
SUBSTITUTE SENATE BILL 5572 (Corrected Copy)

State of Washington

65th Legislature

2017 Regular Session

By Senate State Government (originally sponsored by Senators Hunt and Miloscia; by request of Office of the Chief Information Officer)

READ FIRST TIME 02/17/17.

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

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

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

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

20 In addition, the legislature intends that the state develop
21 procurement policies, procedures, and materials that encourage and

1 facilitate state agency purchase of goods and services from
2 Washington small businesses.

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

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

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

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

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

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

23 (4) "Client services" means services provided directly to agency
24 clients including, but not limited to, medical and dental services,
25 employment and training programs, residential care, and subsidized
26 housing.

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

29 (a) Is registered as a nonprofit corporation with the secretary
30 of state; and

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

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

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

1 (8) "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 (9) "Department" means the department of enterprise services.

6 (10) "Director" means the director of the department of
7 enterprise services.

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

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

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

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

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

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

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

37 (18) "Polychlorinated biphenyls" means any polychlorinated
38 biphenyl congeners and homologs.

39 (19) "Practical quantification limit" means the lowest
40 concentration that can be reliably measured within specified limits

1 of precision, accuracy, representativeness, completeness, and
2 comparability during routine laboratory operating conditions.

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

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

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

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

13 (i) Fifty or fewer employees; or

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

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

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

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

25 (25) "Information technology" has the definition in RCW
26 43.105.020.

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

29 (27) "Excellence assessment" means an assessment of agency
30 operational performance by a trained national or state examiner using
31 an excellence framework published by the national institutes of
32 standards and technology, United States department of commerce.

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

35 (1) In addition to the powers and duties provided in chapter
36 43.19 RCW, the department shall make available goods and services to
37 support state agencies, and may enter into agreements with any other
38 local or federal governmental agency or entity or a public benefit
39 nonprofit organization, in compliance with RCW 39.34.055, and any

1 tribes located in the state, to furnish such products and services as
2 deemed appropriate by both parties. The department must consult with
3 the office when it makes available information technology goods and
4 services to ensure consistency with standards and policies to govern
5 information technology as established by the office in accordance
6 with RCW 43.105.054.

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

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

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

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

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

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

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

37 (1) The director is responsible for the development and oversight
38 of policy for the procurement of goods and services by all state

1 agencies under this chapter. When establishing policies, standards,
2 and procedures, the director shall account for differentiation in
3 procurement practices and needs among state agencies and strive to
4 establish policies, standards, and procedures that promote greater
5 efficiency in procurement. Policies, standards, and procedures for
6 the procurement of information technology goods and services must be
7 developed in consultation with and approved by the office.

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

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

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

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

26 The director shall:

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

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

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

37 (4) Enter into contracts or delegate the authority to enter into
38 contracts on behalf of the state to facilitate the purchase, lease,
39 rent, or otherwise acquire all goods and services and equipment

1 needed for the support, maintenance, and use of all state agencies,
2 except as provided in RCW 39.26.100;

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

18 (6) Provide excellence assessments of its information technology
19 contract operations every two years, and transmit completed
20 excellence assessments and feedback reports to pertinent legislative
21 committees and to the office of the governor.

22 (a) An agency's excellence assessment score measures the agency's
23 progress towards achieving world-class performance. Each agency's
24 goal is to achieve a sixty percent score within seven years of its
25 first excellence assessment. When an agency achieves a sixty percent
26 score, it must apply for a national institute of science and
27 technology performance award.

28 (b) An agency that:

29 (i) Achieves the goal in (a) of this subsection is not required
30 to conduct an excellence assessment every two years, but must conduct
31 an excellence assessment at least every four years; and

32 (ii) Fails to achieve the goal in (a) of this subsection must
33 achieve certification under an internationally recognized quality
34 management system, such as ISO 9001, or its equivalent, within seven
35 years of the first excellence assessment;

36 (7) Develop procurement policies and procedures, such as
37 unbundled contracting and subcontracting, that encourage and
38 facilitate the purchase of goods and services from Washington small
39 businesses, microbusinesses, and minibusinesses, and minority and

1 women-owned businesses to the maximum extent practicable and
2 consistent with international trade agreement commitments;

3 ~~((7))~~ (8) Develop and implement an enterprise system for
4 electronic procurement;

5 ~~((8))~~ (9) Provide for a commodity classification system and
6 provide for the adoption of goods and services commodity standards;

7 ~~((9))~~ (10) Establish overall state policy for compliance by all
8 agencies regarding:

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

13 (b) Policies requiring all food contracts to include a plan to
14 maximize to the extent practicable and consistent with international
15 trade agreement commitments the availability of Washington grown food
16 purchased through the contract;

