority to enter into
36 contracts on behalf of the state to facilitate the purchase, lease,
37 rent, or otherwise acquire all goods and services and equipment
38 needed for the support, maintenance, and use of all state agencies,
39 except as provided in RCW 39.26.100;

1 (5) Have authority to delegate to agencies authorization to
2 purchase goods and services. The authorization must specify
3 restrictions as to dollar amount or to specific types of goods and
4 services, based on a risk assessment process developed by the
5 department. Acceptance of the purchasing authorization by an agency
6 does not relieve the agency from conformance with this chapter or
7 from policies established by the director. Also, the director may not
8 delegate to a state agency the authorization to purchase goods and
9 services if the agency is not in substantial compliance with overall
10 procurement policies as established by the director. The delegation
11 of authority to an agency for the purchase of information technology
12 goods and services granted under this subsection must be approved by
13 the office. The office has the authority to change or withdraw the
14 delegated authority for the purchase of information technology goods
15 and services;

16 (6) Develop procurement policies and procedures, such as
17 unbundled contracting and subcontracting, that encourage and
18 facilitate the purchase of goods and services from Washington small
19 businesses, microbusinesses, and minibusinesses, and minority and
20 women-owned businesses to the maximum extent practicable and
21 consistent with international trade agreement commitments;

22 (7) Develop and implement an enterprise system for electronic
23 procurement;

24 (8) Provide for a commodity classification system and provide for
25 the adoption of goods and services commodity standards;

26 (9) Establish overall state policy for compliance by all agencies
27 regarding:

28 (a) Food procurement procedures and materials that encourage and
29 facilitate the purchase of Washington grown food by state agencies
30 and institutions to the maximum extent practicable and consistent
31 with international trade agreement commitments; and

32 (b) Policies requiring all food contracts to include a plan to
33 maximize to the extent practicable and consistent with international
34 trade agreement commitments the availability of Washington grown food
35 purchased through the contract;

36 (10) Develop guidelines and criteria for the purchase of
37 vehicles, high gas mileage vehicles, and alternate vehicle fuels and
38 systems, equipment, and materials, that reduce overall energy-related
39 costs and energy use by the state, including investigations into all
40 opportunities to aggregate the purchasing of clean technologies by

1 state and local governments, and including the requirement that new
2 passenger vehicles purchased by the state meet the minimum standards
3 for passenger automobile fuel economy established by the United
4 States secretary of transportation pursuant to the energy policy and
5 conservation act (15 U.S.C. Sec. 2002); and

6 (11) Develop and enact rules to implement the provisions of this
7 chapter.

8 **Sec. 7.** RCW 39.26.110 and 2012 c 224 s 12 are each amended to
9 read as follows:

10 (1) The department must provide expertise and training on best
11 practices for state procurement. The department must coordinate with
12 the office regarding training on the best practices for state
13 procurement of information technology goods and services.

14 (2) The department must establish either training or
15 certification programs, or both, to ensure consistency in procurement
16 practices for employees authorized to perform procurement functions
17 under the provisions of this chapter. When establishing training or
18 certification programs, the department may approve existing training
19 or certification programs at state agencies. When establishing
20 programs or approving existing programs, the department shall work
21 with agencies with existing training programs to ensure coordination
22 and minimize additional costs associated with training requirements.
23 Training or certificate programs focused on the procurement of
24 information technology goods and services must be developed and
25 provided in partnership with the office.

26 (3) Beginning July 1, 2013, state agencies must require agency
27 employees responsible for developing, executing, or managing
28 procurements or contracts, or both, to complete department-approved
29 training or certification programs, or both. Beginning July 1, 2015,
30 no agency employee may execute or manage contracts unless the
31 employee has met the training or certification requirements or both
32 as set by the department. Any request for exception to this
33 requirement must be submitted to the director for approval before the
34 employee or group of employees executes or manages contracts.

35 **Sec. 8.** RCW 39.26.130 and 2012 c 224 s 15 are each amended to
36 read as follows:

37 (1) An agency may make emergency purchases as defined in
38 subsection (3) of this section. When an emergency purchase is made,

1 the agency head shall submit written notification of the purchase
2 within three business days of the purchase to the director and
3 provide a copy to the office for purchases of information technology
4 goods or services. This notification must contain a description of
5 the purchase, a description of the emergency and the circumstances
6 leading up to the emergency, and an explanation of why the
7 circumstances required an emergency purchase.

