

FINAL BILL REPORT

E2SHB 1521

C 269 L 20
Synopsis as Enacted

Brief Description: Providing for accountability and transparency in government contracting.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Dolan, Harris, Valdez, Frame, Caldier, MacEwen, Griffey, Blake, Sells, Tarleton, Fitzgibbon, Ryu, Kilduff and Ormsby).

House Committee on State Government & Tribal Relations
House Committee on Appropriations
Senate Committee on State Government, Tribal Relations & Elections
Senate Committee on Ways & Means

Background:

Contracting Out.

Prior to July 1, 2005, state agencies and institutions of higher education were prohibited from contracting out for services regularly and historically provided by classified employees. Employees in classified services include state employees not specifically exempt from the state civil service statute. Beginning July 1, 2005, the Personnel System Reform Act of 2002 lifted this prohibition on contracting and authorized state agencies and institutions of higher education to purchase services, including services traditionally and historically provided by state employees in classified service, if the following criteria are met:

- the request for proposal contains measurable performance standards;
- the contract contains a provision to require the contracted entity to consider employment of state employees who may be displaced by the contract;
- a contract monitoring process is established to measure contract performance and to cancel contracts not meeting standards;
- there is a determination that contracts would lead to savings or efficiencies; and
- classified service employees are allowed to provide alternative solutions to purchasing the services by contract and, in the event those solutions are not approved, form employee business units and bid for the contract.

Certain entities and contracts are exempt from these criteria, such as contracts for services expressly mandated by the Legislature, printing services, and certain contracts by the Department of Enterprise Services (DES) and Consolidated Technology Services Agency.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Contract Management Policies and Procedures.

The DES must adopt policies and procedures for effective and efficient management of contracts by state agencies. These include procedures for selecting potential contractors based on their qualifications, performance measures, model contract terms to ensure contract performance and compliance with state and federal standards, executing contracts using electronic signatures, and procedures and criteria for terminating contracts. Agencies must provide, on an annual basis, a list of contracts that the agency has entered into or renewed.

The DES must maintain a list of all contracts entered into by agencies. Agencies are encouraged to enter into performance-based contracts that identify expected deliverables and performance measures or outcomes. Payment for goods and services under performance-based contracts should be contingent on the customer achieving performance outcomes.

To provide the maximum practicable opportunity for increased participation by minority- and women-owned and controlled businesses in public works and agency procurement, goals are established in statute for each state agency. If necessary to meet these goals, contracts may be awarded to the next lowest responsible bidder, or all bids may be rejected and new bids obtained, if the lowest responsible bidder does not meet the goals established for a particular contract.

The Washington Law Against Discrimination (WLAD).

The WLAD prohibits discriminatory practices in employment, real estate transactions, public accommodations, credit, and insurance, based on a person's protected characteristics or membership in a protected class. Protected characteristics include race, gender, sexual orientation, and the presence of a disability. Complaints are filed with the Human Rights Commission (HRC), which may conduct an investigation and issue a finding as to whether the WLAD has been violated.

Summary:

Contracting Out.

The applicability of the contracting out requirements for state agencies and institutions of higher education is narrowed to apply only to contracts for services that: (1) have been customarily and historically provided by classified employees on or after July 1, 2005; and (2) would displace or relocate classified employees.

The following additional criteria must be met before the department, agency, or institution of higher education may contract for services:

- A comprehensive impact assessment is completed by the department, agency, or institution of higher education which must include:
 - an estimate of the cost of performance of the service if done by employees;
 - an estimate of the cost of performance of the service if contracted out;
 - the reason for proposing to contract out; and
 - the reasons for determining that the contract results in savings are efficiency improvements.
- When the contract will result in termination of state employees or elimination of state positions, the comprehensive impact assessment may include an assessment of potential adverse impacts on the public from outsourcing the contract.

Departments, agencies, or institutions of higher education must also:

- post on their website the request for proposal, the contract or a statement of the decision to not move forward with contracting out, and the comprehensive impact assessment;
- prepare and maintain in the contract file, every five years or upon completion of the contract, a report that contains:
 - documentation of the contractor's performance measured by itemized performance standards;
 - an itemization of any contract extensions or change orders that resulted in the cost of the contract; and
 - remedial actions that were taken to enforce compliance with the contract and the estimate of the cost incurred by the department, agency, or institution of higher education in enforcing such compliance; and
- include specified terms in any agreement to contract for a service.

Contracts relating to the DES's activities are subject to the contracting out requirements.

The following contracts are exempt from the additional criteria for contracting out, as well as the requirements relating to posting information on a website, maintaining specified records, and including certain terms in contracts for service:

- contracts awarded for the purposes of or by the Department of Transportation;
- contracts with an estimated cost of contract performance of \$20,000 or less;
- contracts for public work with an estimated cost of contract performance that exceeds \$500,000; and
- contracts that cost \$75,000 or more relating to mechanical, plumbing, or electrical procured to install systems for new construction or life-cycle replacement.

Contracts for fire suppression awarded by the Department of Natural Resources are contracts expressly mandated by the Legislature and are therefore also exempt from all contracting out provisions.

Contract Management Policies and Procedures.

The uniform policies and procedures for management of contracts are modified to include: precontract procedures to ensure compliance with minority- and women-owned business participation; model terms to facilitate recovery of the costs of employee staff time expended to achieve substantial compliance; and procedures and criteria for terminating contracts that are not achieving performance standards. Agencies must monitor performance-based contracts to ensure that all aspects are being properly performed and that performance standards are being achieved.

The state is prohibited from contracting with industry partners that have violated the WLAD. Existing contracts must be terminated immediately, unless the industry partner has complied with conditions or obligations resulting from that violation or taken significant and meaningful steps to correct the violation, as determined by the HRC.

Application.

The act applies prospectively only and does not impact contracts in effect prior to the effective date of the act.

Votes on Final Passage:

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| House | 65 | 32 | |
| Senate | 31 | 18 | (Senate amended) |
| House | 67 | 29 | (House concurred) |

Effective: June 11, 2020