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**SENATE BILL 5572**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senators Hunt and Miloscia; by request of Office of the Chief Information Officer

Read first time 01/30/17. Referred to Committee on State Government.

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

31 (1) In addition to the powers and duties provided in chapter  
32 43.19 RCW, the department shall make available goods and services to  
33 support state agencies, and may enter into agreements with any other  
34 local or federal governmental agency or entity or a public benefit  
35 nonprofit organization, in compliance with RCW 39.34.055, and any  
36 tribes located in the state, to furnish such products and services as  
37 deemed appropriate by both parties. The department must consult with  
38 the office when it makes available information technology goods and  
39 services to ensure consistency with standards and policies to govern

1 information technology as established by the office in accordance  
2 with RCW 43.105.054.

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

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

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

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

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

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

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

33 (1) The director is responsible for the development and oversight  
34 of policy for the procurement of goods and services by all state  
35 agencies under this chapter. When establishing policies, standards,  
36 and procedures, the director shall account for differentiation in  
37 procurement practices and needs among state agencies and strive to  
38 establish policies, standards, and procedures that promote greater

1 efficiency in procurement. Policies, standards, and procedures for  
2 the procurement of information technology goods and services must be  
3 developed in consultation with and approved by the office.

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

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

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

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

22 The director shall:

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

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

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

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

38 (5) Have authority to delegate to agencies authorization to  
39 purchase goods and services. The authorization must specify

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

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

20 (7) Develop and implement an enterprise system for electronic  
21 procurement;

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

24 (9) Establish overall state policy for compliance by all agencies  
25 regarding:

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

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

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

1 for passenger automobile fuel economy established by the United  
2 States secretary of transportation pursuant to the energy policy and  
3 conservation act (15 U.S.C. Sec. 2002); and

4 (11) Develop and enact rules to implement the provisions of this  
5 chapter.

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

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

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

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

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

35 (1) An agency may make emergency purchases as defined in  
36 subsection (3) of this section. When an emergency purchase is made,  
37 the agency head shall submit written notification of the purchase  
38 within three business days of the purchase to the director and

1 provide a copy to the office for purchases of information technology  
2 goods or services. This notification must contain a description of  
3 the purchase, a description of the emergency and the circumstances  
4 leading up to the emergency, and an explanation of why the  
5 circumstances required an emergency purchase.

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) Model complaint and protest procedures;

14 (c) Alternative dispute resolution processes;

15 (d) Incorporation of performance measures and measurable  
16 benchmarks in contracts;

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

19 (f) Executing contracts using electronic signatures;

20 (g) Criteria for contract amendments;

21 (h) Postcontract procedures;

22 (i) Procedures and criteria for terminating contracts for cause  
23 or otherwise; and

24 (j) Any other subject related to effective and efficient contract  
25 management.

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

33 (3) To the extent practicable, agencies should enter into  
34 performance-based contracts. Performance-based contracts identify  
35 expected deliverables and performance measures or outcomes.  
36 Performance-based contracts also use appropriate techniques, which  
37 may include but are not limited to, either consequences or incentives  
38 or both to ensure that agreed upon value to the state is received.  
39 Payment for goods and services under performance-based contracts

1 should be contingent on the contractor achieving performance  
2 outcomes.

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

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

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