8 (2) Emergency contracts must be submitted to the department and
9 made available for public inspection within three working days
10 following the commencement of work or execution of the contract,
11 whichever occurs first.

12 (3) As used in this section, "emergency" means a set of
13 unforeseen circumstances beyond the control of the agency that
14 either:

15 (a) Present a real, immediate, and extreme threat to the proper
16 performance of essential functions; or

17 (b) May reasonably be expected to result in material loss or
18 damage to property, bodily injury, or loss of life, if immediate
19 action is not taken.

20 **Sec. 9.** RCW 39.26.140 and 2012 c 224 s 16 are each amended to
21 read as follows:

22 (1) Agencies must submit sole source contracts to the department
23 and make the contracts available for public inspection not less than
24 ten working days before the proposed starting date of the contract.
25 Agencies must provide documented justification for sole source
26 contracts to the department when the contract is submitted, and must
27 include evidence that the agency posted the contract opportunity at a
28 minimum on the state's enterprise vendor registration and bid
29 notification system. The department must provide a copy of the
30 submittal for a sole source contract for information technology goods
31 and services to the office for review, and the office shall notify
32 the department if the contract should be denied or if additional
33 justification is needed before the contract may be approved.

34 (2) The department must approve sole source contracts before any
35 such contract becomes binding and before any services may be
36 performed or goods provided under the contract. These requirements
37 shall also apply to all sole source contracts except as otherwise
38 exempted by the director.

1 (3) The director may provide an agency an exemption from the
2 requirements of this section for a contract or contracts. Requests
3 for exemptions must be submitted to the director in writing.

4 (4) Contracts awarded by institutions of higher education from
5 nonstate funds are exempt from the requirements of this section.

6 **Sec. 10.** RCW 39.26.180 and 2012 c 224 s 20 are each amended to
7 read as follows:

8 (1) The department must adopt uniform policies and procedures for
9 the effective and efficient management of contracts by all state
10 agencies. Additional policies and procedures related to the
11 management of information technology contracts must be developed in
12 consultation with and approved by the office. The policies and
13 procedures must, at a minimum, include:

14 (a) Precontract procedures for selecting potential contractors
15 based on their qualifications and ability to perform;

16 (b) Model complaint and protest procedures;

17 (c) Alternative dispute resolution processes;

18 (d) Incorporation of performance measures and measurable
19 benchmarks in contracts;

20 (e) Model contract terms to ensure contract performance and
21 compliance with state and federal standards;

22 (f) Executing contracts using electronic signatures;

23 (g) Criteria for contract amendments;

24 (h) Postcontract procedures;

25 (i) Procedures and criteria for terminating contracts for cause
26 or otherwise; and

27 (j) Any other subject related to effective and efficient contract
28 management.

29 (2) An agency may not enter into a contract under which the
30 contractor could charge additional costs to the agency, the
31 department, the joint legislative audit and review committee, or the
32 state auditor for access to data generated under the contract. A
33 contractor under such a contract must provide access to data
34 generated under the contract to the contracting agency, the joint
35 legislative audit and review committee, and the state auditor.

36 (3) To the extent practicable, agencies should enter into
37 performance-based contracts. Performance-based contracts identify
38 expected deliverables and performance measures or outcomes.
39 Performance-based contracts also use appropriate techniques, which

1 may include but are not limited to, either consequences or incentives
2 or both to ensure that agreed upon value to the state is received.
3 Payment for goods and services under performance-based contracts
4 should be contingent on the contractor achieving performance
5 outcomes.

6 (4) An agency and contractor may execute a contract using
7 electronic signatures.

8 (5) As used in subsection (2) of this section, "data" includes
9 all information that supports the findings, conclusions, and
10 recommendations of the contractor's reports, including computer
11 models and the methodology for those models.

12 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
13 this act, referencing this act by bill or chapter number, is not
14 provided by June 30, 2017, in the omnibus appropriations act, this
15 act is null and void.

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