17 ~~((10))~~ (11) Develop guidelines and criteria for the purchase of
18 vehicles, high gas mileage vehicles, and alternate vehicle fuels and
19 systems, equipment, and materials, that reduce overall energy-related
20 costs and energy use by the state, including investigations into all
21 opportunities to aggregate the purchasing of clean technologies by
22 state and local governments, and including the requirement that new
23 passenger vehicles purchased by the state meet the minimum standards
24 for passenger automobile fuel economy established by the United
25 States secretary of transportation pursuant to the energy policy and
26 conservation act (15 U.S.C. Sec. 2002); and

27 ~~((11))~~ (12) Develop and enact rules to implement the provisions
28 of this chapter.

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

31 (1) The department must provide expertise and training on best
32 practices for state procurement. The department must coordinate with
33 the office regarding training on the best practices for state
34 procurement of information technology goods and services.

35 (2) The department must establish either training or
36 certification programs, or both, to ensure consistency in procurement
37 practices for employees authorized to perform procurement functions
38 under the provisions of this chapter. When establishing training or
39 certification programs, the department may approve existing training

1 or certification programs at state agencies. When establishing
2 programs or approving existing programs, the department shall work
3 with agencies with existing training programs to ensure coordination
4 and minimize additional costs associated with training requirements.
5 Training or certificate programs focused on the procurement of
6 information technology goods and services must be developed and
7 provided in partnership with the office.

8 (3) Beginning July 1, 2013, state agencies must require agency
9 employees responsible for developing, executing, or managing
10 procurements or contracts, or both, to complete department-approved
11 training or certification programs, or both. Beginning July 1, 2015,
12 no agency employee may execute or manage contracts unless the
13 employee has met the training or certification requirements or both
14 as set by the department. Any request for exception to this
15 requirement must be submitted to the director for approval before the
16 employee or group of employees executes or manages contracts.

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

19 (1) An agency may make emergency purchases as defined in
20 subsection (3) of this section. When an emergency purchase is made,
21 the agency head shall submit written notification of the purchase
22 within three business days of the purchase to the director and
23 provide a copy to the office for purchases of information technology
24 goods or services. This notification must contain a description of
25 the purchase, a description of the emergency and the circumstances
26 leading up to the emergency, and an explanation of why the
27 circumstances required an emergency purchase.

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

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

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

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

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

3 (1) Agencies must submit sole source contracts to the department
4 and make the contracts available for public inspection not less than
5 ten working days before the proposed starting date of the contract.
6 Agencies must provide documented justification for sole source
7 contracts to the department when the contract is submitted, and must
8 include evidence that the agency posted the contract opportunity at a
9 minimum on the state's enterprise vendor registration and bid
10 notification system. The department must provide a copy of the
11 submittal for a sole source contract for information technology goods
12 and services to the office for review, and the office shall notify
13 the department if the contract should be denied or if additional
14 justification is needed before the contract may be approved.

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

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

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

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

27 (1) The department must adopt uniform policies and procedures for
28 the effective and efficient management of contracts by all state
29 agencies. Additional policies and procedures related to the
30 management of information technology contracts must be developed in
31 consultation with and approved by the office. The policies and
32 procedures must, at a minimum, include:

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

35 (b) Model complaint and protest procedures;

36 (c) Alternative dispute resolution processes;

37 (d) Incorporation of performance measures and measurable
38 benchmarks in contracts;

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

3 (f) Executing contracts using electronic signatures;

4 (g) Criteria for contract amendments;

5 (h) Postcontract procedures;

6 (i) Procedures and criteria for terminating contracts for cause
7 or otherwise; and

8 (j) Any other subject related to effective and efficient contract
9 management.

10 (2) An agency may not enter into a contract under which the
11 contractor could charge additional costs to the agency, the
12 department, the joint legislative audit and review committee, or the
13 state auditor for access to data generated under the contract. A
14 contractor under such a contract must provide access to data
15 generated under the contract to the contracting agency, the joint
16 legislative audit and review committee, and the state auditor.

17 (3) To the extent practicable, agencies should enter into
18 performance-based contracts. Performance-based contracts identify
19 expected deliverables and performance measures or outcomes.
20 Performance-based contracts also use appropriate techniques, which
21 may include but are not limited to, either consequences or incentives
22 or both to ensure that agreed upon value to the state is received.
23 Payment for goods and services under performance-based contracts
24 should be contingent on the contractor achieving performance
25 outcomes.

26 (4) An agency and contractor may execute a contract using
27 electronic signatures.

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

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